

SECOND REGULAR SESSION

HOUSE BILL NO. 1849

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (120) (Sponsor) AND SKAGGS (Co-sponsor).

Read 1st time February 22, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5129L.02I

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to child custody.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows:

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Custody" means joint legal custody, sole legal custody, joint physical custody or sole physical custody or any combination thereof;

(2) "Joint legal custody" means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;

(3) "Joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;

(4) "Third-party custody" means a third party designated as a legal and physical custodian pursuant to subdivision (5) of subsection 5 of this section.

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (1) The wishes of the child's parents as to custody and the proposed parenting plan
17 submitted by both parties;

18 (2) The needs of the child for a frequent, continuing and meaningful relationship with
19 both parents and the ability and willingness of parents to actively perform their functions as
20 mother and father for the needs of the child;

21 (3) The interaction and interrelationship of the child with parents, siblings, and any other
22 person who may significantly affect the child's best interests;

23 (4) Which parent is more likely to allow the child frequent, continuing and meaningful
24 contact with the other parent;

25 (5) The child's adjustment to the child's home, school, and community;

26 (6) The mental and physical health of all individuals involved, including any history of
27 abuse of any individuals involved. If the court finds that a pattern of domestic violence has
28 occurred, and, if the court also finds that awarding custody to the abusive parent is in the best
29 interest of the child, then the court shall enter written findings of fact and conclusions of law.
30 Custody and visitation rights shall be ordered in a manner that best protects the child and any
31 other child or children for whom the parent has custodial or visitation rights, and the parent or
32 other family or household member who is the victim of domestic violence from any further
33 harm;

34 (7) The intention of either parent to relocate the principal residence of the child; and

35 (8) The wishes of a child as to the child's custodian.
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37 The fact that a parent sends his or her child or children to a home school, as defined in section
38 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such
39 child or children.

40 3. (1) In any court proceedings relating to custody of a child, the court shall not award
41 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
42 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
43 was the victim:

44 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
45 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
46 566.209, 566.212, or 566.215, RSMo;

47 (b) A violation of section 568.020, RSMo;

48 (c) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

49 (d) A violation of section 568.065, RSMo;

50 (e) A violation of section 568.080, RSMo;

51 (f) A violation of section 568.090, RSMo; or

52 (g) A violation of section 568.175, RSMo.

53 (2) For all other violations of offenses in chapters 566 and 568, RSMo, not specifically
54 listed in subdivision (1) of this subsection or for a violation of an offense committed in another
55 state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if
56 committed in Missouri, the court may exercise its discretion in awarding custody or visitation
57 of a child to a parent if such parent or any person residing with such parent has been found guilty
58 of, or pled guilty to, any such offense.

59 4. The general assembly finds and declares that it is the public policy of this state that
60 frequent, continuing and meaningful contact with both parents after the parents have separated
61 or dissolved their marriage is in the best interest of the child, except for cases where the court
62 specifically finds that such contact is not in the best interest of the child, and that it is the public
63 policy of this state to encourage parents to participate in decisions affecting the health, education
64 and welfare of their children, and to resolve disputes involving their children amicably through
65 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
66 custody arrangement which will best assure both parents participate in such decisions and have
67 frequent, continuing and meaningful contact with their children so long as it is in the best
68 interests of the child.

69 5. Prior to awarding the appropriate custody arrangement in the best interest of the child,
70 the court shall consider each of the following as follows:

71 (1) Joint physical and joint legal custody to both parents, which shall not be denied
72 solely for the reason that one parent opposes a joint physical and joint legal custody award. The
73 residence of one of the parents shall be designated as the address of the child for mailing and
74 educational purposes;

75 (2) Joint physical custody with one party granted sole legal custody. The residence of
76 one of the parents shall be designated as the address of the child for mailing and educational
77 purposes;

78 (3) Joint legal custody with one party granted sole physical custody; **except that, if**
79 **either parent requests an award of joint physical custody, the court shall consider an**
80 **award of joint physical custody and may require the parents to submit, individually or**
81 **jointly, a written proposed parenting plan in accordance with section 452.310. If joint**
82 **physical custody is not awarded by the court under this subdivision, the court shall include**
83 **a written finding in the judgment or order detailing the specific findings of fact and**
84 **conclusions of law resulting in the determination that the awarding of joint physical**
85 **custody is not in the best interest of the child;**

86 (4) Sole custody to either parent; or

87 (5) Third-party custody or visitation:

88 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
89 or the welfare of the child requires, and it is in the best interests of the child, then custody,
90 temporary custody or visitation may be awarded to any other person or persons deemed by the
91 court to be suitable and able to provide an adequate and stable environment for the child. Before
92 the court awards custody, temporary custody or visitation to a third person under this
93 subdivision, the court shall make that person a party to the action;

94 (b) Under the provisions of this subsection, any person may petition the court to
95 intervene as a party in interest at any time as provided by supreme court rule.

96 6. If the parties have not agreed to a custodial arrangement, or the court determines such
97 arrangement is not in the best interest of the child, the court shall include a written finding in the
98 judgment or order based on the public policy in subsection 4 of this section and each of the
99 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific
100 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
101 custodial arrangement is rejected by the court, the court shall include a written finding in the
102 judgment or order detailing the specific relevant factors resulting in the rejection of such
103 arrangement.

104 7. Upon a finding by the court that either parent has refused to exchange information
105 with the other parent, which shall include but not be limited to information concerning the
106 health, education and welfare of the child, the court shall order the parent to comply immediately
107 and to pay the prevailing party a sum equal to the prevailing party's cost associated with
108 obtaining the requested information, which shall include but not be limited to reasonable
109 attorney's fees and court costs.

110 8. As between the parents of a child, no preference may be given to either parent in the
111 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
112 or sex of the child.

113 9. Any judgment providing for custody shall include a specific written parenting plan
114 setting forth the terms of such parenting plan arrangements specified in subsection 7 of section
115 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
116 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
117 approved and ordered by the court shall be in the court's discretion and shall be in the best
118 interest of the child.

119 10. Unless a parent has been denied custody rights pursuant to this section or visitation
120 rights under section 452.400, both parents shall have access to records and information
121 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
122 If the parent without custody has been granted restricted or supervised visitation because the
123 court has found that the parent with custody or any child has been the victim of domestic

124 violence, as defined in section 455.200, RSMo, by the parent without custody, the court may
125 order that the reports and records made available pursuant to this subsection not include the
126 address of the parent with custody or the child. Unless a parent has been denied custody rights
127 pursuant to this section or visitation rights under section 452.400, any judgment of dissolution
128 or other applicable court order shall specifically allow both parents access to such records and
129 reports.

130 11. Except as otherwise precluded by state or federal law, if any individual, professional,
131 public or private institution or organization denies access or fails to provide or disclose any and
132 all records and information, including, but not limited to, past and present dental, medical and
133 school records pertaining to a minor child, to either parent upon the written request of such
134 parent, the court shall, upon its finding that the individual, professional, public or private
135 institution or organization denied such request without good cause, order that party to comply
136 immediately with such request and to pay to the prevailing party all costs incurred, including, but
137 not limited to, attorney's fees and court costs associated with obtaining the requested information.

138 12. An award of joint custody does not preclude an award of child support pursuant to
139 section 452.340 and applicable supreme court rules. The court shall consider the factors
140 contained in section 452.340 and applicable supreme court rules in determining an amount
141 reasonable or necessary for the support of the child.

142 13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and
143 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the
144 custody or visitation arrangement ordered by the court best protects the child and the parent or
145 other family or household member who is the victim of domestic violence or abuse, as defined
146 in sections 455.010 and 455.501, RSMo, and any other children for whom such parent has
147 custodial or visitation rights from any further harm.

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