

SECOND REGULAR SESSION

HOUSE BILL NO. 1551

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

4369H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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

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

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.

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 as
28 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the
29 abusive parent is in the best interest of the child, then the court shall enter written findings of fact
30 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best
31 protects the child and any other child or children for whom the parent has custodial or visitation
32 rights, and the parent or other family or household member who is the victim of domestic
33 violence from any further 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. The fact that a parent sends his or
36 her child or children to a home school, as defined in section 167.031, shall not be the sole factor
37 that a court considers in determining custody of such child or children.

38 3. (1) In any court proceedings relating to custody of a child, the court shall not award
39 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
40 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
41 was the victim:

42 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
43 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
44 566.209, 566.212, or 566.215;

45 (b) A violation of section 568.020;

46 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

47 (d) A violation of section 568.065;

48 (e) A violation of section 568.080;

49 (f) A violation of section 568.090; or

50 (g) A violation of section 568.175.

51 (2) For all other violations of offenses in chapters 566 and 568 not specifically listed in
52 subdivision (1) of this subsection or for a violation of an offense committed in another state
53 when a child is the victim that would be a violation of chapter 566 or 568 if committed in

54 Missouri, the court may exercise its discretion in awarding custody or visitation of a child to a
55 parent if such parent or any person residing with such parent has been found guilty of, or pled
56 guilty to, any such offense.

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

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

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

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

76 (3) Joint legal custody with one party granted sole physical custody;

77 (4) Sole custody to either parent; or

78 (5) Third-party custody or visitation:

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

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

87 6. If the parties have not agreed to a custodial arrangement, or the court determines such
88 arrangement is not in the best interest of the child, the court shall include a written finding in the
89 judgment or order based on the public policy in subsection 4 of this section and each of the

90 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific
91 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
92 custodial arrangement is rejected by the court, the court shall include a written finding in the
93 judgment or order detailing the specific relevant factors resulting in the rejection of such
94 arrangement.

95 **7. Upon ordering a custody arrangement, the court may also order that the**
96 **noncustodial and custodial parents provide the court with an annual report that specifies**
97 **whether the parties are in compliance with the order and an accounting of how the parent**
98 **awarded child support has spent the support received from the parent obligated to make**
99 **support payments under section 452.340, if applicable. No court costs or other fees shall**
100 **be assessed to either party for submitting the annual report.**

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

107 **[8.] 9.** As between the parents of a child, no preference may be given to either parent in
108 the awarding of custody because of that parent's age, sex, or financial status, nor because of the
109 age or sex of the child.

110 **[9.] 10.** Any judgment providing for custody shall include a specific written parenting
111 plan setting forth the terms of such parenting plan arrangements specified in subsection [7] **8** of
112 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section
113 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody
114 plan approved and ordered by the court shall be in the court's discretion and shall be in the best
115 interest of the child.

116 **[10.] 11.** Unless a parent has been denied custody rights pursuant to this section or
117 visitation rights under section 452.400, both parents shall have access to records and information
118 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
119 If the parent without custody has been granted restricted or supervised visitation because the
120 court has found that the parent with custody or any child has been the victim of domestic
121 violence, as defined in section 455.010, by the parent without custody, the court may order that
122 the reports and records made available pursuant to this subsection not include the address of the
123 parent with custody or the child. Unless a parent has been denied custody rights pursuant to this
124 section or visitation rights under section 452.400, any judgment of dissolution or other applicable
125 court order shall specifically allow both parents access to such records and reports.

126 [11.] **12.** Except as otherwise precluded by state or federal law, if any individual,
127 professional, public or private institution or organization denies access or fails to provide or
128 disclose any and all records and information, including, but not limited to, past and present
129 dental, medical and school records pertaining to a minor child, to either parent upon the written
130 request of such parent, the court shall, upon its finding that the individual, professional, public
131 or private institution or organization denied such request without good cause, order that party to
132 comply immediately with such request and to pay to the prevailing party all costs incurred,
133 including, but not limited to, attorney's fees and court costs associated with obtaining the
134 requested information.

135 [12.] **13.** An award of joint custody does not preclude an award of child support pursuant
136 to section 452.340 and applicable supreme court rules. The court shall consider the factors
137 contained in section 452.340 and applicable supreme court rules in determining an amount
138 reasonable or necessary for the support of the child.

139 [13.] **14.** If the court finds that domestic violence or abuse, as defined in section 455.010
140 has occurred, the court shall make specific findings of fact to show that the custody or visitation
141 arrangement ordered by the court best protects the child and the parent or other family or
142 household member who is the victim of domestic violence **or abuse**, as defined in section
143 455.010, and any other children for whom such parent has custodial or visitation rights from any
144 further harm.

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