

FIRST REGULAR SESSION

# HOUSE BILL NO. 447

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CRAWFORD.

0955H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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*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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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. When the parties have not reached an agreement on all issues related to custody, the court shall consider all relevant factors and enter written findings of fact and conclusions of law, including, but not limited to, the following:

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

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

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

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

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

28 (6) The mental and physical health of all individuals involved, including any history of  
29 abuse of any individuals involved. If the court finds that a pattern of domestic violence as  
30 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the  
31 abusive parent is in the best interest of the child, then the court shall enter written findings of fact  
32 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best  
33 protects the child and any other child or children for whom the parent has custodial or visitation  
34 rights, and the parent or other family or household member who is the victim of domestic  
35 violence from any further harm;

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

37 (8) The wishes of a child as to the child's custodian. The fact that a parent sends his or  
38 her child or children to a home school, as defined in section 167.031, shall not be the sole factor  
39 that a court considers in determining custody of such 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, 566.031, 566.060, 566.062, 566.064,  
45 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111, 566.151, 566.203, 566.206,  
46 566.209, 566.211, or 566.215;

47 (b) A violation of section 568.020;

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

49 (d) A violation of section 568.065;

50 (e) A violation of section 573.200;

51 (f) A violation of section 573.205; or

52 (g) A violation of section 568.175.

53           (2) For all other violations of offenses in chapters 566 and 568 not specifically listed in  
54 subdivision (1) of this subsection or for a violation of an offense committed in another state  
55 when a child is the victim that would be a violation of chapter 566 or 568 if committed in  
56 Missouri, the court may exercise its discretion in awarding custody or visitation of a child to a  
57 parent if such parent or any person residing with such parent has been found guilty of, or pled  
58 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 one  
76 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;

79           (4) Sole custody to either parent; or

80           (5) Third-party custody or visitation:

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

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

89           6. If the parties **are not in default or failed to appear for trial after reasonable notice**  
90 **and** have not agreed to a custodial arrangement, or the court determines such arrangement is not  
91 in the best interest of the child, the court shall include a written finding in the judgment or order  
92 based on the public policy in subsection 4 of this section and each of the factors listed in  
93 subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors that  
94 made a particular arrangement in the best interest of the child. If a proposed custodial  
95 arrangement is rejected by the court, the court shall include a written finding in the judgment or  
96 order detailing the specific relevant factors resulting in the rejection of such arrangement.

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

103           8. As between the parents of a child, no preference may be given to either parent in the  
104 awarding of custody because of that parent's age, sex, or financial status, nor because of the age  
105 or sex of the child. The court shall not presume that a parent, solely because of his or her sex,  
106 is more qualified than the other parent to act as a joint or sole legal or physical custodian for the  
107 child.

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

114           10. After August 28, 2016, every court order establishing or modifying custody or  
115 visitation shall include the following language: "In the event of noncompliance with this order,  
116 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party  
117 custody is denied or interfered with by a parent or third party without good cause, the aggrieved  
118 person may file a family access motion with the court stating the specific facts that constitute a  
119 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment  
120 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the  
121 procedures for filing a family access motion and a simple form for use in filing the family access  
122 motion. A family access motion does not require the assistance of legal counsel to prepare and  
123 file.".

11. No court shall adopt any local rule, form, or practice requiring a standardized or default parenting plan for interim, temporary, or permanent orders or judgments. Notwithstanding any other provision of law to the contrary, a court may enter an interim order in a proceeding under this chapter, provided that the interim order shall not contain any provisions about child custody or a parenting schedule or plan without first providing the parties with notice and a hearing, unless the parties otherwise agree.

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

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

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

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

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