

SECOND REGULAR SESSION

# HOUSE BILL NO. 1638

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TERRY.

3529H.011

DANA RADEMAN MILLER, 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 the custody of children.

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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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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. There shall be a rebuttable presumption that an award of equal or approximately equal parenting time to each parent is in the best interests of the child. Such presumption is

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 rebuttable only by a preponderance of the evidence in accordance with all relevant factors,  
19 including, but not limited to, the factors contained in subdivisions (1) to (8) of this subsection.  
20 The presumption may be rebutted if the court finds that the parents have reached an  
21 agreement on all issues related to custody, or if the court finds that a pattern of domestic  
22 violence has occurred as set out in subdivision (6) of this subsection. When the parties have  
23 not reached an agreement on all issues related to custody, the court shall consider all relevant  
24 factors and enter written findings of fact and conclusions of law, including, but not limited to,  
25 the following:

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

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

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

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

35 (5) The child's adjustment to the child's home, school, and community. The fact that a  
36 parent sends his or her child or children to a home school, as defined in section 167.031, shall  
37 not be the sole factor that a court considers in determining custody of such child or children;

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

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

47 (8) The unobstructed input of a child, free of coercion and manipulation, as to the  
48 child's custodial arrangement.

49 3. (1) In any court proceedings relating to custody of a child, the court shall not  
50 award custody or unsupervised visitation of a child to a parent if such parent or any person  
51 residing with such parent has been found guilty of, or pled guilty to, any of the following  
52 offenses when a child was the victim:

53 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061,  
54 566.062, 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203,  
55 566.206, 566.209, 566.211, or 566.215;

56 (b) A violation of section 568.020;

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

58 (d) A violation of section 568.065;

59 (e) A violation of section 573.200;

60 (f) A violation of section 573.205; or

61 (g) A violation of section 568.175.

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

68 4. The general assembly finds and declares that it is the public policy of this state that  
69 frequent, continuing and meaningful contact with both parents after the parents have  
70 separated or dissolved their marriage is in the best interest of the child, except for cases where  
71 the court specifically finds that such contact is not in the best interest of the child, and that it  
72 is the public policy of this state to encourage parents to participate in decisions affecting the  
73 health, education and welfare of their children, and to resolve disputes involving their  
74 children amicably through alternative dispute resolution. In order to effectuate these policies,  
75 the general assembly encourages the court to enter a temporary parenting plan as early as  
76 practicable in a proceeding under this chapter, consistent with the provisions of subsection 2  
77 of this section, and, in so doing, the court shall determine the custody arrangement which will  
78 best assure both parents participate in such decisions and have frequent, continuing and  
79 meaningful contact with their children so long as it is in the best interests of the child.

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

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

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

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

90 (4) Sole custody to either parent; or

91 (5) Third-party custody or visitation:

92 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a  
93 custodian, or the welfare of the child requires, and it is in the best interests of the child, then  
94 custody, temporary custody or visitation may be awarded to a person related by consanguinity  
95 or affinity to the child **with priority given to the grandparent or grandparents of the**  
96 **child**. If no person related to the child by consanguinity or affinity is willing to accept  
97 custody, then the court may award custody to any other person or persons deemed by the  
98 court to be suitable and able to provide an adequate and stable environment for the child.  
99 Before the court awards custody, temporary custody or visitation to a third person under this  
100 subdivision, the court shall make that person a party to the action;

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

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

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

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

122 9. Any judgment providing for custody shall include a specific written parenting plan  
123 setting forth the terms of such parenting plan arrangements specified in subsection 8 of  
124 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to  
125 section 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the

126 custody plan approved and ordered by the court shall be in the court's discretion and shall be  
127 in the best interest of the child.

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

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

144         12. Unless a parent has been denied custody rights pursuant to this section or  
145 visitation rights under section 452.400, both parents shall have access to records and  
146 information pertaining to a minor child including, but not limited to, medical, dental, and  
147 school records. If the parent without custody has been granted restricted or supervised  
148 visitation because the court has found that the parent with custody or any child has been the  
149 victim of domestic violence, as defined in section 455.010, by the parent without custody, the  
150 court may order that the reports and records made available pursuant to this subsection not  
151 include the address of the parent with custody or the child. A court shall order that the reports  
152 and records made available under this subsection not include the address of the parent with  
153 custody if the parent with custody is a participant in the address confidentiality program under  
154 section 589.663. Unless a parent has been denied custody rights pursuant to this section or  
155 visitation rights under section 452.400, any judgment of dissolution or other applicable court  
156 order shall specifically allow both parents access to such records and reports.

157         13. Except as otherwise precluded by state or federal law, if any individual,  
158 professional, public or private institution or organization denies access or fails to provide or  
159 disclose any and all records and information, including, but not limited to, past and present  
160 dental, medical and school records pertaining to a minor child, to either parent upon the  
161 written request of such parent, the court shall, upon its finding that the individual,  
162 professional, public or private institution or organization denied such request without good

163 cause, order that party to comply immediately with such request and to pay to the prevailing  
164 party all costs incurred, including, but not limited to, attorney's fees and court costs associated  
165 with obtaining the requested information.

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

170         15. If the court finds that domestic violence or abuse as defined in section 455.010  
171 has occurred, the court shall make specific findings of fact to show that the custody or  
172 visitation arrangement ordered by the court best protects the child and the parent or other  
173 family or household member who is the victim of domestic violence, as defined in section  
174 455.010, and any other children for whom such parent has custodial or visitation rights from  
175 any further harm.

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