

FIRST REGULAR SESSION

HOUSE BILL NO. 381

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

1125H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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 or FPE school shall not be the sole
37 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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