

FIRST REGULAR SESSION

HOUSE BILL NO. 1047

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAILEY.

2221H.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 custody of in vitro human embryos.

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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) **"Gamete" means a sperm or ovum;**

(3) **"In vitro human embryo" means any human embryo, at any stage of development, which is not conceived within a female;**

(4) "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)~~ (5) "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;

(6) **"Surrogate" means a woman who is not an ovum donor but in whose womb an in vitro human embryo is implanted;**

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 ~~[(4)]~~ (7) "Third-party custody" means a third party designated as a legal and physical
19 custodian pursuant to subdivision (5) of subsection 5 of this section.

20 2. The court shall determine custody in accordance with the best interests of the child.
21 When the parties have not reached an agreement on all issues related to custody, the court shall
22 consider all relevant factors and enter written findings of fact and conclusions of law, including,
23 but not limited to, the following:

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

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

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

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

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

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

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

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

46 3. (1) In any court proceedings relating to custody of a child, the court shall not award
47 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
48 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
49 was the victim:

50 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062,
51 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203, 566.206,
52 566.209, 566.211, or 566.215;

53 (b) A violation of section 568.020;

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

55 (d) A violation of section 568.065;

56 (e) A violation of section 573.200;

57 (f) A violation of section 573.205; or

58 (g) A violation of section 568.175.

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

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

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

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

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

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

85 (4) Sole custody to either parent; or

86 (5) Third-party custody or visitation:

87 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
88 or the welfare of the child requires, and it is in the best interests of the child, then custody,
89 temporary custody or visitation may be awarded to any other person or persons deemed by the

90 court to be suitable and able to provide an adequate and stable environment for the child. Before
91 the court awards custody, temporary custody or visitation to a third person under this
92 subdivision, the court shall make that person a party to the action;

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

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

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

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

114 9. Any judgment providing for custody shall include a specific written parenting plan
115 setting forth the terms of such parenting plan arrangements specified in subsection 8 of section
116 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
117 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
118 approved and ordered by the court shall be in the court's discretion and shall be in the best
119 interest of the child.

120 10. After August 28, 2016, every court order establishing or modifying custody or
121 visitation shall include the following language: "In the event of noncompliance with this order,
122 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party
123 custody is denied or interfered with by a parent or third party without good cause, the aggrieved
124 person may file a family access motion with the court stating the specific facts that constitute a
125 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment

126 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the
127 procedures for filing a family access motion and a simple form for use in filing the family access
128 motion. A family access motion does not require the assistance of legal counsel to prepare and
129 file."

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

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

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

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

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

166 **16. If a dispute is brought before a court of this state involving the custody of an**
167 **in vitro human embryo, the court shall render a decision according to the following**
168 **standards:**

169 **(1) The court shall determine custody in accordance with the best interest of the in**
170 **vitro human embryo. It is presumed that it is in the best interest of the in vitro human**
171 **embryo to place him or her in the custody of the ovum donor or spermatozoon donor who**
172 **intends to develop the in vitro human embryo to birth, subject to rebuttal evidence;**

173 **(2) The court shall resolve the dispute between the parties in the manner that**
174 **provides the best chance for the in vitro human embryo to develop and grow;**

175 **(3) The following persons have standing to petition the court or to intervene in a**
176 **case: the ovum donor; spermatozoon donor; or the surrogate, who shall have limited**
177 **standing for only those embryos that have been previously placed inside the womb of the**
178 **surrogate;**

179 **(4) The court may uphold an agreement between the parties to an action**
180 **establishing or terminating parental rights as not against public policy; and**

181 **(5) All agreements brought before the court concerning the disposition of in vitro**
182 **human embryos shall be subject to the provisions of this section.**

183 **17. The party that is not awarded custody of an in vitro human embryo has no**
184 **parental responsibility and no right, obligation, or interest with respect to any child**
185 **resulting from the disputed in vitro human embryo, unless the party provided gametes for**
186 **the in vitro human embryo and consents in writing to be a parent to any resulting child as**
187 **part of the proceedings concerning the disposition of the in vitro human embryo.**

188 **18. If the party who is not awarded custody of an in vitro human embryo does not**
189 **consent to being a parent as provided in subsection 17 of this section, any resulting child**
190 **from the disputed in vitro human embryo shall not be a child of the party and has no right,**
191 **obligation, or interest with respect to the party.**

192 **19. A party who provided gametes for an in vitro human embryo and who does not**
193 **consent to being a parent as provided in subsection 17 of this section shall provide the**
194 **party awarded custody of the in vitro human embryo with detailed written nonidentifying**
195 **information that includes the health and genetic history of the party and the party's family**
196 **in a document that is separate from a document containing identifying information.**

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