

SECOND REGULAR SESSION

HOUSE BILL NO. 2558

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCAHERTY.

6444H.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 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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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) **"DNA donor", a person providing a cell that, through a somatic cell nuclear transfer process or any similar process, created a human embryo;**

(3) **"Human embryo", a human organism created by the joining of a female ovum with a male spermatozoon, or by any other method, from the single cell stage through every stage of development in the biological process through birth;**

(4) **"In vitro human embryo", any human embryo at any stage of development which is not located within a female womb;**

(5) "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)] (6) "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

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 the parents in such a way as to assure the child of frequent, continuing and meaningful contact
19 with both parents;

20 ~~[(4)]~~ (7) **“Surrogate”, a woman who is not an ovum donor, but in whose womb a**
21 **human embryo is implanted;**

22 (8) "Third-party custody" means a third party designated as a legal and physical
23 custodian pursuant to subdivision (5) of subsection 5 of this section.

24 2. The court shall determine custody in accordance with the best interests of the child.
25 The court shall consider all relevant factors including:

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 other
32 person who may significantly affect the child's best interests;

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

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

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

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

45 (8) The wishes of a child as to the child's custodian.

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47 The fact that a parent sends his or her child or children to a home school, as defined in section
48 167.031, shall not be the sole factor that a court considers in determining custody of such child
49 or children.

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

54 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
55 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
56 566.209, 566.212, or 566.215;

57 (b) A violation of section 568.020;

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

59 (d) A violation of section 568.065;

60 (e) A violation of section 568.080;

61 (f) A violation of section 568.090; or

62 (g) A violation of section 568.175.

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

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

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

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

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

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

89 (4) Sole custody to either parent; or

90 (5) Third-party custody or visitation:

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

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

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

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

113 8. As between the parents of a child, no preference may be given to either parent in the
114 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
115 or sex of the child.

116 9. Any judgment providing for custody shall include a specific written parenting plan
117 setting forth the terms of such parenting plan arrangements specified in subsection [7] 8 of
118 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section
119 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody
120 plan approved and ordered by the court shall be in the court's discretion and shall be in the best
121 interest of the child.

122 10. Unless a parent has been denied custody rights pursuant to this section or visitation
123 rights under section 452.400, both parents shall have access to records and information
124 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
125 If the parent without custody has been granted restricted or supervised visitation because the

126 court has found that the parent with custody or any child has been the victim of domestic
127 violence, as defined in section 455.010, by the parent without custody, the court may order that
128 the reports and records made available pursuant to this subsection not include the address of the
129 parent with custody or the child. Unless a parent has been denied custody rights pursuant to this
130 section or visitation rights under section 452.400, any judgment of dissolution or other applicable
131 court order shall specifically allow both parents access to such records and reports.

132 11. Except as otherwise precluded by state or federal law, if any individual, professional,
133 public or private institution or organization denies access or fails to provide or disclose any and
134 all records and information, including, but not limited to, past and present dental, medical and
135 school records pertaining to a minor child, to either parent upon the written request of such
136 parent, the court shall, upon its finding that the individual, professional, public or private
137 institution or organization denied such request without good cause, order that party to comply
138 immediately with such request and to pay to the prevailing party all costs incurred, including, but
139 not limited to, attorney's fees and court costs associated with obtaining the requested information.
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141 12. An award of joint custody does not preclude an award of child support pursuant to
142 section 452.340 and applicable supreme court rules. The court shall consider the factors
143 contained in section 452.340 and applicable supreme court rules in determining an amount
144 reasonable or necessary for the support of the child.

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

150 **14. If a dispute is brought before a court of this state involving the custody of in**
151 **vitro human embryos, the court shall render a decision according to the following**
152 **standards:**

153 **(1) The in vitro human embryo is recognized as a human being in this state;**

154 **(2) Any provision under this section shall be interpreted and construed to**
155 **acknowledge that every human being at every stage of development has all the rights,**
156 **privileges, and immunities available to other persons, citizens, and residents of this state,**
157 **subject only to the Constitution of the United States, decisional interpretations thereof by**
158 **the United States Supreme Court, and specific provisions to the contrary in the laws of this**
159 **state;**

160 **(3) The court shall determine custody in accordance with the best interest of the in**
161 **vitro human embryo. It is presumed that it is in the best interest of the in vitro human**

162 embryo to place him or her in the custody of the ovum donor or spermatozoon donor who
163 intends to develop the in vitro human embryo to birth, subject to rebuttal evidence;

164 (4) The court shall resolve the dispute between the parties in the manner that
165 provides the best chance for the in vitro human embryo to develop and grow. The court
166 shall not approve either the termination of the in vitro human embryo or an outcome that
167 leaves the in vitro human embryo indefinitely in an environment in which it does not
168 develop and grow;

169 (5) The following persons have standing to petition the court or to intervene in a
170 case: the ovum donor, spermatozoon donor, DNA donor, the surrogate in which the human
171 embryo at issue has been placed, or any other party involved in the negotiations for the
172 creation of the in vitro human embryo at issue;

173 (6) The court may uphold an agreement between the parties to an action
174 establishing or terminating parental rights as not against public policy;

175 (7) All agreements brought before the court concerning the disposition of in vitro
176 human embryos shall be subject to the provisions of this section.

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