

# HOUSE BILL NO. 2789

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE REUTER.

5813H.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 custody of in vitro human embryos.

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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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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) **"In vitro human embryo" means any human embryo at any stage of development that is not conceived within a female;**

(3) "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)~~ (4) "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;

(5) **"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.

17           ~~[(4)]~~ (6) "Third-party custody" means a third party designated as a legal and physical  
18 custodian pursuant to subdivision (5) of subsection 5 of this section.

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

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

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

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

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

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

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

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

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

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

57           (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061,  
58 566.062, 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203,  
59 566.206, 566.209, 566.211, or 566.215;

60           (b) A violation of section 568.020;

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

62           (d) A violation of section 568.065;

63           (e) A violation of section 573.200;

64           (f) A violation of section 573.205; or

65           (g) A violation of section 568.175.

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

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

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

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

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

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

94 (4) Sole custody to either parent; or

95 (5) Third-party custody or visitation:

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

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

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

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

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

125 9. Any judgment providing for custody shall include a specific written parenting plan  
126 setting forth the terms of such parenting plan arrangements specified in subsection 8 of

127 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to  
128 section 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the  
129 custody plan approved and ordered by the court shall be in the court's discretion and shall be  
130 in the best interest of the child.

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

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

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

160 13. Except as otherwise precluded by state or federal law, if any individual,  
161 professional, public or private institution or organization denies access or fails to provide or  
162 disclose any and all records and information, including, but not limited to, past and present  
163 dental, medical and school records pertaining to a minor child, to either parent upon the

164 written request of such parent, the court shall, upon its finding that the individual,  
165 professional, public or private institution or organization denied such request without good  
166 cause, order that party to comply immediately with such request and to pay to the prevailing  
167 party all costs incurred, including, but not limited to, attorney's fees and court costs associated  
168 with obtaining the requested information.

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

173       15. If the court finds that domestic violence or abuse as defined in section 455.010  
174 has occurred, the court shall make specific findings of fact to show that the custody or  
175 visitation arrangement ordered by the court best protects the child and the parent or other  
176 family or household member who is the victim of domestic violence, as defined in section  
177 455.010, and any other children for whom such parent has custodial or visitation rights from  
178 any further harm.

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

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

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

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

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

195       **(5) All agreements, lawsuits, motions to modify, or any other motions regarding**  
196 **the disposition of in vitro human embryos brought before the court shall be subject to**  
197 **the provisions of this subsection. All decisions made by the court regarding the**  
198 **disposition of in vitro human embryos prior to August 28, 2024, shall be open to**

199 **modification by motion or petition of a person with standing and shall be reopened and**  
200 **modified in accordance with this subsection.**

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