

# SENATE BILL NO. 1026

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

3420S.02I

KRISTINA MARTIN, Secretary

## AN ACT

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

*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Section A. Section 452.375, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 452.375,  
3 to read as follows:

452.375. 1. As used in this chapter, unless the  
2 context clearly indicates otherwise:

3 (1) "Custody" means joint legal custody, sole legal  
4 custody, joint physical custody or sole physical custody or  
5 any combination thereof;

6 (2) "Joint legal custody" means that the parents share  
7 the decision-making rights, responsibilities, and authority  
8 relating to the health, education and welfare of the child,  
9 and, unless allocated, apportioned, or decreed, the parents  
10 shall confer with one another in the exercise of decision-  
11 making rights, responsibilities, and authority;

12 (3) "Joint physical custody" means an order awarding  
13 each of the parents [significant, but not necessarily  
14 equal,] **substantially equal** periods of time during which a  
15 child resides with or is under the care and supervision of  
16 each of the parents. Joint physical custody shall be shared  
17 by the parents in such a way as to assure the child of

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 frequent, continuing and meaningful contact with both  
19 parents;

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

23 2. The court shall determine custody in accordance  
24 with the best interests of the child. There shall be a  
25 rebuttable presumption that an award of equal or  
26 [approximately] **substantially** equal parenting time to each  
27 parent is in the best interests of the child. Such  
28 presumption is rebuttable only by a preponderance of the  
29 evidence in accordance with all relevant factors, including,  
30 but not limited to, the factors contained in subdivisions  
31 (1) to [(8)] (9) of this subsection. The presumption may be  
32 rebutted if the court finds that the parents have reached an  
33 agreement on all issues related to custody, or if the court  
34 finds that a pattern of domestic violence has occurred as  
35 set out in subdivision [(6)] (7) of this subsection. When  
36 the parties have not reached an agreement on all issues  
37 related to custody, the court shall consider all relevant  
38 factors and enter written findings of fact and conclusions  
39 of law, including, but not limited to, the following:

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

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

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

49           (4) Which parent is more likely to allow the child  
50 frequent, continuing and meaningful contact with the other  
51 parent **and the willingness and ability of parents to**  
52 **cooperate in the rearing of their child, to maximize sharing**  
53 **information and minimize exposure of the child to parental**  
54 **conflict, and to utilize methods for resolving disputes**  
55 **regarding any major decision concerning the life of the**  
56 **child;**

57           (5) The child's adjustment to the child's home,  
58 school, and community **and the child's physical, educational,**  
59 **and other needs.** The fact that a parent sends his or her  
60 child or children to a home school, as defined in section  
61 167.031, shall not be the sole factor that a court considers  
62 in determining custody of such child or children;

63           (6) The mental and physical health of all individuals  
64 involved, including **the mental health or substance abuse**  
65 **history experienced by either parent;**

66           (7) Any history of abuse of any individuals involved,  
67 **including domestic and child abuse. In determining whether**  
68 **the presumption is rebutted by a pattern of domestic**  
69 **violence, the court shall consider the nature and context of**  
70 **the domestic violence and the implications of the domestic**  
71 **violence for parenting and for the child's safety, well-**  
72 **being, and developmental needs.** If the court finds that a  
73 pattern of domestic violence as defined in section 455.010  
74 has occurred, and, if the court also finds that awarding  
75 custody to the abusive parent is in the best interest of the  
76 child, then the court shall enter written findings of fact  
77 and conclusions of law. Custody and visitation rights shall  
78 be ordered in a manner that best protects the child and any  
79 other child or children for whom the parent has custodial or  
80 visitation rights, and the parent or other family or

81 household member who is the victim of domestic violence from  
82 any further harm, **whether physical, verbal, or psychological;**

83 [(7) The intention of either parent to relocate the  
84 principal residence of the child; and]

85 (8) [The unobstructed input of a child, free of  
86 coercion and manipulation, as to the child's custodial  
87 arrangement] **The distance between the residences of the  
88 parents seeking custody, including consideration of any  
89 relocation which has occurred or an intent to relocate; and**

90 (9) **The reasonable input of the child as to the  
91 child's custodial arrangement, if the court deems the child  
92 to be of sufficient ability, age, and maturity to express an  
93 independent, reliable preference and that such input is in  
94 the best interests of the child and will not be emotionally  
95 damaging, with due consideration of the influence that a  
96 parent may have on the child's input.**

97 3. (1) In any court proceedings relating to custody  
98 of a child, the court shall not award custody or  
99 unsupervised visitation of a child to a parent if such  
100 parent or any person residing with such parent has been  
101 found guilty of, or pled guilty to, any of the following  
102 offenses when a child was the victim:

103 (a) A felony violation of section 566.030, 566.031,  
104 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,  
105 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,  
106 566.203, 566.206, 566.209, 566.211, or 566.215;

107 (b) A violation of section 568.020;

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

110 (d) A violation of section 568.065;

111 (e) A violation of section 573.200;

112 (f) A violation of section 573.205; or

113 (g) A violation of section 568.175.

114 (2) For all other violations of offenses in chapters  
115 566 and 568 not specifically listed in subdivision (1) of  
116 this subsection or for a violation of an offense committed  
117 in another state when a child is the victim that would be a  
118 violation of chapter 566 or 568 if committed in Missouri,  
119 the court may exercise its discretion in awarding custody or  
120 visitation of a child to a parent if such parent or any  
121 person residing with such parent has been found guilty of,  
122 or pled guilty to, any such offense.

123 4. The general assembly finds and declares that it is  
124 the public policy of this state that frequent, continuing  
125 and meaningful contact with both parents after the parents  
126 have separated or dissolved their marriage is in the best  
127 interest of the child, except for cases where the court  
128 specifically finds that such contact is not in the best  
129 interest of the child, and that it is the public policy of  
130 this state to encourage parents to participate in decisions  
131 affecting the health, education and welfare of their  
132 children, and to resolve disputes involving their children  
133 amicably through alternative dispute resolution. In order  
134 to effectuate these policies, the general assembly  
135 encourages the court to enter a temporary parenting plan as  
136 early as practicable in a proceeding under this chapter,  
137 consistent with the provisions of subsection 2 of this  
138 section, and, in so doing, the court shall determine the  
139 custody arrangement which will best assure both parents  
140 participate in such decisions and have frequent, continuing  
141 and meaningful contact with their children so long as it is  
142 in the best interests of the child.

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

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

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

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

158           (4) Sole custody to either parent; or

159           (5) Third-party custody or visitation:

160           (a) When the court finds that each parent is unfit,  
161 unsuitable, or unable to be a custodian, or the welfare of  
162 the child requires, and it is in the best interests of the  
163 child, then custody, temporary custody or visitation may be  
164 awarded to a person related by consanguinity or affinity to  
165 the child. If no person related to the child by  
166 consanguinity or affinity is willing to accept custody, then  
167 the court may award custody to any other person or persons  
168 deemed by the court to be suitable and able to provide an  
169 adequate and stable environment for the child. Before the  
170 court awards custody, temporary custody or visitation to a  
171 third person under this subdivision, the court shall make  
172 that person a party to the action;

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

176           6. If the parties have not agreed to a custodial  
177 arrangement, or the court determines such arrangement is not  
178 in the best interest of the child, the court shall include a  
179 written finding in the judgment or order based on the public  
180 policy in subsection 4 of this section and each of the  
181 factors listed in subdivisions (1) to **[(8)] (9)** of  
182 subsection 2 of this section detailing the specific relevant  
183 factors that made a particular arrangement in the best  
184 interest of the child. If a proposed custodial arrangement  
185 is rejected by the court, the court shall include a written  
186 finding in the judgment or order detailing the specific  
187 relevant factors resulting in the rejection of such  
188 arrangement.

189           7. Upon a finding by the court that either parent has  
190 refused to exchange information with the other parent, which  
191 shall include but not be limited to information concerning  
192 the health, education and welfare of the child, the court  
193 shall order the parent to comply immediately and to pay the  
194 prevailing party a sum equal to the prevailing party's cost  
195 associated with obtaining the requested information, which  
196 shall include but not be limited to reasonable attorney's  
197 fees and court costs.

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

205           9. Any judgment providing for custody shall include a  
206 specific written parenting plan setting forth the terms of  
207 such parenting plan arrangements specified in subsection 8  
208 of section 452.310. Such plan may be a parenting plan  
209 submitted by the parties pursuant to section 452.310 or, in  
210 the absence thereof, a plan determined by the court, but in  
211 all cases, the custody plan approved and ordered by the  
212 court shall be in the court's discretion and shall be in the  
213 best interest of the child.

214           10. After August 28, 2016, every court order  
215 establishing or modifying custody or visitation shall  
216 include the following language: "In the event of  
217 noncompliance with this order, the aggrieved party may file  
218 a verified motion for contempt. If custody, visitation, or  
219 third-party custody is denied or interfered with by a parent  
220 or third party without good cause, the aggrieved person may  
221 file a family access motion with the court stating the  
222 specific facts that constitute a violation of the custody  
223 provisions of the judgment of dissolution, legal separation,  
224 or judgment of paternity. The circuit clerk will provide  
225 the aggrieved party with an explanation of the procedures  
226 for filing a family access motion and a simple form for use  
227 in filing the family access motion. A family access motion  
228 does not require the assistance of legal counsel to prepare  
229 and file."

230           11. No court shall adopt any local rule, form, or  
231 practice requiring a standardized or default parenting plan  
232 for interim, temporary, or permanent orders or judgments.  
233 Notwithstanding any other provision of law to the contrary,  
234 a court may enter an interim order in a proceeding under  
235 this chapter, provided that the interim order shall not  
236 contain any provisions about child custody or a parenting



237 schedule or plan without first providing the parties with  
238 notice and a hearing, unless the parties otherwise agree.

239 12. Unless a parent has been denied custody rights  
240 pursuant to this section or visitation rights under section  
241 452.400, both parents shall have access to records and  
242 information pertaining to a minor child including, but not  
243 limited to, medical, dental, and school records. If the  
244 parent without custody has been granted restricted or  
245 supervised visitation because the court has found that the  
246 parent with custody or any child has been the victim of  
247 domestic violence, as defined in section 455.010, by the  
248 parent without custody, the court may order that the reports  
249 and records made available pursuant to this subsection not  
250 include the address of the parent with custody or the  
251 child. A court shall order that the reports and records  
252 made available under this subsection not include the address  
253 of the parent with custody if the parent with custody is a  
254 participant in the address confidentiality program under  
255 section 589.663. Unless a parent has been denied custody  
256 rights pursuant to this section or visitation rights under  
257 section 452.400, any judgment of dissolution or other  
258 applicable court order shall specifically allow both parents  
259 access to such records and reports.

260 13. Except as otherwise precluded by state or federal  
261 law, if any individual, professional, public or private  
262 institution or organization denies access or fails to  
263 provide or disclose any and all records and information,  
264 including, but not limited to, past and present dental,  
265 medical and school records pertaining to a minor child, to  
266 either parent upon the written request of such parent, the  
267 court shall, upon its finding that the individual,  
268 professional, public or private institution or organization

269 denied such request without good cause, order that party to  
270 comply immediately with such request and to pay to the  
271 prevailing party all costs incurred, including, but not  
272 limited to, attorney's fees and court costs associated with  
273 obtaining the requested information.

274         14. An award of joint custody does not preclude an  
275 award of child support pursuant to section 452.340 and  
276 applicable supreme court rules. The court shall consider  
277 the factors contained in section 452.340 and applicable  
278 supreme court rules in determining an amount reasonable or  
279 necessary for the support of the child.

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

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