

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 129
102ND GENERAL ASSEMBLY

0992H.08C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 211.221, 452.375, and 454.1005, RSMo, and to enact in lieu thereof three new sections relating to child custody.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 211.221, 452.375, and 454.1005, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 211.221, 452.375, and 454.1005,
3 to read as follows:

211.221. In placing a child in or committing a child to the custody of an individual or
2 of a private agency or institution the court, **children's division, or any child placing agency**
3 **contracting with the state to provide foster care services** shall whenever practicable select
4 either a person, or an agency or institution governed by persons of the same religious faith as
5 that of the parents of such child, or in case of a difference in the religious faith of the parents,
6 then of the religious faith of the child or if the religious faith of the child is not ascertainable,
7 then of the faith of either of the parents.

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:
2 (1) "Custody" means joint legal custody, sole legal custody, joint physical custody or
3 sole physical custody or any combination thereof;

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

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.

8 (3) "Joint physical custody" means an order awarding each of the parents significant,
9 but not necessarily equal, periods of time during which a child resides with or is under the
10 care and supervision of each of the parents. Joint physical custody shall be shared by the
11 parents in such a way as to assure the child of frequent, continuing and meaningful contact
12 with both parents;

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

15 2. The court shall determine custody in accordance with the best interests of the child.

16 **There shall be a rebuttable presumption that an award of equal or approximately equal**
17 **parenting time to each parent is in the best interests of the child. Such presumption is**
18 **rebuttable only by a preponderance of the evidence in accordance with all relevant**
19 **factors, including, but not limited to, the factors contained in subdivisions (1) to (9) of**
20 **this subsection. The presumption may be rebutted if the court finds that the parents**
21 **have reached an agreement on all issues related to custody or if the court finds that a**
22 **pattern of domestic violence has occurred as set out in subdivision (7) of this subsection.**

23 When the parties have not reached an agreement on all issues related to custody, the court
24 shall consider all relevant factors and enter written findings of fact and conclusions of law,
25 including, but not limited to, 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; **the willingness and ability of parents to**
35 **cooperate in the rearing of their child; to maximize sharing information and minimize**
36 **exposure of the child to parental conflict; and to utilize methods for resolving disputes**
37 **regarding any major decision concerning the life of the child;**

38 (5) The child's **needs** adjustment to the child's home, school, and community; **and the**
39 **child's physical, emotional, educational, and other needs. The fact that a parent sends**
40 **his or her child or children to a home school, as defined in section 167.031, shall not be**
41 **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 **the mental**
43 **health or substance abuse history experienced by either parent;**

44 **(7) Any history of abuse of any individuals involved, including domestic and child**
45 **abuse. In determining whether the presumption is rebutted by a pattern of domestic**
46 **violence, the court shall consider the nature and context of the domestic violence and the**
47 **implications of the domestic violence for parenting and for the child's safety, well-being,**
48 **and developmental needs.** If the court finds that a pattern of domestic violence as defined in
49 section 455.010 has occurred, and, if the court also finds that awarding custody to the abusive
50 parent is in the best interest of the child, then the court shall enter written findings of fact and
51 conclusions of law. Custody and visitation rights shall be ordered in a manner that best
52 protects the child and any other child or children for whom the parent has custodial or
53 visitation rights, and the parent or other family or household member who is the victim of
54 domestic violence from any further harm, **whether physical, verbal, emotional, or**
55 **psychological;**

56 ~~[(7) The intention of either parent to relocate the principal residence of the child; and~~
57 ~~[(8) The wishes of a child as to the child's custodian. The fact that a parent sends his~~
58 ~~or her child or children to a home school, as defined in section 167.031, shall not be the sole~~
59 ~~factor that a court considers in determining custody of such child or children.]~~

60 **(8) The distance between the residences of the parents seeking custody, including**
61 **consideration of any relocation which has occurred or an intent to relocate; and**

62 **(9) The reasonable input of the child as to the child's custodian, if the court**
63 **deems the child to be of sufficient ability, age, and maturity to express an independent,**
64 **reliable preference and that such input is in the best interests of the child and will not be**
65 **emotionally damaging, with due consideration of the influence that a parent may have**
66 **on the child's input.**

67 3. (1) In any court proceedings relating to custody of a child, the court shall not
68 award custody or unsupervised visitation of a child to a parent if such parent or any person
69 residing with such parent has been found guilty of, or pled guilty to, any of the following
70 offenses when a child was the victim:

71 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061,
72 566.062, 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203,
73 566.206, 566.209, 566.211, or 566.215;

74 (b) A violation of section 568.020;

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

76 (d) A violation of section 568.065;

77 (e) A violation of section 573.200;

78 (f) A violation of section 573.205; or

79 (g) A violation of section 568.175.

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

86 4. The general assembly finds and declares that it is the public policy of this state that
87 frequent, continuing and meaningful contact with both parents after the parents have
88 separated or dissolved their marriage is in the best interest of the child, except for cases where
89 the court specifically finds that such contact is not in the best interest of the child, and that it
90 is the public policy of this state to encourage parents to participate in decisions affecting the
91 health, education and welfare of their children, and to resolve disputes involving their
92 children amicably through alternative dispute resolution. In order to effectuate these policies,
93 **the general assembly encourages the court to enter a temporary parenting plan as early**
94 **as practicable in a proceeding under this chapter, consistent with the provisions of**
95 **subsection 2 of this section, and, in so doing,** the court shall determine the custody
96 arrangement which will best assure both parents participate in such decisions and have
97 frequent, continuing and meaningful contact with their children so long as it is in the best
98 interests of the child.

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

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

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

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

109 (4) Sole custody to either parent; or

110 (5) Third-party custody or visitation:

111 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a
112 custodian, or the welfare of the child requires, and it is in the best interests of the child, then
113 custody, temporary custody or visitation may be awarded **to** a person related by consanguinity
114 or affinity to the child. If no person related to the child by consanguinity or affinity is willing
115 to accept custody, then the court may award custody to any other person or persons deemed
116 by the court to be suitable and able to provide an adequate and stable environment for the

117 child. Before the court awards custody, temporary custody or visitation to a third person
118 under this subdivision, the court shall make that person a party to the action;

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

121 6. If the parties have not agreed to a custodial arrangement, or the court determines
122 such arrangement is not in the best interest of the child, the court shall include a written
123 finding in the judgment or order based on the public policy in subsection 4 of this section and
124 each of the factors listed in subdivisions (1) to [~~(8)~~] (9) of subsection 2 of this section
125 detailing the specific relevant factors that made a particular arrangement in the best interest of
126 the child. If a proposed custodial arrangement is rejected by the court, the court shall include
127 a written finding in the judgment or order detailing the specific relevant factors resulting in
128 the rejection of such arrangement.

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

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

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

146 10. After August 28, 2016, every court order establishing or modifying custody or
147 visitation shall include the following language: "In the event of noncompliance with this
148 order, the aggrieved party may file a verified motion for contempt. If custody, visitation, or
149 third-party custody is denied or interfered with by a parent or third party without good cause,
150 the aggrieved person may file a family access motion with the court stating the specific facts
151 that constitute a violation of the custody provisions of the judgment of dissolution, legal
152 separation, or judgment of paternity. The circuit clerk will provide the aggrieved party with
153 an explanation of the procedures for filing a family access motion and a simple form for use

154 in filing the family access motion. A family access motion does not require the assistance of
155 legal counsel to prepare and file."

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

162 12. Unless a parent has been denied custody rights pursuant to this section or
163 visitation rights under section 452.400, both parents shall have access to records and
164 information pertaining to a minor child including, but not limited to, medical, dental, and
165 school records. If the parent without custody has been granted restricted or supervised
166 visitation because the court has found that the parent with custody or any child has been the
167 victim of domestic violence, as defined in section 455.010, by the parent without custody, the
168 court may order that the reports and records made available pursuant to this subsection not
169 include the address of the parent with custody or the child. A court shall order that the reports
170 and records made available under this subsection not include the address of the parent with
171 custody if the parent with custody is a participant in the address confidentiality program under
172 section 589.663. Unless a parent has been denied custody rights pursuant to this section or
173 visitation rights under section 452.400, any judgment of dissolution or other applicable court
174 order shall specifically allow both parents access to such records and reports.

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

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

188 15. If the court finds that domestic violence or abuse as defined in section 455.010
189 has occurred, the court shall make specific findings of fact to show that the custody or
190 visitation arrangement ordered by the court best protects the child and the parent or other

191 family or household member who is the victim of domestic violence, as defined in section
192 455.010, and any other children for whom such parent has custodial or visitation rights from
193 any further harm.

454.1005. 1. To show cause why suspension of a license may not be appropriate, the
2 obligor shall request a hearing from the court or division that issued the notice of intent to
3 suspend the license. The request shall be made within sixty days of the date of service of
4 notice.

5 2. If an obligor fails to respond, without good cause, to a notice of intent to suspend a
6 license~~;~~ **or to** timely request a hearing or comply with a payment plan, ~~[the obligor's~~
7 ~~defenses and objections shall be considered to be without merit and]~~ the court or director may
8 enter an order suspending the obligor's license and ordering the obligor to refrain from
9 engaging in the licensed activity.

10 3. Upon timely receipt of a request for hearing from an obligor, the court or director
11 shall schedule a hearing **that complies with due process** to determine if suspension of the
12 obligor's license is appropriate **considering all relevant factors, including those factors**
13 **listed in subsection 4 of this section.** The court or director shall stay suspension of the
14 license pending the outcome of the hearing.

15 4. ~~[If the action involves an arrearage, the only issues that may be determined in a~~
16 ~~hearing pursuant to this section are]~~ **In determining whether the license suspension is**
17 **appropriate under the circumstances, the court or director shall consider and issue**
18 **written findings of fact and conclusions of law within thirty days following the hearing**
19 **regarding the following:**

20 (1) The identity of the obligor;

21 (2) Whether the arrearage is in an amount greater than or equal to three months of
22 support payments or two thousand five hundred dollars, whichever is less, by the date of
23 service of a notice of intent to suspend; ~~[and]~~

24 (3) Whether the obligor has entered a payment plan. If the action involves a failure to
25 comply with a subpoena or order, the only issues that may be determined are the identity of
26 the obligor and whether the obligor has complied with the subpoena or order;

27 (4) **Whether the obligor had the ability to make the payments that are in**
28 **arrearage;**

29 (5) **Whether the obligor has the current ability to make the payments;**

30 (6) **The reasons the obligor needs the license, including, but not limited to:**

31 (a) **Transportation of family members to and from work, school, or medical**
32 **treatment;**

33 (b) **Transportation of the obligor or family members to extra curricular**
34 **activities; or**

- 35 **(c) A requirement for employment;**
36 **(7) Whether the obligor is unemployed or underemployed;**
37 **(8) Whether the obligor is actively seeking employment;**
38 **(9) Whether the obligor has engaged in job search and job readiness assistance,**
39 **including utilization of the state employment database website;**
40 **(10) Whether the obligor has a physical or mental impairment affecting his or**
41 **her capacity to work; and**
42 **(11) Any other relevant factors that affect the obligor's ability to make the child**
43 **support payments.**
- 44 **5. If the court or director, after the hearing, determines that the obligor has**
45 **failed to comply with the child support payment obligation and an arrearage exists in**
46 **excess of two thousand five hundred dollars for good cause, then the court or director**
47 **shall not issue an order suspending the obligor's license and ordering the obligor to**
48 **refrain from engaging in the licensed activity or, if an order is in place, shall stay such**
49 **order. Good cause may include loss of employment, excluding voluntarily quitting or a**
50 **dismissal due to poor job performance or failure to meet a condition of employment;**
51 **catastrophic illness or accident of the obligor or a family member; severe inclement**
52 **weather, including a natural disaster; or the obligor experiences a family emergency or**
53 **other life-changing event, including divorce or domestic violence. A decision by the**
54 **court or director under this section not to issue an order suspending the obligor's license**
55 **and ordering the obligor to refrain from engaging in the licensed activity shall not**
56 **prevent a court or the director from issuing a new order suspending the license of the**
57 **same obligor in the event of another arrearage if the obligor fails, without good cause, to**
58 **comply with the support order or payment plan.**
- 59 **6. If the court or director, after hearing, determines that the obligor has failed,**
60 **without good cause, to comply with any of the requirements in subsection 4 of this section,**
61 **the court or director shall issue an order suspending the obligor's license and ordering the**
62 **obligor to refrain from engaging in the licensed activity.**
- 63 ~~6.]~~ **7. The court or division shall send a copy of the order suspending a license to the**
64 **licensing authority and the obligor by certified mail.**
- 65 ~~7.]~~ **8. The determination of the director, after a hearing pursuant to this section, shall**
66 **be a final agency decision and shall be subject to judicial review pursuant to chapter 536.**
67 **Administrative hearings held pursuant to this section shall be conducted by hearing officers**
68 **appointed by the director of the department pursuant to subsection 1 of section 454.475.**

69 ~~[8:]~~ **9.** A determination made by the court or division pursuant to this section is
70 independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate
71 or renew a license.

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