

FIRST REGULAR SESSION

SENATE BILL NO. 377

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 31, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1690S.011

AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new section
2 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
2 otherwise:

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

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

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

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

17 2. The court shall determine custody in accordance with the best interests
18 of the child. **There shall be a rebuttable presumption that an award of**
19 **equal or approximately equal parenting time to each parent giving the**
20 **child equal or approximately equal access to both parents is in the best**

21 **interest of the child. Such presumption is rebuttable only by clear and**
22 **convincing evidence in accordance with the factors contained in**
23 **subdivisions (1) to (8) of this subsection.** When the parties have not reached
24 an agreement on all issues related to custody, the court shall consider all relevant
25 factors and enter written findings of fact and conclusions of law, including, but
26 not limited to, the following:

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

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

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

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

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

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

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

49 (8) The wishes of a child as to the child's custodian. The fact that a
50 parent sends his or her child or children to a home school, as defined in section
51 167.031, shall not be the sole factor that a court considers in determining custody
52 of such child or children.

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

57 (a) A felony violation of section 566.030, 566.032, 566.031, 566.060,
58 566.062, 566.064, 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111,
59 566.151, 566.203, 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
67 specifically listed in subdivision (1) of this subsection or for a violation of an
68 offense committed in another state when a child is the victim that would be a
69 violation of chapter 566 or 568 if committed in Missouri, the court may exercise
70 its discretion in awarding custody or visitation of a child to a parent if such
71 parent or any person residing with such parent has been found guilty of, or pled
72 guilty to, any such offense.

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

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

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

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

93 mailing and educational purposes;

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

95 (4) Sole custody to either parent; or

96 (5) Third-party custody or visitation:

97 (a) When the court finds that each parent is unfit, unsuitable, or unable
98 to be a custodian, or the welfare of the child requires, and it is in the best
99 interests of the child, then custody, temporary custody or visitation may be
100 awarded to any other person or persons deemed by the court to be suitable and
101 able to provide an adequate and stable environment for the child. Before the
102 court awards custody, temporary custody or visitation to a third person under this
103 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
105 court to intervene as a party in interest at any time as provided by supreme court
106 rule.

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

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

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

128 9. Any judgment providing for custody shall include a specific written

129 parenting plan setting forth the terms of such parenting plan arrangements
130 specified in subsection 8 of section 452.310. Such plan may be a parenting plan
131 submitted by the parties pursuant to section 452.310 or, in the absence thereof,
132 a plan determined by the court, but in all cases, the custody plan approved and
133 ordered by the court shall be in the court's discretion and shall be in the best
134 interest of the child.

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

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

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

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

175 14. An award of joint custody does not preclude an award of child support
176 pursuant to section 452.340 and applicable supreme court rules. The court shall
177 consider the factors contained in section 452.340 and applicable supreme court
178 rules in determining an amount reasonable or necessary for the support of the
179 child.

180 15. If the court finds that domestic violence or abuse as defined in section
181 455.010 has occurred, the court shall make specific findings of fact to show that
182 the custody or visitation arrangement ordered by the court best protects the child
183 and the parent or other family or household member who is the victim of domestic
184 violence, as defined in section 455.010, and any other children for whom such
185 parent has custodial or visitation rights from any further harm.

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