

SENATE BILL NO. 459

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

1913S.01H

ADRIANE D. CROUSE, Secretary

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Section A. Section 452.375, RSMo, is repealed and one new
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 equal,
14 periods of time during which a child resides with or is
15 under the care and supervision of each of the parents.
16 Joint physical custody shall be shared by the parents in
17 such a way as to assure the child of frequent, continuing
18 and meaningful contact with both parents;

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

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

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

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

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

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

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

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

56 (6) The mental and physical health of all individuals
57 involved, including any history of abuse of any individuals
58 involved. If the court finds that a pattern of domestic
59 violence as defined in section 455.010 has occurred, and, if
60 the court also finds that awarding custody to the abusive
61 parent is in the best interest of the child, then the court
62 shall enter written findings of fact and conclusions of
63 law. Custody and visitation rights shall be ordered in a
64 manner that best protects the child and any other child or
65 children for whom the parent has custodial or visitation
66 rights, and the parent or other family or household member
67 who is the victim of domestic violence from any further harm;

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

70 (8) The [wishes] **input** of a child as to the child's
71 custodian. [The fact that a parent sends his or her child
72 or children to a home school, as defined in section 167.031,
73 shall not be the sole factor that a court considers in
74 determining custody of such child or children.]

75 3. (1) In any court proceedings relating to custody
76 of a child, the court shall not award custody or
77 unsupervised visitation of a child to a parent if such
78 parent or any person residing with such parent has been
79 found guilty of, or pled guilty to, any of the following
80 offenses when a child was the victim:

81 (a) A felony violation of section 566.030, 566.031,
82 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,

83 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
84 566.203, 566.206, 566.209, 566.211, or 566.215;

85 (b) A violation of section 568.020;

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

88 (d) A violation of section 568.065;

89 (e) A violation of section 573.200;

90 (f) A violation of section 573.205; or

91 (g) A violation of section 568.175.

92 (2) For all other violations of offenses in chapters
93 566 and 568 not specifically listed in subdivision (1) of
94 this subsection or for a violation of an offense committed
95 in another state when a child is the victim that would be a
96 violation of chapter 566 or 568 if committed in Missouri,
97 the court may exercise its discretion in awarding custody or
98 visitation of a child to a parent if such parent or any
99 person residing with such parent has been found guilty of,
100 or pled guilty to, any such offense.

101 4. The general assembly finds and declares that it is
102 the public policy of this state that frequent, continuing
103 and meaningful contact with both parents after the parents
104 have separated or dissolved their marriage is in the best
105 interest of the child, except for cases where the court
106 specifically finds that such contact is not in the best
107 interest of the child, and that it is the public policy of
108 this state to encourage parents to participate in decisions
109 affecting the health, education and welfare of their
110 children, and to resolve disputes involving their children
111 amicably through alternative dispute resolution. In order
112 to effectuate these policies, **the general assembly**
113 **encourages the court to enter a temporary parenting plan as**
114 **early as practicable in a proceeding under this chapter,**

115 **consistent with the provisions of subsection 2 of this**
116 **section, and, in so doing,** the court shall determine the
117 custody arrangement which will best assure both parents
118 participate in such decisions and have frequent, continuing
119 and meaningful contact with their children so long as it is
120 in the best interests of the child.

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

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

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

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

136 (4) Sole custody to either parent; or

137 (5) Third-party custody or visitation:

138 (a) When the court finds that each parent is unfit,
139 unsuitable, or unable to be a custodian, or the welfare of
140 the child requires, and it is in the best interests of the
141 child, then custody, temporary custody or visitation may be
142 awarded to any other person or persons deemed by the court
143 to be suitable and able to provide an adequate and stable
144 environment for the child. Before the court awards custody,
145 temporary custody or visitation to a third person under this

146 subdivision, the court shall make that person a party to the
147 action;

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

151 6. If the parties have not agreed to a custodial
152 arrangement, or the court determines such arrangement is not
153 in the best interest of the child, the court shall include a
154 written finding in the judgment or order based on the public
155 policy in subsection 4 of this section and each of the
156 factors listed in subdivisions (1) to (8) of subsection 2 of
157 this section detailing the specific relevant factors that
158 made a particular arrangement in the best interest of the
159 child. If a proposed custodial arrangement is rejected by
160 the court, the court shall include a written finding in the
161 judgment or order detailing the specific relevant factors
162 resulting in the rejection of such arrangement.

163 7. Upon a finding by the court that either parent has
164 refused to exchange information with the other parent, which
165 shall include but not be limited to information concerning
166 the health, education and welfare of the child, the court
167 shall order the parent to comply immediately and to pay the
168 prevailing party a sum equal to the prevailing party's cost
169 associated with obtaining the requested information, which
170 shall include but not be limited to reasonable attorney's
171 fees and court costs.

172 8. As between the parents of a child, no preference
173 may be given to either parent in the awarding of custody
174 because of that parent's age, sex, or financial status, nor
175 because of the age or sex of the child. The court shall not
176 presume that a parent, solely because of his or her sex, is

177 more qualified than the other parent to act as a joint or
178 sole legal or physical custodian for the child.

179 9. Any judgment providing for custody shall include a
180 specific written parenting plan setting forth the terms of
181 such parenting plan arrangements specified in subsection 8
182 of section 452.310. Such plan may be a parenting plan
183 submitted by the parties pursuant to section 452.310 or, in
184 the absence thereof, a plan determined by the court, but in
185 all cases, the custody plan approved and ordered by the
186 court shall be in the court's discretion and shall be in the
187 best interest of the child.

188 10. After August 28, 2016, every court order
189 establishing or modifying custody or visitation shall
190 include the following language: "In the event of
191 noncompliance with this order, the aggrieved party may file
192 a verified motion for contempt. If custody, visitation, or
193 third-party custody is denied or interfered with by a parent
194 or third party without good cause, the aggrieved person may
195 file a family access motion with the court stating the
196 specific facts that constitute a violation of the custody
197 provisions of the judgment of dissolution, legal separation,
198 or judgment of paternity. The circuit clerk will provide
199 the aggrieved party with an explanation of the procedures
200 for filing a family access motion and a simple form for use
201 in filing the family access motion. A family access motion
202 does not require the assistance of legal counsel to prepare
203 and file."

204 11. No court shall adopt any local rule, form, or
205 practice requiring a standardized or default parenting plan
206 for interim, temporary, or permanent orders or judgments.
207 Notwithstanding any other provision **of law** to the contrary,
208 a court may enter an interim order in a proceeding under

209 this chapter, provided that the interim order shall not
210 contain any provisions about child custody or a parenting
211 schedule or plan without first providing the parties with
212 notice and a hearing, unless the parties otherwise agree.

213 12. Unless a parent has been denied custody rights
214 pursuant to this section or visitation rights under section
215 452.400, both parents shall have access to records and
216 information pertaining to a minor child including, but not
217 limited to, medical, dental, and school records. If the
218 parent without custody has been granted restricted or
219 supervised visitation because the court has found that the
220 parent with custody or any child has been the victim of
221 domestic violence, as defined in section 455.010, by the
222 parent without custody, the court may order that the reports
223 and records made available pursuant to this subsection not
224 include the address of the parent with custody or the
225 child. A court shall order that the reports and records
226 made available under this subsection not include the address
227 of the parent with custody if the parent with custody is a
228 participant in the address confidentiality program under
229 section 589.663. Unless a parent has been denied custody
230 rights pursuant to this section or visitation rights under
231 section 452.400, any judgment of dissolution or other
232 applicable court order shall specifically allow both parents
233 access to such records and reports.

234 13. Except as otherwise precluded by state or federal
235 law, if any individual, professional, public or private
236 institution or organization denies access or fails to
237 provide or disclose any and all records and information,
238 including, but not limited to, past and present dental,
239 medical and school records pertaining to a minor child, to
240 either parent upon the written request of such parent, the

241 court shall, upon its finding that the individual,
242 professional, public or private institution or organization
243 denied such request without good cause, order that party to
244 comply immediately with such request and to pay to the
245 prevailing party all costs incurred, including, but not
246 limited to, attorney's fees and court costs associated with
247 obtaining the requested information.

248 14. An award of joint custody does not preclude an
249 award of child support pursuant to section 452.340 and
250 applicable supreme court rules. The court shall consider
251 the factors contained in section 452.340 and applicable
252 supreme court rules in determining an amount reasonable or
253 necessary for the support of the child.

254 15. If the court finds that domestic violence or abuse
255 as defined in section 455.010 has occurred, the court shall
256 make specific findings of fact to show that the custody or
257 visitation arrangement ordered by the court best protects
258 the child and the parent or other family or household member
259 who is the victim of domestic violence, as defined in
260 section 455.010, and any other children for whom such parent
261 has custodial or visitation rights from any further harm.

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