

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 839

101ST GENERAL ASSEMBLY

3689S.03C

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 452.375 and 452.415, RSMo, and to enact in lieu thereof two new sections relating to child custody arrangements.

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

Section A. Sections 452.375 and 452.415, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 452.375 and 452.415, 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

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

17 such a way as to assure the child of frequent, continuing
18 and meaningful contact with both parents;

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. [When the parties
24 have not reached an agreement on all issues related to
25 custody, the court] **There shall be a rebuttable presumption**
26 **that an award of equal or approximately equal parenting time**
27 **that maximizes time with each parent is in the best**
28 **interests of the child. Such presumption is rebuttable by a**
29 **preponderance of the evidence in accordance with all**
30 **relevant factors, including, but not limited to, the factors**
31 **contained in subdivisions (1) to (9) of this subsection.**
32 **The presumption shall be rebutted if the court finds that**
33 **the parents have reached an agreement on all issues related**
34 **to custody. The court shall construct a parenting plan that**
35 **is consistent with ensuring the child's welfare and shall**
36 consider all relevant factors and enter written findings of
37 fact and conclusions of law, including, but not limited to,
38 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; **the willingness and ability of parents to cooperate**
51 **in the rearing of their child; to maximize sharing**
52 **information and minimize exposure of the child to parental**
53 **conflict; and to utilize methods for resolving disputes**
54 **regarding any major decision concerning the life of the**
55 **child;**

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

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

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

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

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

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

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

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

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

106 (a) A felony violation of section 566.030, 566.031,
107 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
108 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
109 566.203, 566.206, 566.209, 566.211, or 566.215;

110 (b) A violation of section 568.020;

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

113 (d) A violation of section 568.065;

114 (e) A violation of section 573.200;

115 (f) A violation of section 573.205; or

116 (g) A violation of section 568.175.

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

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

143 the custody arrangement which will best assure both parents
144 participate in such decisions and have frequent, continuing
145 and meaningful contact with their children so long as it is
146 in the best interests of the child.

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

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

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

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

162 (4) Sole custody to either parent; or

163 (5) Third-party custody or visitation:

164 (a) When the court finds that each parent is unfit,
165 unsuitable, or unable to be a custodian, or the welfare of
166 the child requires, and it is in the best interests of the
167 child, then custody, temporary custody or visitation may be
168 awarded **to** a person [related by consanguinity or affinity to
169 the child. If no person related to the child by
170 consanguinity or affinity is willing to accept custody, then
171 the court may award custody to any other person or persons
172 deemed by the court to be suitable and able to provide an
173 adequate and stable environment for the child] **or persons**
174 **deemed by the court to be suitable and able to provide an**

175 adequate and stable environment for the child.
176 Consideration shall be given first to any relatives related
177 within the second degree of consanguinity and to those with
178 a familial relationship, including, but not limited to,
179 stepparents or adults who have resided with the child for a
180 period of six months or longer, who have come forward
181 seeking third party custody. If the court finds that the
182 relative or person with a familial relationship is not
183 suitable or it is not in the child's best interests to be
184 placed with such persons, then the court may award custody
185 or visitation to another suitable person. Before the court
186 awards custody, temporary custody or visitation to a third
187 person under this subdivision, the court shall make that
188 person a party to the action;

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

192 6. If the parties have not agreed to a custodial
193 arrangement, or the court determines such arrangement is not
194 in the best interest of the child, the court shall include a
195 written finding in the judgment or order based on the public
196 policy in subsection 4 of this section and each of the
197 factors listed in subdivisions (1) to [(8)] (9) of
198 subsection 2 of this section detailing the specific relevant
199 factors that made a particular arrangement in the best
200 interest of the child. If a proposed custodial arrangement
201 is rejected by the court, the court shall include a written
202 finding in the judgment or order detailing the specific
203 relevant factors resulting in the rejection of such
204 arrangement.

205 7. Upon a finding by the court that either parent has
206 refused to exchange information with the other parent, which

207 shall include but not be limited to information concerning
208 the health, education and welfare of the child, the court
209 shall order the parent to comply immediately and to pay the
210 prevailing party a sum equal to the prevailing party's cost
211 associated with obtaining the requested information, which
212 shall include but not be limited to reasonable attorney's
213 fees and court costs.

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

221 9. Any judgment providing for custody shall include a
222 specific written parenting plan setting forth the terms of
223 such parenting plan arrangements specified in subsection 8
224 of section 452.310. Such plan may be a parenting plan
225 submitted by the parties pursuant to section 452.310 or, in
226 the absence thereof, a plan determined by the court, but in
227 all cases, the custody plan approved and ordered by the
228 court shall be in the court's discretion and shall be in the
229 best interest of the child.

230 10. After August 28, 2016, every court order
231 establishing or modifying custody or visitation shall
232 include the following language: "In the event of
233 noncompliance with this order, the aggrieved party may file
234 a verified motion for contempt. If custody, visitation, or
235 third-party custody is denied or interfered with by a parent
236 or third party without good cause, the aggrieved person may
237 file a family access motion with the court stating the
238 specific facts that constitute a violation of the custody

239 provisions of the judgment of dissolution, legal separation,
240 or judgment of paternity. The circuit clerk will provide
241 the aggrieved party with an explanation of the procedures
242 for filing a family access motion and a simple form for use
243 in filing the family access motion. A family access motion
244 does not require the assistance of legal counsel to prepare
245 and file."

246 11. No court shall adopt any local rule, form, or
247 practice requiring a standardized or default parenting plan
248 for interim, temporary, or permanent orders or judgments.
249 Notwithstanding any other provision to the contrary, a court
250 may enter an interim order in a proceeding under this
251 chapter, provided that the interim order shall not contain
252 any provisions about child custody or a parenting schedule
253 or plan without first providing the parties with notice and
254 a hearing, unless the parties otherwise agree.

255 12. Unless a parent has been denied custody rights
256 pursuant to this section or visitation rights under section
257 452.400, both parents shall have access to records and
258 information pertaining to a minor child including, but not
259 limited to, medical, dental, and school records. If the
260 parent without custody has been granted restricted or
261 supervised visitation because the court has found that the
262 parent with custody or any child has been the victim of
263 domestic violence, as defined in section 455.010, by the
264 parent without custody, the court may order that the reports
265 and records made available pursuant to this subsection not
266 include the address of the parent with custody or the
267 child. A court shall order that the reports and records
268 made available under this subsection not include the address
269 of the parent with custody if the parent with custody is a
270 participant in the address confidentiality program under

271 section 589.663. Unless a parent has been denied custody
272 rights pursuant to this section or visitation rights under
273 section 452.400, any judgment of dissolution or other
274 applicable court order shall specifically allow both parents
275 access to such records and reports.

276 13. Except as otherwise precluded by state or federal
277 law, if any individual, professional, public or private
278 institution or organization denies access or fails to
279 provide or disclose any and all records and information,
280 including, but not limited to, past and present dental,
281 medical and school records pertaining to a minor child, to
282 either parent upon the written request of such parent, the
283 court shall, upon its finding that the individual,
284 professional, public or private institution or organization
285 denied such request without good cause, order that party to
286 comply immediately with such request and to pay to the
287 prevailing party all costs incurred, including, but not
288 limited to, attorney's fees and court costs associated with
289 obtaining the requested information.

290 14. An award of joint custody does not preclude an
291 award of child support pursuant to section 452.340 and
292 applicable supreme court rules. The court shall consider
293 the factors contained in section 452.340 and applicable
294 supreme court rules in determining an amount reasonable or
295 necessary for the support of the child.

296 15. If the court finds that domestic violence or abuse
297 as defined in section 455.010 has occurred, the court shall
298 make specific findings of fact to show that the custody or
299 visitation arrangement ordered by the court best protects
300 the child and the parent or other family or household member
301 who is the victim of domestic violence, as defined in

302 section 455.010, and any other children for whom such parent
303 has custodial or visitation rights from any further harm.

452.415. 1. Sections 452.300 to 452.415 [apply to all
2 proceedings commenced on or after January 1, 1974], as such
3 sections existed on August 27, 2021, shall apply to all
4 pending actions and proceedings brought under this chapter
5 as of that date, except that actions on appeal to the
6 supreme court and the court of appeals of Missouri shall be
7 governed by the law in effect at the time of the judgment or
8 decree being appealed becomes final.

9 2. Any amendments to sections 452.300 to 452.415
10 shall, upon becoming effective, apply to all pending actions
11 and proceedings [commenced prior to January 1, 1974, with
12 respect to issues on which a judgment has not been entered.
13 Pending actions for divorce or separation are deemed to have
14 been commenced on the basis of irretrievable breakdown.
15 Evidence adduced after January 1, 1974, shall be in
16 compliance with sections 452.300 to 452.415] brought under
17 this chapter on or after August 28, 2021, except as
18 otherwise provided by law.

19 [3. Sections 452.300 to 452.415 apply to all
20 proceedings commenced after January 1, 1974, for the
21 modification of a judgment or order entered prior to January
22 1, 1974.

23 4. In any action or proceeding in which an appeal was
24 pending or a new trial was ordered prior to January 1, 1974,
25 the law in effect at the time of the order sustaining the
26 appeal or the new trial governs the appeal, the new trial,
27 and any subsequent trial or appeal.]

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