

FIRST REGULAR SESSION

HOUSE BILL NO. 788

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POGUE.

1065H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to custody of in vitro human embryos.

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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

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

(2) **"In vitro human embryo" means any human embryo, at any stage of development, which is not conceived within a female;**

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

~~(3)~~ (4) "Joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;

(5) **"Surrogate" means a woman who is not an ovum donor but in whose womb an in vitro human embryo is implanted;**

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.

17 ~~[(4)]~~ (6) "Third-party custody" means a third party designated as a legal and physical
18 custodian pursuant to subdivision (5) of subsection 5 of this section.

19 2. The court shall determine custody in accordance with the best interests of the child.
20 When the parties have not reached an agreement on all issues related to custody, the court shall
21 consider all relevant factors and enter written findings of fact and conclusions of law, including,
22 but not limited to, the following:

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

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

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

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

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

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

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

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

45 3. (1) In any court proceedings relating to custody of a child, the court shall not award
46 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
47 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
48 was the victim:

49 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062,
50 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203, 566.206,
51 566.209, 566.211, or 566.215;

52 (b) A violation of section 568.020;

- 53 (c) A violation of subdivision (2) of subsection 1 of section 568.060;
54 (d) A violation of section 568.065;
55 (e) A violation of section 573.200;
56 (f) A violation of section 573.205; or
57 (g) A violation of section 568.175.

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

64 4. The general assembly finds and declares that it is the public policy of this state that
65 frequent, continuing and meaningful contact with both parents after the parents have separated
66 or dissolved their marriage is in the best interest of the child, except for cases where the court
67 specifically finds that such contact is not in the best interest of the child, and that it is the public
68 policy of this state to encourage parents to participate in decisions affecting the health, education
69 and welfare of their children, and to resolve disputes involving their children amicably through
70 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
71 custody arrangement which will best assure both parents participate in such decisions and have
72 frequent, continuing and meaningful contact with their children so long as it is in the best
73 interests of the child.

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

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

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

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

84 (4) Sole custody to either parent; or

85 (5) Third-party custody or visitation:

86 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
87 or the welfare of the child requires, and it is in the best interests of the child, then custody,
88 temporary custody or visitation may be awarded to any other person or persons deemed by the

89 court to be suitable and able to provide an adequate and stable environment for the child. Before
90 the court awards custody, temporary custody or visitation to a third person under this
91 subdivision, the court shall make that person a party to the action;

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

94 6. If the parties have not agreed to a custodial arrangement, or the court determines such
95 arrangement is not in the best interest of the child, the court shall include a written finding in the
96 judgment or order based on the public policy in subsection 4 of this section and each of the
97 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific
98 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
99 custodial arrangement is rejected by the court, the court shall include a written finding in the
100 judgment or order detailing the specific relevant factors resulting in the rejection of such
101 arrangement.

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

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

113 9. Any judgment providing for custody shall include a specific written parenting plan
114 setting forth the terms of such parenting plan arrangements specified in subsection 8 of section
115 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
116 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
117 approved and ordered by the court shall be in the court's discretion and shall be in the best
118 interest of the child.

119 10. After August 28, 2016, every court order establishing or modifying custody or
120 visitation shall include the following language: "In the event of noncompliance with this order,
121 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party
122 custody is denied or interfered with by a parent or third party without good cause, the aggrieved
123 person may file a family access motion with the court stating the specific facts that constitute a
124 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment

125 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the
126 procedures for filing a family access motion and a simple form for use in filing the family access
127 motion. A family access motion does not require the assistance of legal counsel to prepare and
128 file."

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

135 12. Unless a parent has been denied custody rights pursuant to this section or visitation
136 rights under section 452.400, both parents shall have access to records and information
137 pertaining to a minor child including, but not limited to, medical, dental, and school records. If
138 the parent without custody has been granted restricted or supervised visitation because the court
139 has found that the parent with custody or any child has been the victim of domestic violence, as
140 defined in section 455.010, by the parent without custody, the court may order that the reports
141 and records made available pursuant to this subsection not include the address of the parent with
142 custody or the child. A court shall order that the reports and records made available under this
143 subsection not include the address of the parent with custody if the parent with custody is a
144 participant in the address confidentiality program under section 589.663. Unless a parent has
145 been denied custody rights pursuant to this section or visitation rights under section 452.400, any
146 judgment of dissolution or other applicable court order shall specifically allow both parents
147 access to such records and reports.

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

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

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

165 **16. If a dispute is brought before a court of this state involving the custody of an**
166 **in vitro human embryo, the court shall render a decision according to the following**
167 **standards:**

168 **(1) The court shall determine custody in accordance with the best interest of the in**
169 **vitro human embryo. It is presumed that it is in the best interest of the in vitro human**
170 **embryo to place him or her in the custody of the ovum donor or spermatozoon donor who**
171 **intends to develop the in vitro human embryo to birth, subject to rebuttal evidence;**

172 **(2) The court shall resolve the dispute between the parties in the manner that**
173 **provides the best chance for the in vitro human embryo to develop and grow;**

174 **(3) The following persons have standing to petition the court or to intervene in a**
175 **case: the ovum donor; spermatozoon donor; or the surrogate, who shall have limited**
176 **standing for only those embryos that have been previously placed inside the womb of the**
177 **surrogate;**

178 **(4) The court may uphold an agreement between the parties to an action**
179 **establishing or terminating parental rights as not against public policy; and**

180 **(5) All agreements brought before the court concerning the disposition of in vitro**
181 **human embryos shall be subject to the provisions of this section.**

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