

SECOND REGULAR SESSION

HOUSE BILL NO. 1772

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

3636H.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 the custody of children.

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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

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

2. The court shall determine custody in accordance with the best interests of the child. When the parties have not reached an agreement on all issues related to custody, the court

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 shall consider all relevant factors and enter written findings of fact and conclusions of law,
18 including, but not limited to, the following:

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

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

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

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

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

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

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

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

41 3. (1) In any court proceedings relating to custody of a child, the court shall not
42 award custody or unsupervised visitation of a child to a parent if such parent or any person
43 residing with such parent has been found guilty of, or pled guilty to, any of the following
44 offenses when a child was the victim:

45 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061,
46 566.062, 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203,
47 566.206, 566.209, 566.211, or 566.215;

48 (b) A violation of section 568.020;

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

50 (d) A violation of section 568.065;

51 (e) A violation of section 573.200;

52 (f) A violation of section 573.205; or

53 (g) A violation of section 568.175.

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

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

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

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

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

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

80 (4) Sole custody to either parent; or

81 (5) Third-party custody or visitation:

82 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a
83 custodian, or the welfare of the child requires, and it is in the best interests of the child, then
84 custody, temporary custody or visitation may be awarded a person related by consanguinity or
85 affinity to the child. If no person related to the child by consanguinity or affinity is willing to
86 accept custody, then the court may award custody to any other person or persons deemed by
87 the court to be suitable and able to provide an adequate and stable environment for the child;
88 **however, priority shall be given to the grandparent or grandparents of the child.** Before
89 the court awards custody, temporary custody or visitation to a third person under this
90 subdivision, the court shall make that person a party to the action;

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

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

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

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

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

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

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

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

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

163 family or household member who is the victim of domestic violence, as defined in section
164 455.010, and any other children for whom such parent has custodial or visitation rights from
165 any further harm.

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