

SENATE BILL NO. 744

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

4016S.01H

KRISTINA MARTIN, Secretary

AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new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)] (9) 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)] (7) of this subsection. When the parties
35 have not reached an agreement on all issues related to
36 custody, the court shall consider all relevant factors and
37 enter written findings of fact and conclusions of law,
38 including, 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 **and the willingness and ability of parents to**

51 cooperate 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 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 unobstructed input of a child, free of
86 coercion and manipulation, as to the child's custodial
87 arrangement] **The distance between the residences of the
88 parents seeking custody, including consideration of any
89 relocation which has occurred or an intent to relocate; and**

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

97 3. (1) In any court proceedings relating to custody
98 of a child, the court shall not award custody or
99 unsupervised visitation of a child to a parent if such
100 parent or any person residing with such parent has been
101 found guilty of, or pled guilty to, any of the following
102 offenses when a child was the victim:

103 (a) A felony violation of section 566.030, 566.031,
104 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
105 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
106 566.203, 566.206, 566.209, 566.211, or 566.215;

107 (b) A violation of section 568.020;

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

110 (d) A violation of section 568.065;

111 (e) A violation of section 573.200;

112 (f) A violation of section 573.205; or

113 (g) A violation of section 568.175.

114 (2) For all other violations of offenses in chapters
115 566 and 568 not specifically listed in subdivision (1) of
116 this subsection or for a violation of an offense committed
117 in another state when a child is the victim that would be a
118 violation of chapter 566 or 568 if committed in Missouri,
119 the court may exercise its discretion in awarding custody or
120 visitation of a child to a parent if such parent or any
121 person residing with such parent has been found guilty of,
122 or pled guilty to, any such offense.

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

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

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

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

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

158 (4) Sole custody to either parent; or

159 (5) Third-party custody or visitation:

160 (a) When the court finds that each parent is unfit,
161 unsuitable, or unable to be a custodian, or the welfare of
162 the child requires, and it is in the best interests of the
163 child, then custody, temporary custody or visitation may be
164 awarded to a person related by consanguinity or affinity to
165 the child. If no person related to the child by
166 consanguinity or affinity is willing to accept custody, then
167 the court may award custody to any other person or persons
168 deemed by the court to be suitable and able to provide an
169 adequate and stable environment for the child. Before the
170 court awards custody, temporary custody or visitation to a
171 third person under this subdivision, the court shall make
172 that person a party to the action;

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

176 6. If the parties have not agreed to a custodial
177 arrangement, or the court determines such arrangement is not

178 in the best interest of the child, the court shall include a
179 written finding in the judgment or order based on the public
180 policy in subsection 4 of this section and each of the
181 factors listed in subdivisions (1) to [(8)] (9) of
182 subsection 2 of this section detailing the specific relevant
183 factors that made a particular arrangement in the best
184 interest of the child. If a proposed custodial arrangement
185 is rejected by the court, the court shall include a written
186 finding in the judgment or order detailing the specific
187 relevant factors resulting in the rejection of such
188 arrangement.

189 7. Upon a finding by the court that either parent has
190 refused to exchange information with the other parent, which
191 shall include but not be limited to information concerning
192 the health, education and welfare of the child, the court
193 shall order the parent to comply immediately and to pay the
194 prevailing party a sum equal to the prevailing party's cost
195 associated with obtaining the requested information, which
196 shall include but not be limited to reasonable attorney's
197 fees and court costs.

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

205 9. Any judgment providing for custody shall include a
206 specific written parenting plan setting forth the terms of
207 such parenting plan arrangements specified in subsection 8
208 of section 452.310. Such plan may be a parenting plan
209 submitted by the parties pursuant to section 452.310 or, in

210 the absence thereof, a plan determined by the court, but in
211 all cases, the custody plan approved and ordered by the
212 court shall be in the court's discretion and shall be in the
213 best interest of the child.

214 10. After August 28, 2016, every court order
215 establishing or modifying custody or visitation shall
216 include the following language: "In the event of
217 noncompliance with this order, the aggrieved party may file
218 a verified motion for contempt. If custody, visitation, or
219 third-party custody is denied or interfered with by a parent
220 or third party without good cause, the aggrieved person may
221 file a family access motion with the court stating the
222 specific facts that constitute a violation of the custody
223 provisions of the judgment of dissolution, legal separation,
224 or judgment of paternity. The circuit clerk will provide
225 the aggrieved party with an explanation of the procedures
226 for filing a family access motion and a simple form for use
227 in filing the family access motion. A family access motion
228 does not require the assistance of legal counsel to prepare
229 and file."

230 11. No court shall adopt any local rule, form, or
231 practice requiring a standardized or default parenting plan
232 for interim, temporary, or permanent orders or judgments.
233 Notwithstanding any other provision of law to the contrary,
234 a court may enter an interim order in a proceeding under
235 this chapter, provided that the interim order shall not
236 contain any provisions about child custody or a parenting
237 schedule or plan without first providing the parties with
238 notice and a hearing, unless the parties otherwise agree.

239 12. Unless a parent has been denied custody rights
240 pursuant to this section or visitation rights under section
241 452.400, both parents shall have access to records and

242 information pertaining to a minor child including, but not
243 limited to, medical, dental, and school records. If the
244 parent without custody has been granted restricted or
245 supervised visitation because the court has found that the
246 parent with custody or any child has been the victim of
247 domestic violence, as defined in section 455.010, by the
248 parent without custody, the court may order that the reports
249 and records made available pursuant to this subsection not
250 include the address of the parent with custody or the
251 child. A court shall order that the reports and records
252 made available under this subsection not include the address
253 of the parent with custody if the parent with custody is a
254 participant in the address confidentiality program under
255 section 589.663. Unless a parent has been denied custody
256 rights pursuant to this section or visitation rights under
257 section 452.400, any judgment of dissolution or other
258 applicable court order shall specifically allow both parents
259 access to such records and reports.

260 13. Except as otherwise precluded by state or federal
261 law, if any individual, professional, public or private
262 institution or organization denies access or fails to
263 provide or disclose any and all records and information,
264 including, but not limited to, past and present dental,
265 medical and school records pertaining to a minor child, to
266 either parent upon the written request of such parent, the
267 court shall, upon its finding that the individual,
268 professional, public or private institution or organization
269 denied such request without good cause, order that party to
270 comply immediately with such request and to pay to the
271 prevailing party all costs incurred, including, but not
272 limited to, attorney's fees and court costs associated with
273 obtaining the requested information.

274 14. An award of joint custody does not preclude an
275 award of child support pursuant to section 452.340 and
276 applicable supreme court rules. The court shall consider
277 the factors contained in section 452.340 and applicable
278 supreme court rules in determining an amount reasonable or
279 necessary for the support of the child.

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

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