

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 735, Page 1, Section A, Line 5, by
2 inserting after all of said section and line the following:

3
4 "452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

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

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

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

13 [(3)] (4) "Joint physical custody" means an order awarding each of the parents significant,
14 but not necessarily equal, periods of time during which a child resides with or is under the care and
15 supervision of each of the parents. Joint physical custody shall be shared by the parents in such a
16 way as to assure the child of frequent, continuing and meaningful contact with both parents;

17 [(4)] (5) "Surrogate", a woman who is not an ovum donor, but in whose womb an in vitro
18 human embryo is implanted;

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

21 2. The court shall determine custody in accordance with the best interests of the child. The
22 court shall consider all relevant factors including:

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 both
26 parents and the ability and willingness of parents to actively perform their functions as mother and
27 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 defined
35 in section 455.010 has occurred, and, if the court also finds that awarding custody to the abusive
36 parent is in the best interest of the child, then the court shall enter written findings of fact and

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1 conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the
2 child and any other child or children for whom the parent has custodial or visitation rights, and the
3 parent or other family or household member who is the victim of domestic violence from any
4 further harm;

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

6 (8) The wishes of a child as to the child's custodian.

7 The fact that a parent sends his or her child or children to a home school, as defined in section
8 167.031, shall not be the sole factor that a court considers in determining custody of such child or
9 children.

10 3. (1) In any court proceedings relating to custody of a child, the court shall not award
11 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
12 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
13 was the victim:

14 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
15 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
16 566.209, 566.212, or 566.215;

17 (b) A violation of section 568.020;

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

19 (d) A violation of section 568.065;

20 (e) A violation of section 568.080;

21 (f) A violation of section 568.090; or

22 (g) A violation of section 568.175.

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

29 4. The general assembly finds and declares that it is the public policy of this state that
30 frequent, continuing and meaningful contact with both parents after the parents have separated or
31 dissolved their marriage is in the best interest of the child, except for cases where the court
32 specifically finds that such contact is not in the best interest of the child, and that it is the public
33 policy of this state to encourage parents to participate in decisions affecting the health, education
34 and welfare of their children, and to resolve disputes involving their children amicably through
35 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
36 custody arrangement which will best assure both parents participate in such decisions and have
37 frequent, continuing and meaningful contact with their children so long as it is in the best interests
38 of the child.

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

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

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

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

48 (4) Sole custody to either parent; or

1 (5) Third-party custody or visitation:

2 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or
3 the welfare of the child requires, and it is in the best interests of the child, then custody, temporary
4 custody or visitation may be awarded to any other person or persons deemed by the court to be
5 suitable and able to provide an adequate and stable environment for the child. Before the court
6 awards custody, temporary custody or visitation to a third person under this subdivision, the court
7 shall make that person a party to the action;

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

10 6. If the parties have not agreed to a custodial arrangement, or the court determines such
11 arrangement is not in the best interest of the child, the court shall include a written finding in the
12 judgment or order based on the public policy in subsection 4 of this section and each of the factors
13 listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors
14 that made a particular arrangement in the best interest of the child. If a proposed custodial
15 arrangement is rejected by the court, the court shall include a written finding in the judgment or
16 order detailing the specific relevant factors resulting in the rejection of such arrangement.

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

23 8. As between the parents of a child, no preference may be given to either parent in the
24 awarding of custody because of that parent's age, sex, or financial status, nor because of the age or
25 sex of the child.

26 9. Any judgment providing for custody shall include a specific written parenting plan
27 setting forth the terms of such parenting plan arrangements specified in subsection [7] 8 of section
28 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
29 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan approved
30 and ordered by the court shall be in the court's discretion and shall be in the best interest of the
31 child.

32 10. Unless a parent has been denied custody rights pursuant to this section or visitation
33 rights under section 452.400, both parents shall have access to records and information pertaining to
34 a minor child, including, but not limited to, medical, dental, and school records. If the parent
35 without custody has been granted restricted or supervised visitation because the court has found that
36 the parent with custody or any child has been the victim of domestic violence, as defined in section
37 455.010, by the parent without custody, the court may order that the reports and records made
38 available pursuant to this subsection not include the address of the parent with custody or the child.
39 Unless a parent has been denied custody rights pursuant to this section or visitation rights under
40 section 452.400, any judgment of dissolution or other applicable court order shall specifically allow
41 both parents access to such records and reports.

42 11. Except as otherwise precluded by state or federal law, if any individual, professional,
43 public or private institution or organization denies access or fails to provide or disclose any and all
44 records and information, including, but not limited to, past and present dental, medical and school
45 records pertaining to a minor child, to either parent upon the written request of such parent, the
46 court shall, upon its finding that the individual, professional, public or private institution or
47 organization denied such request without good cause, order that party to comply immediately with
48 such request and to pay to the prevailing party all costs incurred, including, but not limited to,

1 attorney's fees and court costs associated with obtaining the requested information.

2 12. An award of joint custody does not preclude an award of child support pursuant to
3 section 452.340 and applicable supreme court rules. The court shall consider the factors contained
4 in section 452.340 and applicable supreme court rules in determining an amount reasonable or
5 necessary for the support of the child.

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

11 14. If a dispute is brought before a court of this state involving the custody of in vitro
12 human embryos, the court shall render a decision according to the following standards:

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

17 (2) The court shall resolve the dispute between the parties in the manner that provides the
18 best chance for the in vitro human embryo to develop and grow. The court shall not approve either
19 the termination of the in vitro human embryo or an outcome that leaves the in vitro human embryo
20 indefinitely in an environment in which it does not develop and grow;

21 (3) The following persons have standing to petition the court or to intervene in a case: the
22 ovum donor, spermatozoon donor, the surrogate in which the in vitro human embryo at issue has
23 been placed, or any other party involved in the negotiations for the creation of the in vitro human
24 embryo at issue;

25 (4) The court may uphold an agreement between the parties to an action establishing or
26 terminating parental rights as not against public policy. Notwithstanding the provisions of chapters
27 211 and 435, the noncustodial party may terminate his or her parental rights by filing an affidavit
28 with the court. Upon receipt of such an affidavit, the court shall enter an order terminating such
29 noncustodial party's parental rights. If parental rights have been terminated under this subdivision,
30 then a claim for child support by the custodial party shall not be maintained against the noncustodial
31 party; and

32 (5) All agreements brought before the court concerning the disposition of in vitro human
33 embryos shall be subject to the provisions of this section."; and

34
35 Further amend said bill by amending the title, enacting clause, and intersectional references
36 accordingly.