

FIRST REGULAR SESSION

# HOUSE BILL NO. 229

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SWAN.

0808H.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 child custody arrangements.

*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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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. **There shall be a rebuttable presumption that an award of equal or approximately equal parenting time to each parent is in the best interests of the child. Such presumption is rebuttable only by a preponderance of the evidence in accordance with all relevant factors**

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.

18 **including, but not limited to, the factors contained in subdivisions (1) to (8) of this**  
19 **subsection.** When the parties have not reached an agreement on all issues related to custody,  
20 the court shall consider all relevant factors and enter written findings of fact and conclusions of  
21 law, including, but not limited to, the following:

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

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

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

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

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

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

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

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

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

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

51 (b) A violation of section 568.020;

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

53 (d) A violation of section 568.065;

54 (e) A violation of section 573.200;

55 (f) A violation of section 573.205; or

56 (g) A violation of section 568.175.

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

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

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

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

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

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

83 (4) Sole custody to either parent; or

84 (5) Third-party custody or visitation:

85 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,  
86 or the welfare of the child requires, and it is in the best interests of the child, then custody,  
87 temporary custody or visitation may be awarded to any other person or persons deemed by the  
88 court to be suitable and able to provide an adequate and stable environment for 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 such  
94 arrangement is not in the best interest of the child, the court shall include a written finding in the  
95 judgment or order based on the public policy in subsection 4 of this section and each of the  
96 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific  
97 relevant factors that made a particular arrangement in the best interest of the child. If a proposed  
98 custodial arrangement is rejected by the court, the court shall include a written finding in the  
99 judgment or order detailing the specific relevant factors resulting in the rejection of such  
100 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 immediately  
104 and to pay the prevailing party a sum equal to the prevailing party's cost associated with  
105 obtaining the requested information, which shall include but not be limited to reasonable  
106 attorney's fees and court costs.

107 8. As between the parents of a child, no preference may be given to either parent in the  
108 awarding of custody because of that parent's age, sex, or financial status, nor because of the age  
109 or sex of the child. The court shall not presume that a parent, solely because of his or her sex,  
110 is more qualified than the other parent to act as a joint or sole legal or physical custodian for the  
111 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 section  
114 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310  
115 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan  
116 approved and ordered by the court shall be in the court's discretion and shall be in the best  
117 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 order,  
120 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party  
121 custody is denied or interfered with by a parent or third party without good cause, the aggrieved  
122 person may file a family access motion with the court stating the specific facts that constitute a  
123 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment  
124 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the

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

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

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

159         15. If the court finds that domestic violence or abuse as defined in section 455.010 has  
160 occurred, the court shall make specific findings of fact to show that the custody or visitation

161 arrangement ordered by the court best protects the child and the parent or other family or  
162 household member who is the victim of domestic violence, as defined in section 455.010, and  
163 any other children for whom such parent has custodial or visitation rights from any further harm.

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