

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 129

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

0992S.06P

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 452.375 and 454.1005, RSMo, and to enact in lieu thereof two new sections relating to judicial proceedings involving the parent-child relationship.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 452.375 and 454.1005, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 452.375 and 454.1005, 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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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;

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 (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 (7) of this subsection.** When the parties have
35 not reached an agreement on all issues related to custody,
36 the court shall consider all relevant factors and enter
37 written findings of fact and conclusions of law, including,
38 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; **the willingness and ability of parents to cooperate**
51 **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 **needs** 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 wishes of a child as to the child's
86 custodian. The fact that a parent sends his or her child or
87 children to a home school, as defined in section 167.031,
88 shall not be the sole factor that a court considers in
89 determining custody of such child or children.]

90 (8) The distance between the residences of the parents
91 seeking custody, including consideration of any relocation
92 which has occurred or an intent to relocate; and

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

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

106 (a) A felony violation of section 566.030, 566.031,
107 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,

108 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
109 566.203, 566.206, 566.209, 566.211, or 566.215;

110 (b) A violation of section 568.020;

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

113 (d) A violation of section 568.065;

114 (e) A violation of section 573.200;

115 (f) A violation of section 573.205; or

116 (g) A violation of section 568.175.

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

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

140 **consistent with the provisions of subsection 2 of this**
141 **section, and, in so doing,** the court shall determine the
142 custody arrangement which will best assure both parents
143 participate in such decisions and have frequent, continuing
144 and meaningful contact with their children so long as it is
145 in the best interests of the child.

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

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

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

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

161 (4) Sole custody to either parent; or

162 (5) Third-party custody or visitation:

163 (a) When the court finds that each parent is unfit,
164 unsuitable, or unable to be a custodian, or the welfare of
165 the child requires, and it is in the best interests of the
166 child, then custody, temporary custody or visitation may be
167 awarded **to** a person related by consanguinity or affinity to
168 the child. If no person related to the child by
169 consanguinity or affinity is willing to accept custody, then
170 the court may award custody to any other person or persons
171 deemed by the court to be suitable and able to provide an

adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, the court shall make that person a party to the action;

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

6. If the parties have not agreed to a custodial arrangement, or the court determines such arrangement is not in the best interest of the child, the court shall include a written finding in the judgment or order based on the public policy in subsection 4 of this section and each of the factors listed in subdivisions (1) to ~~[(8)]~~ (9) of subsection 2 of this section detailing the specific relevant factors that made a particular arrangement in the best interest of the child. If a proposed custodial arrangement is rejected by the court, the court shall include a written finding in the judgment or order detailing the specific relevant factors resulting in the rejection of such arrangement.

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

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

204 because of the age or sex of the child. The court shall not
205 presume that a parent, solely because of his or her sex, is
206 more qualified than the other parent to act as a joint or
207 sole legal or physical custodian for the child.

208 9. Any judgment providing for custody shall include a
209 specific written parenting plan setting forth the terms of
210 such parenting plan arrangements specified in subsection 8
211 of section 452.310. Such plan may be a parenting plan
212 submitted by the parties pursuant to section 452.310 or, in
213 the absence thereof, a plan determined by the court, but in
214 all cases, the custody plan approved and ordered by the
215 court shall be in the court's discretion and shall be in the
216 best interest of the child.

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

233 11. No court shall adopt any local rule, form, or
234 practice requiring a standardized or default parenting plan
235 for interim, temporary, or permanent orders or judgments.

Notwithstanding any other provision **of law** to the contrary, a court may enter an interim order in a proceeding under this chapter, provided that the interim order shall not contain any provisions about child custody or a parenting schedule or plan without first providing the parties with notice and a hearing, unless the parties otherwise agree.

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

13. Except as otherwise precluded by state or federal law, if any individual, professional, public or private institution or organization denies access or fails to provide or disclose any and all records and information, including, but not limited to, past and present dental,

268 medical and school records pertaining to a minor child, to
269 either parent upon the written request of such parent, the
270 court shall, upon its finding that the individual,
271 professional, public or private institution or organization
272 denied such request without good cause, order that party to
273 comply immediately with such request and to pay to the
274 prevailing party all costs incurred, including, but not
275 limited to, attorney's fees and court costs associated with
276 obtaining the requested information.

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

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

454.1005. 1. To show cause why suspension of a
2 license may not be appropriate, the obligor shall request a
3 hearing from the court or division that issued the notice of
4 intent to suspend the license. The request shall be made
5 within sixty days of the date of service of notice.

6 2. If an obligor fails to respond, without good cause,
7 to a notice of intent to suspend a license[,] **or to** timely
8 request a hearing or comply with a payment plan, [the
9 obligor's defenses and objections shall be considered to be

without merit and] the court or director may enter an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity.

3. Upon timely receipt of a request for hearing from an obligor, the court or director shall schedule a hearing **that complies with due process** to determine if suspension of the obligor's license is appropriate **considering all relevant factors, including those factors listed in subsection 4 of this section.** The court or director shall stay suspension of the license pending the outcome of the hearing.

4. [If the action involves an arrearage, the only issues that may be determined in a hearing pursuant to this section are] **In determining whether the license suspension is appropriate under the circumstances, the court or director shall consider and issue written findings of fact and conclusions of law within thirty days following the hearing regarding the following:**

(1) The identity of the obligor;

(2) Whether the arrearage is in an amount greater than or equal to three months of support payments or two thousand five hundred dollars, whichever is less, by the date of service of a notice of intent to suspend; [and]

(3) Whether the obligor has entered a payment plan. If the action involves a failure to comply with a subpoena or order, the only issues that may be determined are the identity of the obligor and whether the obligor has complied with the subpoena or order;

(4) **Whether the obligor had the ability to make the payments that are in arrearage;**

(5) **Whether the obligor has the current ability to make the payments;**

(6) The reasons the obligor needs the license, including, but not limited to:

(a) Transportation of family members to and from work, school, or medical treatment;

(b) Transportation of the obligor or family members to extra curricular activities; or

(c) A requirement for employment;

(7) Whether the obligor is unemployed or underemployed;

(8) Whether the obligor is actively seeking employment;

(9) Whether the obligor has engaged in job search and job readiness assistance, including utilization of the state employment database website;

(10) Whether the obligor has a physical or mental impairment affecting his or her capacity to work; and

(11) Any other relevant factors that affect the obligor's ability to make the child support payments.

5. If the court or director, after the hearing, determines that the obligor has failed to comply with the child support payment obligation and an arrearage exists in excess of two thousand five hundred dollars for good cause, then the court or director shall not issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity or, if an order is in place, shall stay such order. Good cause may include loss of employment, excluding voluntarily quitting or a dismissal due to poor job performance or failure to meet a condition of employment; catastrophic illness or accident of the obligor or a family member; severe inclement weather, including a natural disaster; or the obligor experiences a family emergency or other life-changing event, including divorce or domestic violence. A decision by the court or director under this section not to issue an order

74 suspending the obligor's license and ordering the obligor to
75 refrain from engaging in the licensed activity shall not
76 prevent a court or the director from issuing a new order
77 suspending the license of the same obligor in the event of
78 another arrearage if the obligor fails, without good cause,
79 to comply with the support order or payment plan.

80 6. If the court or director, after hearing, determines
81 that the obligor has failed, **without good cause**, to comply
82 with any of the requirements in subsection 4 of this
83 section, the court or director shall issue an order
84 suspending the obligor's license and ordering the obligor to
85 refrain from engaging in the licensed activity.

86 [6.] 7. The court or division shall send a copy of the
87 order suspending a license to the licensing authority and
88 the obligor by certified mail.

89 [7.] 8. The determination of the director, after a
90 hearing pursuant to this section, shall be a final agency
91 decision and shall be subject to judicial review pursuant to
92 chapter 536. Administrative hearings held pursuant to this
93 section shall be conducted by hearing officers appointed by
94 the director of the department pursuant to subsection 1 of
95 section 454.475.

96 [8.] 9. A determination made by the court or division
97 pursuant to this section is independent of any proceeding of
98 the licensing authority to suspend, revoke, deny, terminate
99 or renew a license.

✓