

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 35

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

0364S.02P

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2 repealed and two new sections enacted in lieu thereof, to be  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  
15 under the care and supervision of each of the parents.

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

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 (8) 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) 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;

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

(5) The child's adjustment to the child's home, school, and community. **The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, shall not be the sole factor that a court considers in determining custody of such child or children;**

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

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

(8) The **[wishes]** **unobstructed input** of a child, **free of coercion and manipulation**, as to the child's **[custodian]** **custodial arrangement**. **[The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, shall not be the sole factor that a court considers in determining custody of such child or children.]**

3. (1) In any court proceedings relating to custody of a child, the court shall not award custody or unsupervised visitation of a child to a parent if such parent or any person residing with such parent has been

found guilty of, or pled guilty to, any of the following offenses when a child was the victim:

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

(b) A violation of section 568.020;

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

(d) A violation of section 568.065;

(e) A violation of section 573.200;

(f) A violation of section 573.205; or

(g) A violation of section 568.175.

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

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state to encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children

amicably through alternative dispute resolution. In order to effectuate these policies, **the general assembly encourages the court to enter a temporary parenting plan as early as practicable in a proceeding under this chapter, consistent with the provisions of subsection 2 of this section, and, in so doing,** the court shall determine the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.

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

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

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

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

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child, then custody, temporary custody or visitation may be awarded **to** a person related by consanguinity or affinity to

the child. If no person related to the child by consanguinity or affinity is willing to accept custody, then the court may award custody to any other person or persons 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) 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.

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

183           9. Any judgment providing for custody shall include a  
184 specific written parenting plan setting forth the terms of  
185 such parenting plan arrangements specified in subsection 8  
186 of section 452.310. Such plan may be a parenting plan  
187 submitted by the parties pursuant to section 452.310 or, in  
188 the absence thereof, a plan determined by the court, but in  
189 all cases, the custody plan approved and ordered by the  
190 court shall be in the court's discretion and shall be in the  
191 best interest of the child.

192           10. After August 28, 2016, every court order  
193 establishing or modifying custody or visitation shall  
194 include the following language: "In the event of  
195 noncompliance with this order, the aggrieved party may file  
196 a verified motion for contempt. If custody, visitation, or  
197 third-party custody is denied or interfered with by a parent  
198 or third party without good cause, the aggrieved person may  
199 file a family access motion with the court stating the  
200 specific facts that constitute a violation of the custody  
201 provisions of the judgment of dissolution, legal separation,  
202 or judgment of paternity. The circuit clerk will provide  
203 the aggrieved party with an explanation of the procedures  
204 for filing a family access motion and a simple form for use  
205 in filing the family access motion. A family access motion  
206 does not require the assistance of legal counsel to prepare  
207 and file.".

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

217           12. Unless a parent has been denied custody rights  
218 pursuant to this section or visitation rights under section  
219 452.400, both parents shall have access to records and  
220 information pertaining to a minor child including, but not  
221 limited to, medical, dental, and school records. If the  
222 parent without custody has been granted restricted or  
223 supervised visitation because the court has found that the  
224 parent with custody or any child has been the victim of  
225 domestic violence, as defined in section 455.010, by the  
226 parent without custody, the court may order that the reports  
227 and records made available pursuant to this subsection not  
228 include the address of the parent with custody or the  
229 child. A court shall order that the reports and records  
230 made available under this subsection not include the address  
231 of the parent with custody if the parent with custody is a  
232 participant in the address confidentiality program under  
233 section 589.663. Unless a parent has been denied custody  
234 rights pursuant to this section or visitation rights under  
235 section 452.400, any judgment of dissolution or other  
236 applicable court order shall specifically allow both parents  
237 access to such records and reports.

238           13. Except as otherwise precluded by state or federal  
239 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, medical and school records pertaining to a minor child, to either parent upon the written request of such parent, the court shall, upon its finding that the individual, professional, public or private institution or organization denied such request without good cause, order that party to comply immediately with such request and to pay to the prevailing party all costs incurred, including, but not limited to, attorney's fees and court costs associated with obtaining the requested information.

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

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

454.1005. 1. To show cause why suspension of a license may not be appropriate, the obligor shall request a hearing from the court or division that issued the notice of intent to suspend the license. The request shall be made 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  
10 without merit and] the court or director may enter an order  
11 suspending the obligor's license and ordering the obligor to  
12 refrain from engaging in the licensed activity.

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

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

28           (1) The identity of the obligor;

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

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

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

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

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

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

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

48           (c) A requirement for employment;

49           (7) Whether the obligor is unemployed or underemployed;

50           (8) Whether the obligor is actively seeking employment;

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

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

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

58           5. If the court or director, after the hearing,  
59 determines that the obligor has failed to comply with the  
60 child support payment obligation and an arrearage exists in  
61 excess of two thousand five hundred dollars for good cause,  
62 then the court or director shall not issue an order  
63 suspending the obligor's license and ordering the obligor to  
64 refrain from engaging in the licensed activity or, if an  
65 order is in place, shall stay such order. Good cause may  
66 include loss of employment, excluding voluntarily quitting  
67 or a dismissal due to poor job performance or failure to  
68 meet a condition of employment; catastrophic illness or  
69 accident of the obligor or a family member; severe inclement

70 weather, including a natural disaster; or the obligor  
71 experiences a family emergency or other life-changing event,  
72 including divorce or domestic violence. A decision by the  
73 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.

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