

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/Senate Bill Nos. 767 & 1342, Page 7, Section 452.355, Line 40,

2 by inserting after all of said line the following:

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

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

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

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

21 (4) "Third-party custody" means a third party
22 designated as a legal and physical custodian pursuant to
23 subdivision (5) of subsection 5 of this section.

24 2. The court shall determine custody in accordance
25 with the best interests of the child. There shall be a
26 rebuttable presumption that an award of equal or

27 approximately equal parenting time to each parent is in the
28 best interests of the child. Such presumption is rebuttable
29 only by a preponderance of the evidence in accordance with
30 all relevant factors, including, but not limited to, the
31 factors contained in subdivisions (1) to [(8)] (9) of this
32 subsection. The presumption may be rebutted if the court
33 finds that the parents have reached an agreement on all
34 issues related to custody, or if the court finds that a
35 pattern of domestic violence has occurred as set out in
36 subdivision [(6)] (7) of this subsection. When the parties
37 have not reached an agreement on all issues related to
38 custody, the court shall consider all relevant factors and
39 enter written findings of fact and conclusions of law,
40 including, but not limited to, the following:

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

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

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

50 (4) Which parent is more likely to allow the child
51 frequent, continuing and meaningful contact with the other
52 parent and the willingness and ability of parents to
53 cooperate in the rearing of their child, to maximize sharing
54 information and minimize exposure of the child to parental
55 conflict, and to utilize methods for resolving disputes
56 regarding any major decision concerning the life of the
57 child;

58 (5) The child's adjustment to the child's home,
59 school, and community and the child's physical, emotional,

60 educational, and other needs. The fact that a parent sends
61 his or her child or children to a home school, as defined in
62 section 167.031, shall not be the sole factor that a court
63 considers in determining custody of such child or children;

64 (6) The mental and physical health of all individuals
65 involved, including the mental health or substance abuse
66 history experienced by either parent;

67 (7) Any history of abuse of any individuals involved,
68 including domestic and child abuse. In determining whether
69 the presumption is rebutted by a pattern of domestic
70 violence, the court shall consider the nature and context of
71 the domestic violence and the implications of the domestic
72 violence for parenting and for the child's safety, well-
73 being, and developmental needs. If the court finds that a
74 pattern of domestic violence as defined in section 455.010
75 has occurred, and, if the court also finds that awarding
76 custody to the abusive parent is in the best interest of the
77 child, then the court shall enter written findings of fact
78 and conclusions of law. Custody and visitation rights shall
79 be ordered in a manner that best protects the child and any
80 other child or children for whom the parent has custodial or
81 visitation rights, and the parent or other family or
82 household member who is the victim of domestic violence from
83 any further harm, whether physical, verbal, emotional, or
84 psychological;

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

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

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

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

105 (a) A felony violation of section 566.030, 566.031,
106 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
107 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
108 566.203, 566.206, 566.209, 566.211, or 566.215;

109 (b) A violation of section 568.020;

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

112 (d) A violation of section 568.065;

113 (e) A violation of section 573.200;

114 (f) A violation of section 573.205; or

115 (g) A violation of section 568.175.

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

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

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

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

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

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

160 (4) Sole custody to either parent; or

161 (5) Third-party custody or visitation:

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

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

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

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

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

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

216 10. After August 28, 2016, every court order
217 establishing or modifying custody or visitation shall
218 include the following language: "In the event of
219 noncompliance with this order, the aggrieved party may file
220 a verified motion for contempt. If custody, visitation, or
221 third-party custody is denied or interfered with by a parent
222 or third party without good cause, the aggrieved person may
223 file a family access motion with the court stating the

224 specific facts that constitute a violation of the custody
225 provisions of the judgment of dissolution, legal separation,
226 or judgment of paternity. The circuit clerk will provide
227 the aggrieved party with an explanation of the procedures
228 for filing a family access motion and a simple form for use
229 in filing the family access motion. A family access motion
230 does not require the assistance of legal counsel to prepare
231 and file."

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

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

257 section 589.663. Unless a parent has been denied custody
258 rights pursuant to this section or visitation rights under
259 section 452.400, any judgment of dissolution or other
260 applicable court order shall specifically allow both parents
261 access to such records and reports.

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

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

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

289 has custodial or visitation rights from any further harm.";

290 and

291 Further amend the title and enacting clause accordingly.