

# SENATE BILL NO. 638

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

0777S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to child custody.

*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Section A. Section 452.375, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 452.375,  
3 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  
10 parents shall confer with one another in the exercise of  
11 decision-making rights, responsibilities, and authority;

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

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

18 the child of frequent, continuing and meaningful contact  
19 with both parents;

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

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

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

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

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

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

57           (5) The child's adjustment to the child's home,  
58 school, and community. The fact that a parent sends his or  
59 her child or children to a home school or FPE school shall  
60 not be the sole factor that a court considers in determining  
61 custody of such child or children;

62           (6) The mental and physical health of all individuals  
63 involved, including **any substance abuse history experienced**  
64 **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;

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

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

89 (9) **The unobstructed input of the child, free of  
90 coercion and manipulation, as to the child's custodial  
91 arrangement, if the court deems the child to be of  
92 sufficient ability, age, and maturity to express an  
93 independent, reliable preference with due consideration of  
94 the influence that a parent may have on the child's input.**

95 3. (1) In any court proceedings relating to custody  
96 of a child, the court shall not award custody or  
97 unsupervised visitation of a child to a parent if such  
98 parent or any person residing with such parent has been  
99 found guilty of, or pled guilty to, any of the following  
100 offenses when a child was the victim:

101 (a) A felony violation of section 566.030, 566.031,  
102 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,  
103 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,  
104 566.203, 566.206, 566.209, 566.211, or 566.215;

105 (b) A violation of section 568.020;

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

108 (d) A violation of section 568.065;

109 (e) A violation of section 573.200;

110 (f) A violation of section 573.205; or

111 (g) A violation of section 568.175.

112           (2) For all other violations of offenses in chapters  
113 566 and 568 not specifically listed in subdivision (1) of  
114 this subsection or for a violation of an offense committed  
115 in another state when a child is the victim that would be a  
116 violation of chapter 566 or 568 if committed in Missouri,  
117 the court may exercise its discretion in awarding custody or  
118 visitation of a child to a parent if such parent or any  
119 person residing with such parent has been found guilty of,  
120 or pled guilty to, any such offense.

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

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

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

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

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

156 (4) Sole custody to either parent; or

157 (5) Third-party custody or visitation:

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

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

174 6. If the parties have not agreed to a custodial  
175 arrangement, or the court determines such arrangement is not

176 in the best interest of the child, the court shall include a  
177 written finding in the judgment or order based on the public  
178 policy in subsection 4 of this section and each of the  
179 factors listed in subdivisions (1) to [(8)] (9) of  
180 subsection 2 of this section detailing the specific relevant  
181 factors that made a particular arrangement in the best  
182 interest of the child. If a proposed custodial arrangement  
183 is rejected by the court, the court shall include a written  
184 finding in the judgment or order detailing the specific  
185 relevant factors resulting in the rejection of such  
186 arrangement.

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

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

203 9. Any judgment providing for custody shall include a  
204 specific written parenting plan setting forth the terms of  
205 such parenting plan arrangements specified in subsection 8  
206 of section 452.310. Such plan may be a parenting plan  
207 submitted by the parties pursuant to section 452.310 or, in

208 the absence thereof, a plan determined by the court, but in  
209 all cases, the custody plan approved and ordered by the  
210 court shall be in the court's discretion and shall be in the  
211 best interest of the child.

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

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

237 12. Unless a parent has been denied custody rights  
238 pursuant to this section or visitation rights under section  
239 452.400, both parents shall have access to records and



240 information pertaining to a minor child including, but not  
241 limited to, medical, dental, and school records. If the  
242 parent without custody has been granted restricted or  
243 supervised visitation because the court has found that the  
244 parent with custody or any child has been the victim of  
245 domestic violence, as defined in section 455.010, by the  
246 parent without custody, the court may order that the reports  
247 and records made available pursuant to this subsection not  
248 include the address of the parent with custody or the  
249 child. A court shall order that the reports and records  
250 made available under this subsection not include the address  
251 of the parent with custody if the parent with custody is a  
252 participant in the address confidentiality program under  
253 section 589.663. Unless a parent has been denied custody  
254 rights pursuant to this section or visitation rights under  
255 section 452.400, any judgment of dissolution or other  
256 applicable court order shall specifically allow both parents  
257 access to such records and reports.

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

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

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

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