

SECOND REGULAR SESSION

HOUSE BILL NO. 1414

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHOEMYER.

Read 1st time February 5, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4419L.02I

AN ACT

To repeal sections 452.375 and 452.400, RSMo, and to enact in lieu thereof two new sections relating to child custody and visitation, with a penalty provision.

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

Section A. Sections 452.375 and 452.400, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 452.375 and 452.400, to read as follows:

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

2 (1) "Custody", means joint legal custody, sole legal custody, joint physical custody or
3 sole physical custody or any combination thereof;

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

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

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

14 2. The court shall determine custody in accordance with the best interests of the child.
15 The court shall consider all relevant factors including:

16 (1) The wishes of the child's parents as to custody and the proposed parenting plan

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

17 submitted by both parties;

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

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

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

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

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

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

34 (8) The wishes of a child as to the child's custodian.

35

36 The fact that a parent sends his or her child or children to a home school, as defined in section
37 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such
38 child or children.

39 3. The court shall not award custody **or unsupervised visitation** of a child to a parent
40 if such parent **or any person residing with such parent** has been found guilty of, or pled guilty
41 to, a felony violation of chapter 566, RSMo, when [the] **such child or any other child** was the
42 victim, or a violation of chapter 568, RSMo, except for section 568.040, RSMo, when [the] **such**
43 **child or any other child** was the victim.

44 4. The general assembly finds and declares that it is the public policy of this state that
45 frequent, continuing and meaningful contact with both parents after the parents have separated
46 or dissolved their marriage is in the best interest of the child, except for cases where the court
47 specifically finds that such contact is not in the best interest of the child, and that it is the public
48 policy of this state to encourage parents to participate in decisions affecting the health, education
49 and welfare of their children, and to resolve disputes involving their children amicably through
50 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
51 custody arrangement which will best assure both parents participate in such decisions and have
52 frequent, continuing and meaningful contact with their children so long as it is in the best

53 interests of the child.

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

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

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

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

64 (4) Sole custody to either parent; or

65 (5) Third-party custody or visitation:

66 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
67 or the welfare of the child requires, and it is in the best interests of the child, then custody,
68 temporary custody or visitation may be awarded to any other person or persons deemed by the
69 court to be suitable and able to provide an adequate and stable environment for the child. Before
70 the court awards custody, temporary custody or visitation to a third person under this
71 subdivision, the court shall make that person a party to the action;

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

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

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

88 8. As between the parents of a child, no preference may be given to either parent in the

89 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
90 or sex of the child.

91 9. Any judgment providing for custody shall include a specific written parenting plan
92 setting forth the terms of such parenting plan arrangements specified in subsection 7 of section
93 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
94 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
95 approved and ordered by the court shall be in the court's discretion and shall be in the best
96 interest of the child.

97 10. Unless a parent has been denied custody rights pursuant to this section or visitation
98 rights under section 452.400, both parents shall have access to records and information
99 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
100 If the parent without custody has been granted restricted or supervised visitation because the
101 court has found that the parent with custody or [the] **any** child has been the victim of domestic
102 violence, as defined in section 455.200, RSMo, by the parent without custody, the court may
103 order that the reports and records made available pursuant to this subsection not include the
104 address of the parent with custody or the child. Unless a parent has been denied custody rights
105 pursuant to this section or visitation rights under section 452.400, any judgment of dissolution
106 or other applicable court order shall specifically allow both parents access to such records and
107 reports.

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

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

120 13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and
121 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the
122 custody or visitation arrangement ordered by the court best protects the child and the parent or
123 other family or household member who is the victim of domestic violence or abuse, as defined
124 in sections 455.010 and 455.501, RSMo, from any further harm.

452.400. 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his **or her** emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights. In determining the granting of visitation rights, the court shall consider evidence of domestic violence. If the court finds that domestic violence has occurred, the court may find that granting visitation to the abusive party is in the best interests of the child. The court shall not grant visitation to the parent not granted custody if such parent **or any person residing with such parent** has been found guilty of or pled guilty to a felony violation of chapter 566, RSMo, when [the] **a** child was the victim, or a violation of chapter 568, RSMo, except for section 568.040, RSMo, when [the] **a** child was the victim or an offense committed in another state, when [the] **a** child is the victim, that would be a felony violation of chapter 566, RSMo, or chapter 568, RSMo, except for section 568.040, RSMo, if committed in Missouri. The court shall consider the parent's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on other persons and shall grant visitation in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. The court, if requested by a party, shall make specific findings of fact to show that the visitation arrangements made by the court best protect the child or the parent or other family or household member who is the victim of domestic violence from any further harm.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his **or her** emotional development. When a court restricts a parent's visitation rights or when a court orders supervised visitation because of allegations of abuse or domestic violence, a showing of proof of treatment and rehabilitation shall be made to the court before unsupervised visitation may be ordered. "Supervised visitation", as used in this section, is visitation which takes place in the presence of a responsible adult appointed by the court for the protection of the child.

3. The court shall mandate compliance with its order by all parties to the action, including parents, children and third parties. In the event of noncompliance, the aggrieved person may file a verified motion for contempt. If custody, visitation or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts which constitute a violation of the judgment of dissolution or legal separation. The state courts administrator shall develop a simple form for pro se motions to the aggrieved person, which shall be provided to the person

37 by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved
38 parties the procedures for filing the form. Notice of the fact that clerks will provide such
39 assistance shall be conspicuously posted in the clerk's offices. The location of the office where
40 the family access motion may be filed shall be conspicuously posted in the court building. The
41 performance of duties described in this section shall not constitute the practice of law as defined
42 in section 484.010, RSMo. Such form for pro se motions shall not require the assistance of legal
43 counsel to prepare and file. The cost of filing the motion shall be the standard court costs
44 otherwise due for instituting a civil action in the circuit court.

45 4. Within five court days after the filing of the family access motion pursuant to
46 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
47 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
48 served upon the respondent by personal process server as provided by law or by any sheriff.
49 Such service shall be served at the earliest time and shall take priority over service in other civil
50 actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The
51 motion shall contain the following statement in boldface type: "PURSUANT TO SECTION
52 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE CIRCUIT CLERK WITHIN
53 TEN DAYS OF THE DATE OF SERVICE. FAILURE TO RESPOND TO THE CIRCUIT
54 CLERK MAY RESULT IN THE FOLLOWING:

55 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY, VISITATION
56 OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE AGGRIEVED
57 PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

58 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE
59 VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A
60 CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

61 (3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS AGAINST
62 THE VIOLATOR;

63 (4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE
64 FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

65 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO
66 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED
67 PARTY AND THE CHILD; AND

68 (6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE
69 EXPENSES, INCLUDING ATTORNEY'S FEES AND COURT COSTS ACTUALLY
70 INCURRED BY THE AGGRIEVED PARTY AS A RESULT OF THE DENIAL OF
71 CUSTODY, VISITATION OR THIRD-PARTY CUSTODY."

72 5. If an alternative dispute resolution program is available pursuant to section 452.372,

73 the clerk shall also provide information to all parties on the availability of any such services, and
74 within fourteen days of the date of service, the court may schedule alternative dispute resolution.

75 6. Upon a finding by the court pursuant to a motion for a family access order or a motion
76 for contempt that its order for custody, visitation or third-party custody has not been complied
77 with, without good cause, the court shall order a remedy, which may include, but not be limited
78 to:

79 (1) A compensatory period of visitation, custody or third-party custody at a time
80 convenient for the aggrieved party not less than the period of time denied;

81 (2) Participation by the violator in counseling to educate the violator about the
82 importance of providing the child with a continuing and meaningful relationship with both
83 parents;

84 (3) Assessment of a fine of up to five hundred dollars against the violator payable to the
85 aggrieved party;

86 (4) Requiring the violator to post bond or security to ensure future compliance with the
87 court's access orders; and

88 (5) Ordering the violator to pay the cost of counseling to reestablish the parent-child
89 relationship between the aggrieved party and the child.

90 7. The reasonable expenses incurred as a result of denial or interference with custody or
91 visitation, including attorney's fees and costs of a proceeding to enforce visitation rights, custody
92 or third-party custody, shall be assessed, if requested and for good cause, against the parent or
93 party who unreasonably denies or interferes with visitation, custody or third-party custody. In
94 addition, the court may utilize any and all powers relating to contempt conferred on it by law or
95 rule of the Missouri supreme court.

96 8. Final disposition of a motion for a family access order filed pursuant to this section
97 shall take place not more than sixty days after the service of such motion, unless waived by the
98 parties or determined to be in the best interest of the child. Final disposition shall not include
99 appellate review.

100 9. Motions filed pursuant to this section shall not be deemed an independent civil action
101 from the original action pursuant to which the judgment or order sought to be enforced was
102 entered.