

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1364
92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 15, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4057S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 452.310 and 452.455, RSMo, and to enact in lieu thereof two new sections relating to parenting plans, with an emergency clause.

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

Section A. Sections 452.310 and 452.455, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 452.310 and 452.455, to read as
3 follows:

452.310. 1. In any proceeding commenced pursuant to this chapter, the petition,
2 a motion to modify, a motion for a family access order and a motion for contempt shall
3 be verified. The petition in a proceeding for dissolution of marriage shall allege that the
4 marriage is irretrievably broken and that therefore there remains no reasonable
5 likelihood that the marriage can be preserved. The petition in a proceeding for legal
6 separation shall allege that the marriage is not irretrievably broken and that therefore
7 there remains a reasonable likelihood that the marriage can be preserved.

8 2. The petition in a proceeding for dissolution of marriage or legal separation
9 shall set forth:

10 (1) The residence of each party, including the county, and the length of residence
11 of each party in this state and in the county of residence;

12 (2) The date of the marriage and the place at which it is registered;

13 (3) The date on which the parties separated;

14 (4) The name, date of birth and address of each child, and the parent with whom
15 each child has primarily resided for the sixty days immediately preceding the filing of
16 the petition for dissolution of marriage or legal separation;

17 (5) Whether the wife is pregnant;

18 (6) The Social Security number of the petitioner, respondent and each child;

19 (7) Any arrangements as to the custody and support of the children and the

20 maintenance of each party; and

21 (8) The relief sought.

22 3. Upon the filing of the petition in a proceeding for dissolution of marriage or
23 legal separation, each child shall immediately be subject to the jurisdiction of the court
24 in which the proceeding is commenced, unless a proceeding involving allegations of abuse
25 or neglect of the child is pending in juvenile court. Until permitted by order of the court,
26 neither parent shall remove any child from the jurisdiction of the court or from any
27 parent with whom the child has primarily resided for the sixty days immediately
28 preceding the filing of a petition for dissolution of marriage or legal separation.

29 4. The mere fact that one parent has actual possession of the child at the time
30 of filing shall not create a preference in favor of such parent in any judicial
31 determination regarding custody of the child.

32 5. The respondent shall be served in the manner provided by the rules of the
33 supreme court and applicable court rules and, to avoid an interlocutory judgment of
34 default, shall file a verified answer within thirty days of the date of service which shall
35 not only admit or deny the allegations of the petition, but shall also set forth:

36 (1) The Social Security number of the petitioner, respondent and each child;

37 (2) Any arrangements as to the custody and support of the child and the
38 maintenance of each party; and

39 (3) The relief sought.

40 6. Previously existing defenses to divorce and legal separation, including but not
41 limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time,
42 are abolished.

43 7. The petitioner and respondent shall submit a proposed parenting plan, either
44 individually or jointly, within thirty days after service of process or the filing of the entry
45 of appearance, whichever event first occurs of a motion to modify or a petition involving
46 custody or visitation issues. The proposed parenting plan shall set forth the
47 arrangements that the party believes to be in the best interest of the minor children and
48 shall include but not be limited to:

49 (1) A specific written schedule detailing the custody, visitation and residential
50 time for each child with each party including:

51 (a) Major holidays stating which holidays a party has each year;

52 (b) School holidays for school-age children;

53 (c) The child's birthday, Mother's Day and Father's Day;

54 (d) Weekday and weekend schedules and for school-age children how the winter,
55 spring, summer and other vacations from school will be spent;

56 (e) The times and places for transfer of the child between the parties in
57 connection with the residential schedule;

58 (f) A plan for sharing transportation duties associated with the residential
59 schedule;

60 (g) Appropriate times for telephone access;

61 (h) Suggested procedures for notifying the other party when a party requests a
62 temporary variation from the residential schedule;

63 (i) Any suggested restrictions or limitations on access to a party and the reasons
64 such restrictions are requested;

65 (2) A specific written plan regarding legal custody which details how the
66 decision-making rights and responsibilities will be shared between the parties including
67 the following:

68 (a) Educational decisions and methods of communicating information from the
69 school to both parties;

70 (b) Medical, dental and health care decisions including how health care providers
71 will be selected and a method of communicating medical conditions of the child and how
72 emergency care will be handled;

73 (c) Extracurricular activities, including a method for determining which activities
74 the child will participate in when those activities involve time during which each party
75 is the custodian;

76 (d) Child care providers, including how such providers will be selected;

77 (e) Communication procedures including access to telephone numbers as
78 appropriate;

79 (f) A dispute resolution procedure for those matters on which the parties disagree
80 or in interpreting the parenting plan;

81 (g) If a party suggests no shared decision-making, a statement of the reasons for
82 such a request;

83 (3) How the expenses of the child, including child care, educational and
84 extraordinary expenses as defined in the child support guidelines established by the
85 supreme court, will be paid including:

86 (a) The suggested amount of child support to be paid by each party;

87 (b) The party who will maintain or provide health insurance for the child and
88 how the medical, dental, vision, psychological and other health care expenses of the child
89 not paid by insurance will be paid by the parties;

90 (c) The payment of educational expenses, if any;

91 (d) The payment of extraordinary expenses of the child, if any;

92 (e) Child care expenses, if any;

93 (f) Transportation expenses, if any.

94 8. If the proposed parenting plans of the parties differ and the parties cannot
95 resolve the differences or if any party fails to file a proposed parenting plan, upon motion
96 of either party and an opportunity for the parties to be heard, the court shall enter a
97 temporary order containing a parenting plan setting forth the arrangements specified
98 in subsection 7 of this section which will remain in effect until further order of the
99 court. The temporary order entered by the court shall not create a preference for the
100 court in its adjudication of final custody, child support or visitation.

101 9. Within one hundred twenty days after August 28, 1998, the Missouri supreme
102 court shall have in effect guidelines for a parenting plan form which may be used by the
103 parties pursuant to this section in any dissolution of marriage, legal separation or
104 modification proceeding involving issues of custody and visitation relating to the child.

105 **10. The filing of a parenting plan for any child over the age of eighteen**
106 **for whom custody, visitation, or support is being established or modified by**
107 **a court of competent jurisdiction is not required. Nothing in this section**
108 **shall be construed as precluding the filing of a parenting plan upon**
109 **agreement of the parties or if ordered to do so by the court for any child over**
110 **the age of eighteen for whom custody, visitation, or support is being**
111 **established or modified by a court of competent jurisdiction.**

452.455. 1. Any petition for modification of child custody decrees filed under the
2 provisions of section 452.410, or sections 452.440 to 452.450, shall be verified and, if the
3 original proceeding originated in the state of Missouri, shall be filed in that original
4 case, but service shall be obtained and responsive pleadings may be filed as in any
5 original proceeding.

6 2. Before making a decree under the provisions of section 452.410, or sections
7 452.440 to 452.450, the litigants, any parent whose parental rights have not been
8 previously terminated, and any person who has physical custody of the child must be
9 served in the manner provided by the rules of civil procedure and applicable court rules
10 and may within thirty days after the date of service (forty-five days if service by
11 publication) file a verified answer.

12 If any of these persons is outside this state, notice and opportunity to be heard shall be
13 given pursuant to section 452.460.

14 **3. When a person filing a petition for modification of a child custody**
15 **decree owes past due child support to a custodial parent, such person shall**
16 **post a bond in the amount of past due child support owed as ascertained by**

17 **the division of child support enforcement or reasonable legal fees of the**
18 **custodial parent, whichever is greater, before the filing of the petition. The**
19 **court shall hold the bond in escrow until the modification proceedings**
20 **pursuant to this section have been concluded wherein such bond shall be**
21 **transmitted to the division of child support enforcement for disbursement to**
22 **the custodial parent.**

Section B. Because of the need to protect the interests of the children of this
2 state, section A of this act is deemed necessary for the immediate preservation of the
3 public health, welfare, peace and safety, and is hereby declared to be an emergency act
4 within the meaning of the constitution, and section A of this act shall be in full force and
5 effect upon its passage and approval.

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