

SECOND REGULAR SESSION

HOUSE BILL NO. 1651

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOODMAN (Sponsor) AND LIPKE (Co-sponsor).

Read 1st time March 10, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4610L.011

AN ACT

To repeal sections 211.141, 211.327, 452.340, 488.031, 488.429, 491.300 and 535.030, RSMo, and to enact in lieu thereof nine new sections relating to court procedures.

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

Section A. Sections 211.141, 211.327, 452.340, 488.031, 488.429, 491.300 and 535.030, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 211.141, 211.327, 452.340, 476.800, 476.810, 476.820, 488.031, 488.429 and 535.030, to read as follows:

211.141. 1. When a child is taken into custody as provided in section 211.131, the person taking the child into custody shall, unless it has been otherwise ordered by the court, return the child to his **or her** parent, guardian or legal custodian on the promise of such person to bring the child to court, if necessary, at a stated time or at such times as the court may direct. The court may also impose other conditions relating to activities of the child. If these additional conditions are not met, the court may order the child detained as provided in section 211.151. If additional conditions are imposed, the child shall be notified that failure to adhere to the conditions may result in the court imposing more restrictive conditions or ordering the detention of the child. If the person taking the child into custody believes it desirable, he may request the parent, guardian or legal custodian to sign a written promise to bring the child into court and acknowledging any additional conditions imposed on the child.

2. If the child is not released as provided in subsection 1 of this section, he **or she** may be conditionally released or detained in any place of detention specified in section 211.151 but only on order of the court specifying the reason for the conditional release or the detention. The

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.

15 parent, guardian or legal custodian of the child shall be notified of the terms of the conditional
16 release or the place of detention as soon as possible.

17 3. The juvenile officer may conditionally release or detain a child for a period not to
18 exceed twenty-four hours if it is impractical to obtain a written order from the court because of
19 the unreasonableness of the hour or the fact that it is a Sunday or holiday. The conditional
20 release shall be as provided in subsection 1 of this section, and the detention shall be as provided
21 in section 211.151. A written record of such conditional release or detention shall be kept and
22 a report in writing filed with the court. In the event that the judge is absent from his circuit, or
23 is unable to act, the approval of another circuit judge of the same or adjoining circuit must be
24 obtained as a condition or continuing the conditional release or detention of a child for more than
25 twenty-four hours.

26 4. In any matter referred to the juvenile court pursuant to section 211.031, the juvenile
27 officer shall make [an] **a risk and needs** assessment of the child and, before the disposition of
28 the matter, shall report the results of the assessment to the juvenile court. The assessment shall
29 be written on a standardized form [developed and provided] **approved** by the [division of youth
30 services] **office of state courts administrator**.

31 5. The division, in cooperation with juvenile officers and juvenile courts, shall at least
32 biennially review a random sample of assessments of children and the disposition of each child's
33 case to recommend assessment and disposition equity throughout the state. Such review shall
34 identify any evidence of racial disparity in certification. Such review shall be conducted in a
35 manner which protects the confidentiality of the cases examined.

211.327. The juvenile court shall:

2 (1) Provide to the state courts administrator **the results from the risk and needs**
3 **assessment and the** outcome data for youth receiving formal and informal services on forms
4 developed by the state courts administrator;

5 (2) Require new juvenile court professional personnel to have orientation training as
6 provided in section 211.326;

7 (3) Require existing professional personnel to have continuing education as provided in
8 section 211.326.

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support,
2 the court may order either or both parents owing a duty of support to a child of the marriage to
3 pay an amount reasonable or necessary for the support of the child, including an award
4 retroactive to the date of filing the petition, without regard to marital misconduct, after
5 considering all relevant factors including:

6 (1) The financial needs and resources of the child;

7 (2) The financial resources and needs of the parents;

8 (3) The standard of living the child would have enjoyed had the marriage not been
9 dissolved;

10 (4) The physical and emotional condition of the child, and the child's educational needs;

11 (5) The child's physical and legal custody arrangements, including the amount of time
12 the child spends with each parent and the reasonable expenses associated with the custody or
13 visitation arrangements; and

14 (6) The reasonable work-related child care expenses of each parent.

15 2. The obligation of the parent ordered to make support payments shall abate, in whole
16 or in part, for such periods of time in excess of thirty consecutive days that the other parent has
17 voluntarily relinquished physical custody of a child to the parent ordered to pay child support,
18 notwithstanding any periods of visitation or temporary physical and legal or physical or legal
19 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.
20 In a IV-D case, the division of child support enforcement may determine the amount of the
21 abatement pursuant to this subsection for any child support order and shall record the amount of
22 abatement in the automated child support system record established pursuant to chapter 454,
23 RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall record the
24 amount of abatement in the automated child support system record established in chapter 454,
25 RSMo.

26 3. Unless the circumstances of the child manifestly dictate otherwise and the court
27 specifically so provides, the obligation of a parent to make child support payments shall
28 terminate when the child:

29 (1) Dies;

30 (2) Marries;

31 (3) Enters active duty in the military;

32 (4) Becomes self-supporting, provided that the custodial parent has relinquished the child
33 from parental control by express or implied consent;

34 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply;
35 or

36 (6) Reaches age twenty-two, unless the provisions of the child support order specifically
37 extend the parental support order past the child's twenty-second birthday for reasons provided
38 by subsection 4 of this section.

39 4. If the child is physically or mentally incapacitated from supporting himself **or herself**
40 and insolvent and unmarried, the court may extend the parental support obligation past the child's
41 eighteenth birthday.

42 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
43 school program of instruction, the parental support obligation shall continue, if the child

44 continues to attend and progresses toward completion of said program, until the child completes
45 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an
46 institution of vocational or higher education not later than October first following graduation
47 from a secondary school or completion of a graduation equivalence degree program and so long
48 as the child enrolls for and completes at least twelve hours of credit each semester, not including
49 the summer semester, at an institution of vocational or higher education and achieves grades
50 sufficient to reenroll at such institution, the parental support obligation shall continue until the
51 child completes his or her education, or until the child reaches the age of twenty-two, whichever
52 first occurs. To remain eligible for such continued parental support, at the beginning of each
53 semester the child shall submit to each parent a transcript or similar official document provided
54 by the institution of vocational or higher education which includes the courses the child is
55 enrolled in and has completed for each term, the grades and credits received for each such
56 course, and an official document from the institution listing the courses which the child is
57 enrolled in for the upcoming term and the number of credits for each such course. If the
58 circumstances of the child manifestly dictate, the court may waive the October first deadline for
59 enrollment required by this subsection. If the child is enrolled in such an institution, the child
60 or parent obligated to pay support may petition the court to amend the order to direct the
61 obligated parent to make the payments directly to the child. As used in this section, an
62 "institution of vocational education" means any postsecondary training or schooling for which
63 the student is assessed a fee and attends classes regularly. "Higher education" means any junior
64 college, community college, college, or university at which the child attends classes regularly.
65 A child who has been diagnosed with a learning disability, or whose physical disability or
66 diagnosed health problem limits the child's ability to carry the number of credit hours prescribed
67 in this subsection, shall remain eligible for child support so long as such child is enrolled in and
68 attending an institution of vocational or higher education, and the child continues to meet the
69 other requirements of this subsection. A child who is employed at least fifteen hours per week
70 during the semester may take as few as nine credit hours per semester and remain eligible for
71 child support so long as all other requirements of this subsection are complied with.

72 6. The court shall consider ordering a parent to waive the right to claim the tax
73 dependency exemption for a child enrolled in an institution of vocational or higher education in
74 favor of the other parent if the application of state and federal tax laws and eligibility for
75 financial aid will make an award of the exemption to the other parent appropriate.

76 7. The general assembly finds and declares that it is the public policy of this state that
77 frequent, continuing and meaningful contact with both parents after the parents have separated
78 or dissolved their marriage is in the best interest of the child except for cases where the court
79 specifically finds that such contact is not in the best interest of the child. In order to effectuate

80 this public policy, a court with jurisdiction shall enforce visitation, custody and child support
81 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or
82 future obligation of support and may transfer the physical and legal or physical or legal custody
83 of one or more children if it finds that a parent has, without good cause, failed to provide
84 visitation or physical and legal or physical or legal custody to the other parent pursuant to the
85 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
86 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
87 costs incurred by the prevailing party.

88 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
89 which any award of child support shall be made in any judicial or administrative proceeding.
90 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a
91 computation of the support obligation. The guidelines shall address how the amount of child
92 support shall be calculated when an award of joint physical custody results in the child or
93 children spending substantially equal time with both parents. Not later than October 1, 1998, the
94 Missouri supreme court shall publish child support guidelines and specifically list and explain
95 the relevant factors and assumptions that were used to calculate the child support guidelines.
96 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less
97 than once every [three] **four** years to ensure that its application results in the determination of
98 appropriate child support award amounts.

99 9. There shall be a rebuttable presumption, in any judicial or administrative proceeding
100 for the award of child support, that the amount of the award which would result from the
101 application of the guidelines established pursuant to subsection 8 of this section is the correct
102 amount of child support to be awarded. A written finding or specific finding on the record in a
103 judicial or administrative proceeding that the application of the guidelines would be unjust or
104 inappropriate in a particular case, after considering all relevant factors, including the factors set
105 out in subsection 1 of this section, is required if requested by a party and shall be sufficient to
106 rebut the presumption in the case. The written finding or specific finding on the record shall
107 detail the specific relevant factors that required a deviation from the application of the guidelines.

108 10. Pursuant to this or any other chapter, when a court determines the amount owed by
109 a parent for support provided to a child by another person, other than a parent, prior to the date
110 of filing of a petition requesting support, or when the director of the division of child support
111 enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection
112 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant
113 to subsection 8 of this section. The amount of child support resulting from the application of the
114 guidelines shall be applied retroactively for a period prior to the establishment of a support order
115 and the length of the period of retroactivity shall be left to the discretion of the court or director.

There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

11. The obligation of a parent to make child support payments may be terminated as follows:

(1) Provided that the child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process when the child reaches age twenty-two if the child support order does not specifically require payment of child support beyond age twenty-two for reasons provided by subsection 4 of this section;

(2) The obligation shall be deemed terminated without further judicial or administrative process when the parent receiving child support furnishes a sworn statement or affidavit notifying the obligor parent of the child's emancipation in accordance with the requirements of subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the court which entered the order establishing the child support obligation, or the division of child support enforcement;

(3) The obligation shall be deemed terminated without further judicial or administrative process, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; which statement or affidavit is served by the court or division on the child support obligee; and which is either acknowledged and affirmed by the child support obligee in writing, or which is not responded to in writing within thirty days of receipt by the child support obligee;

(4) The obligation shall be terminated as provided by this subdivision by the court which entered the order establishing the child support obligation, or the division of child support enforcement, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; and which statement or affidavit is served by the court or division on the child support obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon

152 treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to
153 section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion
154 as provided by law; provided that the court may require the payment of a deposit as security for
155 court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

156 12. The court may enter a judgment terminating child support pursuant to subdivisions
157 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
158 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
159 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
160 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
161 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
162 452.370.

476.800. 1. As used in sections 476.800 to 476.820, the following terms mean:

- 2 (1) "NonEnglish speaking person", any person involved in a legal proceeding who
3 cannot readily speak or understand the English language, but does not include persons
4 who are deaf or have a hearing disability;
5 (2) "Appointing authority", any court required to provide an interpreter;
6 (3) "Court proceeding", any proceeding before a court of record;
7 (4) "Qualified interpreter", an impartial and unbiased person who is readily able
8 to render a complete and accurate interpretation or translation of spoken and written
9 English for nonEnglish speaking persons and of nonEnglish oral or written statements into
10 spoken English.

**476.810. 1. The courts shall appoint qualified interpreters and translators in all
2 legal proceedings in which the nonEnglish speaking person is a party or a witness.**

3 **2. The appointing authority shall appoint a qualified interpreter to assist the
4 nonEnglish speaking parent, guardian, or custodian of a juvenile brought before the court.**

5 **3. The court may accept a waiver of the right to a qualified interpreter by a
6 nonEnglish speaking person at any point in the court proceeding if the court advises the
7 person of the nature and effect of the waiver and determines that the waiver has been made
8 knowingly, intelligently, and voluntarily. The nonEnglish speaking person may retract his
9 or her waiver and request that a qualified interpreter shall be appointed.**

10 **4. An interpreter shall take an oath that he or she will make a true interpretation
11 to the party or witness in a language that the party or witness understands and that he or
12 she will make a true interpretation of the party or witness' answers to questions to counsel,
13 court, or jury, in the English language, with his or her best skill and judgment. The
14 interpreter shall not give explanations or legal advice or express personal opinions.**

15 **5. An interpreter or translator cannot be compelled to testify as to the information**

16 that would otherwise be protected by attorney-client privilege as between the party and his
 17 or her attorney.

**476.820. 1. Interpreters and translators in civil, juvenile, and criminal proceedings
 2 shall be allowed a reasonable fee approved by the court and necessary travel expenses not
 3 to exceed state rates. Interpreters shall not be compensated for travel time.**

**4 2. If the person requiring an interpreter or translator during the proceeding is a
 5 party to or a witness in any criminal proceeding, such fees and expenses shall be payable
 6 by the state from funds appropriated for such purpose.**

488.031. 1. In addition to other fees authorized by law, the clerk of each court shall
 2 collect the following fees on the filing of any civil or criminal action or proceeding, including
 3 an appeal, except that no fee shall be imposed pursuant to this section on any case that is filed
 4 charging traffic violations except alcohol-related offenses:

5 Supreme court and [courts] court of appeals	\$20.00;
6 Circuit [courts] division	\$10.00;
7 Associate [circuit courts] and probate divisions	\$8.00; and
8 Small claims courts	No additional fee

9 2. Court filing surcharges pursuant to this section shall be collected in the same manner
 10 as other fees, fines, or costs in the case. The amounts so collected shall be paid by the clerk to
 11 the office of the state courts administrator and credited to the special fund designated as the basic
 12 civil legal services fund. However, the additional fees prescribed by this section shall not be
 13 collected when a criminal proceeding or defendant has been dismissed by the court or when costs
 14 are waived or are to be paid by the state, county, municipality, or other political subdivision of
 15 this state.

488.429. 1. Moneys collected pursuant to section 488.426 shall be payable to the judges
 2 of the circuit court, en banc, of the county from which such surcharges were collected, or to such
 3 person as is designated by local circuit court rule as treasurer of said fund, and said fund shall
 4 be applied and expended under the direction and order of the judges of the circuit court, en banc,
 5 of any such county for the maintenance and upkeep of the law library maintained by the bar
 6 association in any such county, or such other law library in any such county as may be designated
 7 by the judges of the circuit court, en banc, of any such county; provided, that the judges of the
 8 circuit court, en banc, of any such county, and the officers of all courts of record of any such
 9 county, shall be entitled at all reasonable times to use the library to the support of which said
 10 funds are applied.

11 2. In any county of the first classification without a charter form of government and with
 12 a population of at least two hundred thousand, such fund may also be applied and expended for
 13 that county's or circuit's family services and justice fund.

14 3. In any county [of the third classification without a township form of government and
15 with more than forty thousand eight hundred but less than forty thousand nine hundred
16 inhabitants, in any county of the third classification without a township form of government and
17 with more than forty thousand four hundred but less than forty thousand five hundred
18 inhabitants, in any county of the third classification without a township form of government and
19 with more than thirteen thousand four hundred but less than thirteen thousand five hundred
20 inhabitants, in any county of the third classification without a township form of government and
21 with more than thirteen thousand five hundred but less than thirteen thousand six hundred
22 inhabitants, in any county of the third classification without a township form of government and
23 with more than twenty-three thousand two hundred fifty but less than twenty-three thousand
24 three hundred fifty inhabitants, in any county of the third classification without a township form
25 of government and with more than eleven thousand seven hundred fifty but less than eleven
26 thousand eight hundred fifty inhabitants, in any county of the third classification without a
27 township form of government and with more than thirty-seven thousand two hundred but less
28 than thirty- seven thousand three hundred inhabitants, in any county of the fourth classification
29 with more than fifty-five thousand six hundred but less than fifty-five thousand seven hundred
30 inhabitants, or in any county of the first classification with more than ninety-three thousand eight
31 hundred but less than ninety-three thousand nine hundred inhabitants] **other than a county on**
32 **the nonpartisan court plan**, such fund may also be applied and expended for courtroom
33 renovation and technology enhancement in those counties.

 535.030. 1. Such summons shall be served as in other civil cases at least four days
2 before the court date in the summons. The summons shall include a court date which shall not
3 be more than twenty-one business days from the date the summons is issued unless at the time
4 of filing the affidavit the plaintiff or plaintiff's attorney consents in writing to a later date.

5 2. In addition to attempted personal service, the plaintiff may request, and thereupon the
6 clerk of the court shall make an order directing that the officer, or other person empowered to
7 execute the summons, shall also serve the same by securely affixing a copy of such summons and
8 the complaint in a conspicuous place on the dwelling of the premises in question at least ten days
9 before the court date in such summons, and by also mailing a copy of the summons and
10 complaint to the defendant at the defendant's last known address by ordinary mail [and by
11 certified mail, return receipt requested, deliver to addressee only,] at least ten days before the
12 court date. If the officer, or other person empowered to execute the summons, shall return that
13 the defendant is not found, or that the defendant has absconded or vacated his **or her** usual place
14 of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a
15 copy of the summons and complaint, the judge shall at the request of the plaintiff proceed to hear
16 the case as if there had been personal service, and judgment shall be rendered and proceedings

17 had as in other cases, except that no money judgment shall be granted the plaintiff where the
18 defendant is in default and service is by the posting and mailing procedure set forth in this
19 section.

20 3. If the plaintiff does not request service of the original summons by posting and
21 mailing as provided in subsection 2 of this section, and if the officer, or other person empowered
22 to execute the summons, makes return that the defendant is not found, or that the defendant has
23 absconded or vacated the defendant's usual place of abode in this state, the plaintiff may request
24 the issuance of an alias summons and service of the same by posting and mailing in the time and
25 manner provided in subsection 2 of this section. In addition, the plaintiff or an agent of the
26 plaintiff who is at least eighteen years of age may serve the summons by posting and mailing a
27 copy of the summons in the time and manner provided in subsection 2 of this section. Upon
28 proof by affidavit of the posting and of the mailing of a copy of the summons or alias summons
29 and the complaint, the judge shall proceed to hear the case as if there had been personal service,
30 and judgment shall be rendered and proceedings had as in other cases, except that no money
31 judgment shall be granted the plaintiff where the defendant is in default and service is by the
32 posting and mailing procedure provided in subsection 2 of this section.

33 4. On the date judgment is rendered as provided in this section where the defendant is
34 in default, the clerk of the court shall mail to the defendant at the defendant's last known address
35 by certified mail, with a request for return receipt and with directions to deliver to the addressee
36 only, a notice informing the defendant of the judgment and the date it was entered, and stating
37 that the defendant has ten days from the date of the judgment to file a motion to set aside the
38 judgment or to file an application for a trial de novo in the circuit court, as the case may be, and
39 that unless the judgment is set aside or an application for a trial de novo is filed within ten days,
40 the judgment will become final and the defendant will be subject to eviction from the premises
41 without further notice.

[491.300. 1. Interpreters and translators in civil and criminal
2 cases shall be allowed a reasonable fee approved by the court.

3 2. Such fee shall be payable by the state in criminal cases
4 from funds appropriated to the office of the state courts administrator
5 if the person requiring an interpreter or translator during the court
6 proceeding is a party to or witness in the proceeding.]
7