

SECOND REGULAR SESSION

HOUSE BILL NO. 1704

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor) AND PURGASON (Co-sponsor).

Read 1st time March 31, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4994L.011

AN ACT

To repeal sections 452.375, 452.400, and 452.410, RSMo, and to enact in lieu thereof three new sections relating to child custody.

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

Section A. Sections 452.375, 452.400, and 452.410, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 452.375, 452.400, and 452.410, to read
3 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, **adjudged**, or decreed, the parents shall confer with one another
7 in the exercise of decision-making rights, responsibilities, and authority **while the child resides**
8 **with each parent**;
- 9 (3) "Joint physical custody" means an order awarding each of the parents significant, but
10 not necessarily equal, periods of time during which a child resides with or is under the care and
11 supervision of each of the parents. Joint physical custody shall be shared by the parents in such
12 a way as to assure the child of frequent, continuing and meaningful contact with both parents,
13 **and shall not be denied due to one party's opposition to the arrangement**;
- 14 (4) "Third-party custody" means a third party designated as a legal and physical
15 [custodian] **guardian** pursuant to subdivision (5) of subsection 5 of this section.

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.

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

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

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

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

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

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

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

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

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

37

38 The fact that a parent sends his or her child or children to a home school, as defined in section
39 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such
40 child or children.

41 3. The court shall not award custody of a child to a parent if such parent **based upon**
42 **clear, convincing, and cogent evidence** has been found guilty of, or pled guilty to, a felony
43 violation of chapter 566, RSMo, when [the] a child was the victim, or a violation of chapter 568,
44 RSMo, except for section 568.040, RSMo, when [the] a child was the victim.

45 4. The general assembly finds and declares that it is the public policy of this state that
46 frequent, continuing and meaningful contact with both parents after the parents have separated
47 or dissolved their marriage is in the best interest of the child, except for cases where the court
48 specifically finds **based upon clear, convincing, and cogent evidence** that such contact is not
49 in the best interest of the child, and that it is the public policy of this state to encourage parents
50 to participate in decisions affecting the health, education and welfare of their children, and to
51 resolve disputes involving their children amicably through alternative dispute resolution. In

52 order to effectuate these policies, the court shall determine the custody arrangement which will
53 best assure both parents participate in such decisions and have frequent, continuing and
54 meaningful contact with their children so long as it is in the best interests of the child.

55 5. Prior to awarding [the appropriate] **an initial custodial** custody arrangement in the
56 best interest of the child, the court shall consider each of the following as follows:

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

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

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

65 (4) Sole custody to either parent; or

66 (5) Third-party custody or visitation:

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

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

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

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

88 obtaining the requested information, which shall include but not be limited to reasonable
89 attorney's fees and court costs.

90 8. As between the parents of a child, no preference may be given to either parent in the
91 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
92 or sex of the child.

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

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

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

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

122 13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and
123 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the

124 custody or visitation arrangement ordered by the court best protects the child and the parent or
125 other family or household member who is the victim of domestic violence or abuse, as defined
126 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
2 rights unless the court finds, after a hearing **and based upon clear, convincing, and cogent**
3 **evidence**, that visitation would endanger the child's physical health or impair his emotional
4 development. The court shall enter an order specifically detailing the visitation rights of the
5 parent without physical custody rights. In determining the granting of visitation rights, the court
6 shall consider evidence of domestic violence. If the court finds that domestic violence has
7 occurred, the court may find that granting visitation to the abusive party is in the best interests
8 of the child. The court shall not grant visitation to the parent not granted custody if such parent
9 **based on clear, convincing, and cogent evidence** has been found guilty of or pled guilty to a
10 felony violation of chapter 566, RSMo, when [the] a child was the victim, or a violation of
11 chapter 568, RSMo, except for section 568.040, RSMo, when [the] a child was the victim or an
12 offense committed in another state, when the child is the victim, that would be a felony violation
13 of chapter 566, RSMo, or chapter 568, RSMo, except for section 568.040, RSMo, if committed
14 in Missouri. The court shall consider the parent's history of inflicting, or tendency to inflict,
15 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on
16 other persons and shall grant visitation in a manner that best protects the child and the parent or
17 other family or household member who is the victim of domestic violence from any further harm.
18 The court, if requested by a party, shall make specific findings of fact to show that the visitation
19 arrangements made by the court best protect the child or the parent or other family or household
20 member who is the victim of domestic violence from any further harm.

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

30 3. The court shall mandate compliance with its order by all parties to the action,
31 including parents, children and third parties. In the event of noncompliance, the aggrieved
32 person may file a verified motion for contempt. If custody, visitation or third-party custody is
33 denied or interfered with by a parent or third party without good cause, the aggrieved person may

34 file a family access motion with the court stating the specific facts which constitute a violation
35 of the judgment of dissolution or legal separation. The state courts administrator shall develop
36 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.

452.410. 1. Except as provided in [subsection 2] **subsections 2 and 3** of this section,
2 the court shall not modify a prior custody decree unless it has jurisdiction under the provisions
3 of section 452.450 and it finds, upon the basis of facts that have arisen since the prior decree or

4 that were unknown to the court at the time of the prior decree, that a **substantial** change has
5 occurred in the circumstances of the child or [his] **the child's** custodian and that the modification
6 is necessary to serve the best interests of the child **based on the factors listed in subsection 2**
7 **of section 452.375.**

8 **2.** Notwithstanding any other provision of this section or sections 452.375 and
9 452.400[,]:

10 **(1)** Any custody order entered by any court in this state or any other state prior to August
11 13, 1984, may, subject to jurisdictional requirements, be modified to allow for joint custody in
12 accordance with section 452.375, without any further showing;

13 **(2) Third-party guardianship entered by any court in this state or any other state**
14 **may, subject to jurisdictional requirements, be modified or terminated if the court finds**
15 **that a parent is fit, suitable, and able to assume custody and it is in the best interest of the**
16 **minor that the guardianship be terminated.**

17 [2.] **3.** If either parent files a motion to modify an award of joint legal custody or joint
18 physical custody, each party shall be entitled to a change of judge as provided by supreme court
19 rule.

20 **4. Only an original party may file a motion to modify custody under this section.**