

SECOND REGULAR SESSION

HOUSE BILL NO. 1451

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BROWN (50) (Sponsor), HARRIS (110), YAEGER, LOW (39), DARROUGH, WILDBERGER, OXFORD, CASEY, ROORDA, AULL, BOGETTO, CURLS, SATER, FRANZ, MEINERS, HUGHES, JOHNSON (61), DAUS, VILLA, BAKER (25), BEAN, KRAUS, SCHOEMEHL, YOUNG, BOWMAN, WRIGHT-JONES, WETER, NOLTE, WILSON (119), WELLS, WHORTON, LeVOTA, HENKE, WRIGHT (159), BLAND AND BRINGER (Co-sponsors).

Read 1st time January 19, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4291L.01I

AN ACT

To repeal sections 452.310 and 452.400, RSMo, and to enact in lieu thereof two new sections relating to child visitation rights.

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

Section A. Sections 452.310 and 452.400, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.310 and 452.400, to read as follows:

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

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

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

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

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

- 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 each
- 15 child has primarily resided for the sixty days immediately preceding the filing of the petition for
- 16 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 maintenance
- 20 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 legal
- 23 separation, each child shall immediately be subject to the jurisdiction of the court in which the
- 24 proceeding is commenced, unless a proceeding involving allegations of abuse or neglect of the
- 25 child is pending in juvenile court. Until permitted by order of the court, neither parent shall
- 26 remove any child from the jurisdiction of the court or from any parent with whom the child has
- 27 primarily resided for the sixty days immediately preceding the filing of a petition for dissolution
- 28 of marriage or legal separation.
- 29 4. The mere fact that one parent has actual possession of the child at the time of filing
- 30 shall not create a preference in favor of such parent in any judicial determination regarding
- 31 custody of the child.
- 32 5. The respondent shall be served in the manner provided by the rules of the supreme
- 33 court and applicable court rules and, to avoid an interlocutory judgment of default, shall file a
- 34 verified answer within thirty days of the date of service which shall not only admit or deny the
- 35 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 maintenance of
- 38 each party; and
- 39 (3) The relief sought.
- 40 6. Previously existing defenses to divorce and legal separation, including but not limited
- 41 to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
- 42 7. The petitioner and respondent shall submit a proposed parenting plan, either
- 43 individually or jointly, within thirty days after service of process or the filing of the entry of
- 44 appearance, whichever event first occurs of a motion to modify or a petition involving custody
- 45 or visitation issues. The proposed parenting plan shall set forth the arrangements that the party
- 46 believes to be in the best interest of the minor children and shall include but not be limited to:

- 47 (1) A specific written schedule detailing the custody, visitation, **including virtual**
48 **visitation as defined in section 452.400**, and residential time for each child with each party
49 including:
- 50 (a) Major holidays stating which holidays a party has each year;
 - 51 (b) School holidays for school-age children;
 - 52 (c) The child's birthday, Mother's Day and Father's Day;
 - 53 (d) Weekday and weekend schedules and for school-age children how the winter, spring,
54 summer and other vacations from school will be spent;
 - 55 (e) The times and places for transfer of the child between the parties in connection with
56 the residential schedule;
 - 57 (f) A plan for sharing transportation duties associated with the residential schedule;
 - 58 (g) Appropriate times for telephone access;
 - 59 (h) Suggested procedures for notifying the other party when a party requests a temporary
60 variation from the residential schedule;
 - 61 (i) Any suggested restrictions or limitations on access to a party and the reasons such
62 restrictions are requested;
- 63 (2) A specific written plan regarding legal custody which details how the
64 decision-making rights and responsibilities will be shared between the parties including the
65 following:
- 66 (a) Educational decisions and methods of communicating information from the school
67 to both parties;
 - 68 (b) Medical, dental and health care decisions including how health care providers will
69 be selected and a method of communicating medical conditions of the child and how emergency
70 care will be handled;
 - 71 (c) Extracurricular activities, including a method for determining which activities the
72 child will participate in when those activities involve time during which each party is the
73 custodian;
 - 74 (d) Child care providers, including how such providers will be selected;
 - 75 (e) Communication procedures including access to telephone numbers as appropriate,
76 **and virtual visitation as defined in section 452.400**;
 - 77 (f) A dispute resolution procedure for those matters on which the parties disagree or in
78 interpreting the parenting plan;
 - 79 (g) If a party suggests no shared decision-making, a statement of the reasons for such a
80 request;

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

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

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

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

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

90 (e) Child care expenses, if any;

91 (f) Transportation expenses, if any.

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

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

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

452.400. 1. (1) A parent not granted custody of the child is entitled to reasonable
2 visitation rights, **including virtual visitation**, unless the court finds, after a hearing, that
3 visitation would endanger the child's physical health or impair his or her emotional development.
4 The court shall enter an order specifically detailing the visitation rights of the parent without
5 physical custody rights to the child and any other children for whom such parent has custodial
6 or visitation 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.

(2) (a) 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 any of the following offenses when a child was the victim:

a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

b. A violation of section 568.020, RSMo;

c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

d. A violation of section 568.065, RSMo;

e. A violation of section 568.080, RSMo;

f. A violation of section 568.090, RSMo; or

g. A violation of section 568.175, RSMo.

(b) For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in paragraph (a) of this subdivision or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the court may exercise its discretion in granting visitation to a parent not granted custody if such parent or any person residing with such parent has been found guilty of, or pled guilty to, any such offense.

(3) 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, and any other children for whom the parent has custodial or visitation rights from any further harm.

(4) 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, or any other child for whom the parent has custodial or visitation rights from any further harm.

2. (1) For purposes of this chapter, "virtual visitation" means parenting time facilitated by tools such as telephone, e-mail, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual visitation is designed to supplement, not replace, in-person visitation.

(2) Unless otherwise denied or restricted by court order, each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child in the form of mail privileges and virtual visitation if the equipment is reasonably available; provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual visitation is reasonably available taking into consideration:

(a) The best interests of the child;

(b) Each parent's ability to handle any additional expenses of virtual visitation; and

(c) Any other factors the court considers material.

3. (1) 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.

(2) (a) In any proceeding modifying visitation rights, the court shall not grant unsupervised visitation to a parent if the parent or any person residing with such parent has been found guilty of or pled guilty to any of the following offenses when a child was the victim:

a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

b. A violation of section 568.020, RSMo;

c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

d. A violation of section 568.065, RSMo;

e. A violation of section 568.080, RSMo;

f. A violation of section 568.090, RSMo; or

g. A violation of section 568.175, RSMo.

(b) For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in paragraph (a) of this subdivision or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the division may exercise its discretion regarding the placement of a child taken into the custody of the state in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.

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

[4.] 5. Within five court days after the filing of the family access motion pursuant to subsection [3] 4 of this section, the clerk of the court shall issue a summons pursuant to applicable state law, and applicable local or supreme court rules. A copy of the motion shall be personally served upon the respondent by personal process server as provided by law or by any sheriff. Such service shall be served at the earliest time and shall take priority over service in other civil actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The motion shall contain the following statement in boldface type:

"PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

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

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

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

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

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

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

[5.] 6. If an alternative dispute resolution program is available pursuant to section 452.372, the clerk shall also provide information to all parties on the availability of any such services, and within fourteen days of the date of service, the court may schedule alternative dispute resolution.

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

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

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

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

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

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

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

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

150 **[9.] 10.** Motions filed pursuant to this section shall not be deemed an independent civil
151 action from the original action pursuant to which the judgment or order sought to be enforced
152 was entered.

✓