

FIRST REGULAR SESSION

# HOUSE BILL NO. 565

## 94TH GENERAL ASSEMBLY

---

---

INTRODUCED BY REPRESENTATIVES BROWN (50) (Sponsor), CHAPPELLE-NADAL, HUBBARD, BURNETT, DARROUGH, YAEGER, SCAVUZZO, LAMPE, SCHOEMEHL, HOLSMAN, FALLERT, HODGES, HUGHES, SPRENG, VILLA, ROBB, GEORGE, EL-AMIN, HAYWOOD, NASHEED, WALLACE, AULL, BLAND, HOSKINS, McGHEE, NANCE, OXFORD, SATER, MOORE, NOLTE, TILLEY, WILDBERGER, CASEY, COOPER (120), SCHARNHORST, COX, FAITH, DENISON, WELLS, SCHNEIDER, RICHARD, FISHER, JONES (117) AND MAY (Co-sponsors).

Read 1st time January 24, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1429L.011

---

---

### AN ACT

To repeal sections 452.310, 452.340, 452.377, 452.400, and 452.402, RSMo, and to enact in lieu thereof five new sections relating to child visitation rights, with penalty provisions.

---

---

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

Section A. Sections 452.310, 452.340, 452.377, 452.400, and 452.402, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 452.310, 452.340,  
3 452.377, 452.400, and 452.402, to read as follows:

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

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

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.

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

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 of  
45 appearance, whichever event first occurs of a motion to modify or a petition involving custody

46 or visitation issues. The proposed parenting plan shall set forth the arrangements that the party  
47 believes to be in the best interest of the minor children and shall include but not be limited to:

48 (1) A specific written schedule detailing the custody, visitation, **including electronic**  
49 **communication as defined in section 452.400**, and residential time for each child with each  
50 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, spring,  
55 summer and other vacations from school will be spent;

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

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

59 (g) Appropriate times for telephone access;

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

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

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

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

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

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

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

76 (e) Communication procedures including access to telephone numbers as appropriate,  
77 **and electronic communication as defined in section 452.400**;

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

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

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

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

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

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

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

91 (e) Child care expenses, if any;

92 (f) Transportation expenses, if any.

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

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

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

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; **except that, the amount of time electronic communication is used**  
14 **shall not be a factor in the calculation of child support;** and

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

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

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

30           (1) Dies;

31           (2) Marries;

32           (3) Enters active duty in the military;

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

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

36 or

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

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

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

77           6. The court shall consider ordering a parent to waive the right to claim the tax  
78 dependency exemption for a child enrolled in an institution of vocational or higher education in

79 favor of the other parent if the application of state and federal tax laws and eligibility for  
80 financial aid will make an award of the exemption to the other parent appropriate.

81         7. The general assembly finds and declares that it is the public policy of this state that  
82 frequent, continuing and meaningful contact with both parents after the parents have separated  
83 or dissolved their marriage is in the best interest of the child except for cases where the court  
84 specifically finds that such contact is not in the best interest of the child. In order to effectuate  
85 this public policy, a court with jurisdiction shall enforce visitation, custody and child support  
86 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or  
87 future obligation of support and may transfer the physical and legal or physical or legal custody  
88 of one or more children if it finds that a parent has, without good cause, failed to provide  
89 visitation or physical and legal or physical or legal custody to the other parent pursuant to the  
90 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall  
91 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court  
92 costs incurred by the prevailing party.

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

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

113

114           10. Pursuant to this or any other chapter, when a court determines the amount owed by  
115 a parent for support provided to a child by another person, other than a parent, prior to the date  
116 of filing of a petition requesting support, or when the director of the division of child support  
117 enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection  
118 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant  
119 to subsection 8 of this section. The amount of child support resulting from the application of the  
120 guidelines shall be applied retroactively for a period prior to the establishment of a support order  
121 and the length of the period of retroactivity shall be left to the discretion of the court or director.  
122 There shall be a rebuttable presumption that the amount resulting from application of the  
123 guidelines under subsection 8 of this section constitutes the amount owed by the parent for the  
124 period prior to the date of the filing of the petition for support or the period for which state debt  
125 is being established. In applying the guidelines to determine a retroactive support amount, when  
126 information as to average monthly income is available, the court or director may use the average  
127 monthly income of the noncustodial parent, as averaged over the period of retroactivity, in  
128 determining the amount of presumed child support owed for the period of retroactivity. The  
129 court or director may enter a different amount in a particular case upon finding, after  
130 consideration of all relevant factors, including the factors set out in subsection 1 of this section,  
131 that there is sufficient cause to rebut the presumed amount.

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

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

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

144           (3) The obligation shall be deemed terminated without further judicial or administrative  
145 process when the parent paying child support files a sworn statement or affidavit with the court  
146 which entered the order establishing the child support obligation, or the division of child support  
147 enforcement, stating that the child is emancipated and reciting the factual basis for such  
148 statement; which statement or affidavit is served by the court or division on the child support



149 obligee; and which is either acknowledged and affirmed by the child support obligee in writing,  
150 or which is not responded to in writing within thirty days of receipt by the child support obligee;

151 (4) The obligation shall be terminated as provided by this subdivision by the court which  
152 entered the order establishing the child support obligation, or the division of child support  
153 enforcement, when the parent paying child support files a sworn statement or affidavit with the  
154 court which entered the order establishing the child support obligation, or the division of child  
155 support enforcement, stating that the child is emancipated and reciting the factual basis for such  
156 statement; and which statement or affidavit is served by the court or division on the child support  
157 obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon  
158 treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to  
159 section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion  
160 as provided by law; provided that the court may require the payment of a deposit as security for  
161 court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

162 12. The court may enter a judgment terminating child support pursuant to subdivisions  
163 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.  
164 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant  
165 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may  
166 promulgate uniform forms for sworn statements and affidavits to terminate orders of child  
167 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section  
168 452.370.

452.377. 1. For purposes of this section and section 452.375, "relocate" or "relocation"  
2 means a change in the principal residence of a child for a period of ninety days or more, but does  
3 not include a temporary absence from the principal residence.

4 2. Notice of a proposed relocation of the residence of the child, or any party entitled to  
5 custody or visitation of the child, shall be given in writing by certified mail, return receipt  
6 requested, to any party with custody or visitation rights. Absent exigent circumstances as  
7 determined by a court with jurisdiction, written notice shall be provided at least sixty days in  
8 advance of the proposed relocation. The notice of the proposed relocation shall include the  
9 following information:

10 (1) The intended new residence, including the specific address and mailing address, if  
11 known, and if not known, the city;

12 (2) The home telephone number of the new residence, if known;

13 (3) The date of the intended move or proposed relocation;

14 (4) A brief statement of the specific reasons for the proposed relocation of a child, if  
15 applicable; and

16 (5) A proposal for a revised schedule of custody or visitation with the child, if  
17 applicable.

18 3. A party required to give notice of a proposed relocation pursuant to subsection 2 of  
19 this section has a continuing duty to provide a change in or addition to the information required  
20 by this section as soon as such information becomes known.

21 4. In exceptional circumstances where the court makes a finding that the health or safety  
22 of any adult or child would be unreasonably placed at risk by the disclosure of the required  
23 identifying information concerning a proposed relocation of the child, the court may order that:

24 (1) The specific residence address and telephone number of the child, parent or person,  
25 and other identifying information shall not be disclosed in the pleadings, notice, other documents  
26 filed in the proceeding or the final order except for an in camera disclosure;

27 (2) The notice requirements provided by this section shall be waived to the extent  
28 necessary to protect the health or safety of a child or any adult; or

29 (3) Any other remedial action the court considers necessary to facilitate the legitimate  
30 needs of the parties and the best interest of the child.

31 5. The court shall consider a failure to provide notice of a proposed relocation of a child  
32 as:

33 (1) A factor in determining whether custody and visitation should be modified;

34 (2) A basis for ordering the return of the child if the relocation occurs without notice;  
35 and

36 (3) Sufficient cause to order the party seeking to relocate the child to pay reasonable  
37 expenses and attorneys fees incurred by the party objecting to the relocation.

38 6. If the parties agree to a revised schedule of custody and visitation for the child, which  
39 includes a parenting plan, they may submit the terms of such agreement to the court with a  
40 written affidavit signed by all parties with custody or visitation assenting to the terms of the  
41 agreement, and the court may order the revised parenting plan and applicable visitation schedule  
42 without a hearing.

43 7. The residence of the child may be relocated sixty days after providing notice, as  
44 required by this section, unless a parent files a motion seeking an order to prevent the relocation  
45 within thirty days after receipt of such notice. Such motion shall be accompanied by an affidavit  
46 setting forth the specific factual basis supporting a prohibition of the relocation. The person  
47 seeking relocation shall file a response to the motion within fourteen days, unless extended by  
48 the court for good cause, and include a counter-affidavit setting forth the facts in support of the  
49 relocation as well as a proposed revised parenting plan for the child.

50           8. If relocation of the child is proposed, a third party entitled by court order to legal  
51 custody of or visitation with a child and who is not a parent may file a cause of action to obtain  
52 a revised schedule of legal custody or visitation, but shall not prevent a relocation.

53           9. The party seeking to relocate shall have the burden of proving that the proposed  
54 relocation is made in good faith and is in the best interest of the child.

55           10. If relocation is permitted:

56           (1) The court shall order contact with the nonrelocating party including custody or  
57 visitation and [telephone access] **electronic communication** sufficient to assure that the child  
58 has frequent, continuing and meaningful contact with the nonrelocating party unless the child's  
59 best interest warrants otherwise; [and]

60           (2) The court shall specify how the transportation costs will be allocated between the  
61 parties and adjust the child support, as appropriate, considering the costs of transportation; **and**

62           **(3) The court shall not consider the availability of electronic communication as a**  
63 **factor in support of relocation of a child by the custodial parent out of the immediate area**  
64 **or state.**

65           11. After August 28, 1998, every court order establishing or modifying custody or  
66 visitation shall include the following language: "Absent exigent circumstances as determined by  
67 a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by  
68 certified mail, return receipt requested, and at least sixty days prior to the proposed relocation,  
69 each party to this action of any proposed relocation of the principal residence of the child,  
70 including the following information:

71           (1) The intended new residence, including the specific address and mailing address, if  
72 known, and if not known, the city;

73           (2) The home telephone number of the new residence, if known;

74           (3) The date of the intended move or proposed relocation;

75           (4) A brief statement of the specific reasons for the proposed relocation of the child; and

76           (5) A proposal for a revised schedule of custody or visitation with the child.

77

78 Your obligation to provide this information to each party continues as long as you or any other  
79 party by virtue of this order is entitled to custody of a child covered by this order. Your failure  
80 to obey the order of this court regarding the proposed relocation may result in further litigation  
81 to enforce such order, including contempt of court. In addition, your failure to notify a party of  
82 a relocation of the child may be considered in a proceeding to modify custody or visitation with  
83 the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the  
84 required notice."

85 12. Violation of the provisions of this section or a court order under this section may be  
86 deemed a change of circumstance under section 452.410, allowing the court to modify the prior  
87 custody decree. In addition, the court may utilize any and all powers relating to contempt  
88 conferred on it by law or rule of the Missouri supreme court.

89 13. Any party who objects in good faith to the relocation of a child's principal residence  
90 shall not be ordered to pay the costs and attorney's fees of the party seeking to relocate.

452.400. 1. (1) A parent not granted custody of the child is entitled to reasonable  
2 visitation rights, **including electronic communication**, unless the court finds, after a hearing,  
3 that visitation would endanger the child's physical health or impair his or her emotional  
4 development. The court shall enter an order specifically detailing the visitation rights of the  
5 parent without physical custody rights to the child and any other children for whom such parent  
6 has custodial or visitation rights. In determining the granting of visitation rights, the court shall  
7 consider evidence of domestic violence. If the court finds that domestic violence has occurred,  
8 the court may find that granting visitation to the abusive party is in the best interests of the child.

9 (2) (a) The court shall not grant visitation to the parent not granted custody if such  
10 parent or any person residing with such parent has been found guilty of or pled guilty to any of  
11 the following offenses when a child was the victim:

12 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
13 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
14 566.209, 566.212, or 566.215, RSMo;

15 b. A violation of section 568.020, RSMo;

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

17 d. A violation of section 568.065, RSMo;

18 e. A violation of section 568.080, RSMo;

19 f. A violation of section 568.090, RSMo; or

20 g. A violation of section 568.175, RSMo.

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

27 (3) The court shall consider the parent's history of inflicting, or tendency to inflict,  
28 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on  
29 other persons and shall grant visitation in a manner that best protects the child and the parent or

30 other family or household member who is the victim of domestic violence, and any other  
31 children for whom the parent has custodial or visitation rights from any further harm.

32 (4) The court, if requested by a party, shall make specific findings of fact to show that  
33 the visitation arrangements made by the court best protect the child or the parent or other family  
34 or household member who is the victim of domestic violence, or any other child for whom the  
35 parent has custodial or visitation rights from any further harm.

36 2. (1) **For purposes of this chapter:**

37 (a) **"Electronic communication" means parenting time facilitated by tools such as**  
38 **telephone, e-mail, instant messaging, video conferencing, and other wired or wireless**  
39 **technologies over the Internet or other communication media to supplement in-person**  
40 **visits between a noncustodial parent and a child or between a child and the custodial**  
41 **parent when the child is staying with the noncustodial parent. Virtual visitation is**  
42 **designed to supplement, not replace, in-person visitation;**

43 (b) **"Visitation" means time spent between a child and the child's parent, including**  
44 **any electronic communication.**

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

51 (a) **The best interests of the child;**

52 (b) **Each parent's ability to handle any additional expenses of electronic**  
53 **communication; and**

54 (c) **Any other factors the court considers material.**

55 3. (1) The court may modify an order granting or denying visitation rights whenever  
56 modification would serve the best interests of the child, but the court shall not restrict a parent's  
57 visitation rights unless it finds that the visitation would endanger the child's physical health or  
58 impair his or her emotional development.

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

62 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
63 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
64 566.209, 566.212, or 566.215, RSMo;

65 b. A violation of section 568.020, RSMo;

- 66 c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;  
67 d. A violation of section 568.065, RSMo;  
68 e. A violation of section 568.080, RSMo;  
69 f. A violation of section 568.090, RSMo; or  
70 g. A violation of section 568.175, RSMo.

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

77 (3) When a court restricts a parent's visitation rights or when a court orders supervised  
78 visitation **or supervised electronic communication** because of allegations of abuse or domestic  
79 violence, a showing of proof of treatment and rehabilitation shall be made to the court before  
80 unsupervised visitation may be ordered. "Supervised visitation", as used in this section, is  
81 visitation which takes place in the presence of a responsible adult appointed by the court for the  
82 protection of the child.

83 [3.] **4.** The court shall mandate compliance with its order by all parties to the action,  
84 including parents, children and third parties. In the event of noncompliance, the aggrieved  
85 person may file a verified motion for contempt. If custody, visitation or third-party custody is  
86 denied or interfered with by a parent or third party without good cause, the aggrieved person may  
87 file a family access motion with the court stating the specific facts which constitute a violation  
88 of the judgment of dissolution or legal separation. The state courts administrator shall develop  
89 a simple form for pro se motions to the aggrieved person, which shall be provided to the person  
90 by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved  
91 parties the procedures for filing the form. Notice of the fact that clerks will provide such  
92 assistance shall be conspicuously posted in the clerk's offices. The location of the office where  
93 the family access motion may be filed shall be conspicuously posted in the court building. The  
94 performance of duties described in this section shall not constitute the practice of law as defined  
95 in section 484.010, RSMo. Such form for pro se motions shall not require the assistance of legal  
96 counsel to prepare and file. The cost of filing the motion shall be the standard court costs  
97 otherwise due for instituting a civil action in the circuit court.

98 [4.] **5.** Within five court days after the filing of the family access motion pursuant to  
99 subsection [3] **4** of this section, the clerk of the court shall issue a summons pursuant to  
100 applicable state law, and applicable local or supreme court rules. A copy of the motion shall be  
101 personally served upon the respondent by personal process server as provided by law or by any

102 sheriff. Such service shall be served at the earliest time and shall take priority over service in  
103 other civil actions, except those of an emergency nature or those filed pursuant to chapter 455,  
104 RSMo. The motion shall contain the following statement in boldface type:

105

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

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

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

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

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

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

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

126 [5.] 6. If an alternative dispute resolution program is available pursuant to section  
127 452.372, the clerk shall also provide information to all parties on the availability of any such  
128 services, and within fourteen days of the date of service, the court may schedule alternative  
129 dispute resolution.

130 [6.] 7. Upon a finding by the court pursuant to a motion for a family access order or a  
131 motion for contempt that its order for custody, visitation or third-party custody has not been  
132 complied with, without good cause, the court shall order a remedy, which may include, but not  
133 be limited to:

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

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

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

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

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

145 [7.] **8.** The reasonable expenses incurred as a result of denial or interference with custody  
146 or visitation, including attorney's fees and costs of a proceeding to enforce visitation rights,  
147 custody or third-party custody, shall be assessed, if requested and for good cause, against the  
148 parent or party who unreasonably denies or interferes with visitation, custody or third-party  
149 custody. In addition, the court may utilize any and all powers relating to contempt conferred on  
150 it by law or rule of the Missouri supreme court.

151 [8.] **9.** Final disposition of a motion for a family access order filed pursuant to this  
152 section shall take place not more than sixty days after the service of such motion, unless waived  
153 by the parties or determined to be in the best interest of the child. Final disposition shall not  
154 include appellate review.

155 [9.] **10.** Motions filed pursuant to this section shall not be deemed an independent civil  
156 action from the original action pursuant to which the judgment or order sought to be enforced  
157 was entered.

452.402. 1. The court may grant reasonable visitation rights, **including electronic**  
2 **communication**, to the grandparents of the child and issue any necessary orders to enforce the  
3 [decree] order. **As used in this section, "electronic communication" shall have the same**  
4 **meaning as such term is defined in section 452.400; except that, for purposes of this section,**  
5 **electronic communication is applicable to visitation between a child and the grandparent.**  
6 The court may grant grandparent visitation when:

7 (1) The parents of the child have filed for a dissolution of their marriage. A grandparent  
8 shall have the right to intervene in any dissolution action solely on the issue of visitation rights.  
9 Grandparents shall also have the right to file a motion to modify the original decree of  
10 dissolution to seek visitation rights when visitation has been denied to them; or

11 (2) One parent of the child is deceased and the surviving parent denies reasonable  
12 visitation to a parent of the deceased parent of the child; or

13 (3) The child has resided in the grandparent's home for at least six months within the  
14 twenty-four month period immediately preceding the filing of the petition; and



15 (4) A grandparent is unreasonably denied visitation with the child for a period exceeding  
16 ninety days. However, if the natural parents are legally married to each other and are living  
17 together with the child, a grandparent may not file for visitation pursuant to this subdivision.

18 2. The court shall determine if the visitation by the grandparent would be in the child's  
19 best interest or if it would endanger the child's physical health or impair the child's emotional  
20 development. Visitation may only be ordered when the court finds such visitation to be in the  
21 best interests of the child. However, when the parents of the child are legally married to each  
22 other and are living together with the child, it shall be a rebuttable presumption that such parents  
23 know what is in the best interest of the child. The court may order reasonable conditions or  
24 restrictions on grandparent visitation.

25 3. If the court finds it to be in the best interests of the child, the court may appoint a  
26 guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice  
27 law in Missouri. The guardian ad litem may, for the purpose of determining the question of  
28 grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a  
29 party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

30 4. A home study, as described by section 452.390, may be ordered by the court to assist  
31 in determining the best interests of the child.

32 5. The court may, in its discretion, consult with the child regarding the child's wishes in  
33 determining the best interest of the child.

34 6. The right of a grandparent to maintain visitation rights pursuant to this section may  
35 terminate upon the adoption of the child.

36 7. The court may award reasonable attorneys fees and expenses to the prevailing party.

✓