

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Bill No. 222, Page 1, Section A, Line 6, by  
2 inserting after all of said section and line the following:

3  
4 "452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:  
5 (1) "Coerce" means to force a person to act in a given manner or to compel by pressure or  
6 threat;

7 (2) "Custody" means joint legal custody, sole legal custody, joint physical custody or sole  
8 physical custody or any combination thereof;

9 [(2)] (3) "Joint legal custody" means that the parents share the decision-making rights,  
10 responsibilities, and authority relating to the health, education and welfare of the child, and, unless  
11 allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of  
12 decision-making rights, responsibilities, and authority;

13 [(3)] (4) "Joint physical custody" means an order awarding each of the parents significant,  
14 but not necessarily equal, periods of time during which a child resides with or is under the care and  
15 supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way  
16 as to assure the child of frequent, continuing and meaningful contact with both parents;

17 [(4)] (5) "Third-party custody" means a third party designated as a legal and physical  
18 custodian pursuant to subdivision (5) of subsection 5 of this section.

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

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

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

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

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

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

31 (6) The mental and physical health of all individuals involved, including any history of abuse  
32 of any individuals involved. If the court finds that a pattern of domestic violence as defined in  
33 section 455.010 has occurred, and, if the court also finds that awarding custody to the abusive parent  
34 is in the best interest of the child, then the court shall enter written findings of fact and conclusions  
35 of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any  
36 other child or children for whom the parent has custodial or visitation rights, and the parent or other  
37 family or household member who is the victim of domestic violence from any further harm;

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 (7) The intention of either parent to relocate the principal residence of the child; and  
 2 (8) The wishes of a child as to the child's custodian. The fact that a parent sends his or her  
 3 child or children to a home school, as defined in section 167.031, shall not be the sole factor that a  
 4 court considers in determining custody of such child or children.

5 3. (1) In any court proceedings relating to custody of a child, the court shall not award  
 6 custody or unsupervised visitation of a child to a parent if such parent or any person residing with  
 7 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child  
 8 was the victim:

9 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
 10 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
 11 566.209, 566.212, or 566.215;

12 (b) A violation of section 568.020;

13 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

14 (d) A violation of section 568.065;

15 (e) A violation of section 568.080;

16 (f) A violation of section 568.090; or

17 (g) A violation of section 568.175.

18 (2) For all other violations of offenses in chapters 566 and 568 not specifically listed in  
 19 subdivision (1) of this subsection or for a violation of an offense committed in another state when a  
 20 child is the victim that would be a violation of chapter 566 or 568 if committed in Missouri, the court  
 21 may exercise its discretion in awarding custody or visitation of a child to a parent if such parent or  
 22 any person residing with such parent has been found guilty of, or pled guilty to, any such offense.

23 4. The general assembly finds and declares that it is the public policy of this state that  
 24 frequent, continuing and meaningful contact with both parents after the parents have separated or  
 25 dissolved their marriage is in the best interest of the child, except for cases where the court  
 26 specifically finds that such contact is not in the best interest of the child, and that it is the public  
 27 policy of this state to encourage parents to participate in decisions affecting the health, education and  
 28 welfare of their children, and to resolve disputes involving their children amicably through  
 29 alternative dispute resolution. In order to effectuate these policies, the court shall determine the  
 30 custody arrangement which will best assure both parents participate in such decisions and have  
 31 frequent, continuing and meaningful contact with their children so long as it is in the best interests of  
 32 the child.

33 5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the  
 34 court shall consider each of the following as follows:

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

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

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

42 (4) Sole custody to either parent; or

43 (5) Third-party custody or visitation:

44 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or  
 45 the welfare of the child requires, and it is in the best interests of the child, then custody, temporary  
 46 custody or visitation may be awarded to any other person or persons deemed by the court to be  
 47 suitable and able to provide an adequate and stable environment for the child. Before the court  
 48 awards custody, temporary custody or visitation to a third person under this subdivision, the court

1 shall make that person a party to the action;

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

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

11 7. Upon a finding by the court that either parent has refused to exchange information with the  
12 other parent, which shall include but not be limited to information concerning the health, education  
13 and welfare of the child, the court shall order the parent to comply immediately and to pay the  
14 prevailing party a sum equal to the prevailing party's cost associated with obtaining the requested  
15 information, which shall include but not be limited to reasonable attorney's fees and court costs.

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

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

24 10. Unless a parent has been denied custody rights pursuant to this section or visitation rights  
25 under section 452.400, both parents shall have access to records and information pertaining to a  
26 minor child, including, but not limited to, medical, dental, and school records. If the parent without  
27 custody has been granted restricted or supervised visitation because the court has found that the  
28 parent with custody or any child has been the victim of domestic violence, as defined in section  
29 455.010, by the parent without custody, the court may order that the reports and records made  
30 available pursuant to this subsection not include the address of the parent with custody or the child.  
31 Unless a parent has been denied custody rights pursuant to this section or visitation rights under  
32 section 452.400, any judgment of dissolution or other applicable court order shall specifically allow  
33 both parents access to such records and reports.

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

42 12. An award of joint custody does not preclude an award of child support pursuant to section  
43 452.340 and applicable supreme court rules. The court shall consider the factors contained in section  
44 452.340 and applicable supreme court rules in determining an amount reasonable or necessary for  
45 the support of the child.

46 13. If the court finds that domestic violence or abuse, as defined in section 455.010 has  
47 occurred, the court shall make specific findings of fact to show that the custody or visitation  
48 arrangement ordered by the court best protects the child and the parent or other family or household

member who is the victim of domestic violence, as defined in section 455.010, and any other children for whom such parent has custodial or visitation rights from any further harm.

14. If the court finds that a parent of a child, while the child was unborn, attempted to coerce the mother of the child to obtain an abortion, the court may deny custody to the parent.

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

b. A violation of section 568.020;

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

d. A violation of section 568.065;

e. A violation of section 568.080;

f. A violation of section 568.090; or

g. A violation of section 568.175.

(b) For all other violations of offenses in chapters 566 and 568 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 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.

(c) The court may exercise its discretion in granting visitation to a parent not granted custody if such parent, while the child was unborn, attempted to coerce the mother of the child to obtain an abortion.

(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) 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:

1 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
2 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
3 566.209, 566.212, or 566.215;

4 b. A violation of section 568.020;

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

6 d. A violation of section 568.065;

7 e. A violation of section 568.080;

8 f. A violation of section 568.090; or

9 g. A violation of section 568.175.

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

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

21 3. The court shall mandate compliance with its order by all parties to the action, including  
22 parents, children and third parties. In the event of noncompliance, the aggrieved person may file a  
23 verified motion for contempt. If custody, visitation or third-party custody is denied or interfered  
24 with by a parent or third party without good cause, the aggrieved person may file a family access  
25 motion with the court stating the specific facts which constitute a violation of the judgment of  
26 dissolution, [or] legal separation or judgment of paternity. The state courts administrator shall  
27 develop a simple form for pro se motions to the aggrieved person, which shall be provided to the  
28 person by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved  
29 parties the procedures for filing the form. Notice of the fact that clerks will provide such assistance  
30 shall be conspicuously posted in the clerk's offices. The location of the office where the family  
31 access motion may be filed shall be conspicuously posted in the court building. The performance of  
32 duties described in this section shall not constitute the practice of law as defined in section 484.010.  
33 Such form for pro se motions shall not require the assistance of legal counsel to prepare and file.  
34 The cost of filing the motion shall be the standard court costs otherwise due for instituting a civil  
35 action in the circuit court.

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

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

46 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY, VISITATION OR  
47 THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE AGGRIEVED  
48 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. 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. 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. 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. 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.

9. Motions filed pursuant to this section shall not be deemed an independent civil action from the original action pursuant to which the judgment or order sought to be enforced was entered. 453.015. As used in sections 453.010 to 453.400, the following terms mean:

- (1) "Coerce" means to force a person to act in a given manner or to compel by pressure or threat;
- (2) "Minor" or "child", any person who has not attained the age of eighteen years or any person in the custody of the division of family services who has not attained the age of twenty-one;
- (3) "Parent", a birth parent or parents of a child, including the putative father of the child, as well as the husband of a birth mother at the time the child was conceived, or a parent or

1 parents of a child by adoption. The putative father shall have no legal relationship unless he has  
 2 acknowledged the child as his own by affirmatively asserting his paternity;

3 [(3)] (4) "Putative father", the alleged or presumed father of a child including a person who  
 4 has filed a notice of intent to claim paternity with the putative father registry established in section  
 5 192.016 and a person who has filed a voluntary acknowledgment of paternity pursuant to section  
 6 193.087; and

7 [(4)] (5) "Stepparent", the spouse of a biological or adoptive parent. The term does not  
 8 include the state if the child is a ward of the state. The term does not include a person whose parental  
 9 rights have been terminated.

10 453.040. The consent to the adoption of a child is not required of:

11 (1) A parent whose rights with reference to the child have been terminated pursuant to law,  
 12 including section 211.444 or section 211.447 or other similar laws in other states;

13 (2) A parent of a child who has legally consented to a future adoption of the child;

14 (3) A parent whose identity is unknown and cannot be ascertained at the time of the filing of  
 15 the petition;

16 (4) A man who has not been established to be the father and who is not presumed by law to  
 17 be the father, and who, after the conception of the child, executes a verified statement denying  
 18 paternity and disclaiming any interest in the child and acknowledging that this statement is  
 19 irrevocable when executed and follows the consent as set forth in section 453.030;

20 (5) A parent or other person who has not executed a consent and who, after proper service of  
 21 process, fails to file an answer or make an appearance in a proceeding for adoption or for termination  
 22 of parental rights at the time such cause is heard;

23 (6) A parent who has a mental condition which is shown by competent evidence either to be  
 24 permanent or such that there is no reasonable likelihood that the condition can be reversed and which  
 25 renders the parent unable to knowingly provide the child the necessary care, custody and control;

26 (7) A parent who has for a period of at least six months, for a child one year of age or older,  
 27 or at least sixty days, for a child under one year of age, immediately prior to the filing of the petition  
 28 for adoption, willfully abandoned the child or, for a period of at least six months immediately prior  
 29 to the filing of the petition for adoption, willfully, substantially and continuously neglected to  
 30 provide him with necessary care and protection;

31 (8) A man who has reason to believe he is the biological father of an unborn child and who  
 32 attempted to coerce the mother of the child to obtain an abortion;

33 (9) A parent whose rights to the child may be terminated for any of the grounds set forth in  
 34 section 211.447 and whose rights have been terminated after hearing and proof of such grounds as  
 35 required by sections 211.442 to 211.487. Such petition for termination may be filed as a count in an  
 36 adoption petition."; and

37  
 38 Further amend said bill by amending the title, enacting clause, and intersectional references  
 39 accordingly.