

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 110
97TH GENERAL ASSEMBLY
2013

0521H.06T

AN ACT

To repeal sections 210.482 and 210.487, RSMo, and to enact in lieu thereof three new sections relating to custody and visitation for military personnel.

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

Section A. Sections 210.482 and 210.487, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 210.482, 210.487
3 and 452.413, to read as follows:

210.482. 1. If the emergency placement of a child in a private home is
2 necessary due to the unexpected absence of the child's parents, legal guardian,
3 or custodian, the juvenile court or children's division:

4 (1) May request that a local or state law enforcement agency or juvenile
5 officer, subject to any required federal authorization, immediately conduct a
6 name-based criminal history record check to include full orders of protection and
7 outstanding warrants of each person over the age of seventeen residing in the
8 home by using the Missouri uniform law enforcement system (MULES) and the
9 National Crime Information Center to access the Interstate Identification Index
10 maintained by the Federal Bureau of Investigation; and

11 (2) Shall determine or, in the case of the juvenile court, shall request the
12 division to determine whether any person over the age of seventeen years residing
13 in the home is listed on the child abuse and neglect registry. For any children
14 less than seventeen years of age residing in the home, the children's division
15 shall inquire of the person with whom an emergency placement of a child will be
16 made whether any children less than seventeen years of age residing in the home
17 have ever been certified as an adult and convicted of or pled guilty or nolo

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 contendere to any crime.

19 2. If a name-based search has been conducted pursuant to subsection 1
20 of this section, within fifteen calendar days after the emergency placement of the
21 child in the private home, and if the private home has not previously been
22 approved as a foster or adoptive home, all persons over the age of seventeen
23 residing in the home and all children less than seventeen residing in the home
24 who the division has determined have been certified as an adult for the
25 commission of a crime shall report to a local law enforcement agency for the
26 purpose of providing **[two] three** sets of fingerprints each and accompanying fees,
27 pursuant to section 43.530. One set of fingerprints shall be used by the highway
28 patrol to search the criminal history repository **[and the second]**, **one** set shall
29 be forwarded to the Federal Bureau of Investigation for searching the federal
30 criminal history files, **and one set shall be forwarded to and retained by**
31 **the division**. Results of the checks **[will] shall** be provided to the juvenile court
32 or children's division office requesting such information. Any child placed in
33 emergency placement in a private home shall be removed immediately if any
34 person residing in the home fails to provide fingerprints after being requested to
35 do so, unless the person refusing to provide fingerprints ceases to reside in the
36 private home.

37 3. If the placement of a child is denied as a result of a name-based
38 criminal history check and the denial is contested, all persons over the age of
39 seventeen residing in the home and all children less than seventeen years of age
40 residing in the home who the division has determined have been certified as an
41 adult for the commission of a crime shall, within fifteen calendar days, submit to
42 the juvenile court or the children's division **[two] three** sets of fingerprints in the
43 same manner described in subsection 2 of this section, accompanying fees, and
44 written permission authorizing the juvenile court or the children's division to
45 forward the fingerprints to the state criminal record repository for submission to
46 the Federal Bureau of Investigation. One set of fingerprints shall be used by the
47 highway patrol to search the criminal history repository **[and the second]**, **one**
48 set shall be forwarded to the Federal Bureau of Investigation for searching the
49 federal criminal history files, **and one set shall be retained by the division**.

50 4. **No person who submits fingerprints under this section shall**
51 **be required to submit additional fingerprints under this section or**
52 **section 210.487 unless the original fingerprints retained by the division**
53 **are lost or destroyed.**

54 5. Subject to appropriation, the total cost of fingerprinting required by
55 this section may be paid by the state, including reimbursement of persons
56 incurring fingerprinting costs under this section.

57 [5.] 6. For the purposes of this section, "emergency placement" refers to
58 those limited instances when the juvenile court or children's division is placing
59 a child in the home of private individuals, including neighbors, friends, or
60 relatives, as a result of a sudden unavailability of the child's primary caretaker.

 210.487. 1. When conducting investigations of persons for the purpose of
2 foster parent licensing, the division shall:

3 (1) Conduct a search for all persons over the age of seventeen in the
4 applicant's household and for any child less than seventeen years of age residing
5 in the applicant's home who the division has determined has been certified as an
6 adult for the commission of a crime for evidence of full orders of protection. The
7 office of state courts administrator shall allow access to the automated court
8 information system by the division. The clerk of each court contacted by the
9 division shall provide the division information within ten days of a request; and

10 (2) Obtain **[two] three** sets of fingerprints for any person over the age of
11 seventeen in the applicant's household and for any child less than seventeen
12 years of age residing in the applicant's home who the division has determined has
13 been certified as an adult for the commission of a crime in the same manner set
14 forth in subsection 2 of section 210.482. One set of fingerprints shall be used by
15 the highway patrol to search the criminal history repository **[and the second],**
16 **one** set shall be forwarded to the Federal Bureau of Investigation for searching
17 the federal criminal history files, **and one set shall be forwarded to and**
18 **retained by the division.** The highway patrol shall assist the division and
19 provide the criminal fingerprint background information, upon request; and

20 (3) Determine whether any person over the age of seventeen residing in
21 the home and any child less than seventeen years of age residing in the
22 applicant's home who the division has determined has been certified as an adult
23 for the commission of a crime is listed on the child abuse and neglect
24 registry. For any children less than seventeen years of age residing in the
25 applicant's home, the children's division shall inquire of the applicant whether
26 any children less than seventeen years of age residing in the home have ever been
27 certified as an adult and been convicted of or pled guilty or nolo contendere to
28 any crime.

29 2. After the initial investigation is completed under subsection 1 of this

30 section[.]:

31 **(1) No person who submits fingerprints under subsection 1 of**
32 **this section or section 210.482 shall be required to submit additional**
33 **fingerprints under this section or section 210.482 unless the original**
34 **fingerprints retained by the division are lost or destroyed; and**

35 **(2) The children's division and the department of health and senior**
36 **services may waive the requirement for a fingerprint background check for any**
37 **subsequent recertification.**

38 3. Subject to appropriation, the total cost of fingerprinting required by
39 this section may be paid by the state, including reimbursement of persons
40 incurring fingerprinting costs under this section.

41 4. The division may make arrangements with other executive branch
42 agencies to obtain any investigative background information.

43 5. The division may promulgate rules that are necessary to implement the
44 provisions of this section. Any rule or portion of a rule, as that term is defined
45 in section 536.010, that is created under the authority delegated in this section
46 shall become effective only if it complies with and is subject to all of the
47 provisions of chapter 536 and, if applicable, section 536.028. This section and
48 chapter 536 are nonseverable and if any of the powers vested with the general
49 assembly pursuant to chapter 536 to review, to delay the effective date, or to
50 disapprove and annul a rule are subsequently held unconstitutional, then the
51 grant of rulemaking authority and any rule proposed or adopted after August 28,
52 2004, shall be invalid and void.

452.413. 1. As used in this section, the following terms shall
2 **mean:**

3 **(1) "Deploying parent", a parent of a child less than eighteen**
4 **years of age whose parental rights have not been terminated by a court**
5 **of competent jurisdiction or a guardian of a child less than eighteen**
6 **years of age who is deployed or who has received written orders to**
7 **deploy with the United States Army, Navy, Air Force, Marine Corps,**
8 **Coast Guard, National Guard, or any other reserve component thereof;**

9 **(2) "Deployment", military service in compliance with military**
10 **orders received by a member of the United States Army, Navy, Air**
11 **Force, Marine Corps, Coast Guard, National Guard, or any other**
12 **reserve component thereof to report for combat operations,**
13 **contingency operations, peacekeeping operations, temporary duty**

14 (TDY), a remote tour of duty, or other service for which the deploying
15 parent is required to report unaccompanied by any family
16 member. Military service includes a period during which a military
17 parent remains subject to deployment orders and remains deployed on
18 account of sickness, wounds, leave, or other lawful cause;

19 (3) "Military parent", a parent of a child less than eighteen years
20 of age whose parental rights have not been terminated by a court of
21 competent jurisdiction or a guardian of a child less than eighteen years
22 of age who is a service member of the United States Army, Navy, Air
23 Force, Marine Corps, Coast Guard, National Guard, or any other
24 reserve component thereof;

25 (4) "Nondeploying parent", a parent or guardian not subject to
26 deployment.

27 2. If a military parent is required to be separated from a child
28 due to deployment, a court shall not enter a final order modifying the
29 terms establishing custody or visitation contained in an existing order
30 until ninety days after the deployment ends unless there is a written
31 agreement by both parties.

32 3. In accordance with section 452.412, deployment or the
33 potential for future deployment shall not be the sole factor supporting
34 a change in circumstances or grounds sufficient to support a
35 permanent modification of the custody or visitation terms established
36 in an existing order.

37 4. (1) An existing order establishing the terms of custody or
38 visitation in place at the time a military parent is deployed may be
39 temporarily modified to make reasonable accommodation for the
40 parties due to the deployment.

41 (2) A temporary modification order issued under this section
42 shall provide that the deploying parent shall have custody of the child
43 or reasonable visitation, whichever is applicable under the original
44 order, during a period of leave granted to the deploying parent, unless
45 it is not in the best interest of the child.

46 (3) Any court order modifying a previously ordered custody or
47 visitation due to deployment shall specify that the deployment is the
48 basis for the order and shall be entered by the court as a temporary
49 order.

50 (4) Any such temporary custody or visitation order shall require

51 the nondeploying parent to provide the court and the deploying parent
52 with written notice of the nondeploying parent's address and telephone
53 number, and update such information within seven days of any
54 change. However, if a valid order of protection under chapter 455 from
55 this or another jurisdiction is in effect that requires that the address
56 or contact information of the parent who is not deployed be kept
57 confidential, the notification shall be made to the court only, and a
58 copy of the order shall be included in the notification. Nothing in this
59 subdivision shall be construed to eliminate the requirements under
60 section 452.377.

61 (5) Upon motion of a deploying parent, with reasonable advance
62 notice and for good cause shown, the court shall hold an expedited
63 hearing in any custody or visitation matters instituted under this
64 section when the military duties of the deploying parent have a
65 material effect on his or her ability or anticipated ability to appear in
66 person at a regularly scheduled hearing.

67 5. (1) A temporary modification of such an order automatically
68 ends no later than thirty days after the return of the deploying parent
69 and the original terms of the custody or visitation order in place at the
70 time of deployment are automatically reinstated.

71 (2) Nothing in this section shall limit the power of the court to
72 conduct an expedited or emergency hearing regarding custody or
73 visitation upon return of the deploying parent, and the court shall do
74 so within ten days of the filing of a motion alleging an immediate
75 danger or irreparable harm to the child.

76 (3) The nondeploying parent shall bear the burden of showing
77 that reentry of the custody or visitation order in effect before the
78 deployment is no longer in the child's best interests. The court shall set
79 any nonemergency motion by the nondeploying parent for hearing
80 within thirty days of the filing of the motion.

81 6. (1) Upon motion of the deploying parent or upon motion of a
82 family member of the deploying parent with his or her consent, the
83 court may delegate his or her visitation rights, or a portion of such
84 rights, to a family member with a close and substantial relationship to
85 the minor child or children for the duration of the deployment if it is
86 in the best interest of the child.

87 (2) Such delegated visitation time or access does not create an

88 entitlement or standing to assert separate rights to parent time or
89 access for any person other than a parent, and shall terminate by
90 operation of law upon the end of the deployment, as set forth in this
91 section.

92 (3) Such delegated visitation time shall not exceed the visitation
93 time granted to the deploying parent under the existing order; except
94 that, the court may take into consideration the travel time necessary
95 to transport the child for such delegated visitation time.

96 (4) In addition, there is a rebuttable presumption that a deployed
97 parent's visitation rights shall not be delegated to a family member who
98 has a history of perpetrating domestic violence as defined under
99 section 455.010 against another family or household member, or
100 delegated to a family member with an individual in the family
101 member's household who has a history of perpetrating domestic
102 violence against another family or household member.

103 (5) The person or persons to whom delegated visitation time has
104 been granted shall have full legal standing to enforce such rights.

105 7. Upon motion of a deploying parent and upon reasonable
106 advance notice and for good cause shown, the court shall permit such
107 parent to present testimony and evidence by affidavit or electronic
108 means in support, custody, and visitation matters instituted under this
109 section when the military duties of such parent have a material effect
110 on his or her ability to appear in person at a regularly scheduled
111 hearing. Electronic means includes communication by telephone, video
112 conference, or the internet.

113 8. Any order entered under this section shall require that the
114 nondeploying parent:

115 (1) Make the child or children reasonably available to the
116 deploying parent when the deploying parent has leave;

117 (2) Facilitate opportunities for telephonic and electronic mail
118 contact between the deploying parent and the child or children during
119 deployment; and

120 (3) Receive timely information regarding the deploying parent's
121 leave schedule.

122 9. (1) If there is no existing order establishing the terms of
123 custody and visitation and it appears that deployment is imminent,
124 upon the filing of initial pleadings and motion by either parent, the

125 court shall expedite a hearing to establish temporary custody or
126 visitation to ensure the deploying parent has access to the child, to
127 ensure disclosure of information, to grant other rights and duties set
128 forth in this section, and to provide other appropriate relief.

129 (2) Any initial pleading filed to establish custody or visitation for
130 a child of a deploying parent shall be so identified at the time of filing
131 by stating in the text of the pleading the specific facts related to
132 deployment.

133 10. (1) Since military necessity may preclude court adjudication
134 before deployment, the parties shall cooperate with each other in an
135 effort to reach a mutually agreeable resolution of custody, visitation,
136 and child support.

137 (2) A deploying parent shall provide a copy of his or her orders
138 to the nondeploying parent promptly and without delay prior to
139 deployment. Notification shall be made within ten days of receipt of
140 deployment orders. If less than ten days notice is received by the
141 deploying parent, notice shall be given immediately upon receipt of
142 military orders. If all or part of the orders are classified or restricted
143 as to release, the deploying parent shall provide, under the terms of
144 this subdivision, all such nonclassified or nonrestricted information to
145 the nondeploying parent.

146 11. In an action brought under this chapter, whenever the court
147 declines to grant or extend a stay of proceedings under the
148 Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521-522,
149 and decides to proceed in the absence of the deployed parent, the court
150 shall appoint a guardian ad litem to represent the minor child's
151 interests.

152 12. Service of process on a nondeploying parent whose
153 whereabouts are unknown may be accomplished in accordance with the
154 provisions of section 506.160.

155 13. In determining whether a parent has failed to exercise
156 visitation rights, the court shall not count any time periods during
157 which the parent did not exercise visitation due to the material effect
158 of such parent's military duties on visitation time.

159 14. Once an order for custody has been entered in Missouri, any
160 absence of a child from this state during deployment shall be
161 denominated a temporary absence for the purposes of application of

162 the Uniform Child Custody Jurisdiction and Enforcement Act
163 (UCCJEA). For the duration of the deployment, Missouri shall retain
164 exclusive jurisdiction under the UCCJEA and deployment shall not be
165 used as a basis to assert inconvenience of the forum under the UCCJEA.

166 15. In making determinations under this section, the court may
167 award attorney's fees and costs based on the court's consideration of:

168 (1) The failure of either party to reasonably accommodate the
169 other party in custody or visitation matters related to a military
170 parent's service;

171 (2) Unreasonable delay caused by either party in resolving
172 custody or visitation related to a military parent's service;

173 (3) Failure of either party to timely provide military orders,
174 income, earnings, or payment information, housing or education
175 information, or physical location of the child to the other party; and

176 (4) Other factors as the court may consider appropriate and as
177 may be required by law.

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