

FIRST REGULAR SESSION

HOUSE BILL NO. 182

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAAHR.

0078H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 452.375, 452.400, 453.015, and 453.040, RSMo, and to enact in lieu thereof four new sections relating to domestic relations.

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

Section A. Sections 452.375, 452.400, 453.015, and 453.040, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 452.375, 452.400, 453.015, and 453.040, to read as follows:

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

(1) **"Coerce" means to persuade an unwilling person to do something by force or threats;**

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

41 3. (1) In any court proceedings relating to custody of a child, the court shall not award
42 custody or unsupervised visitation of a child to a parent if such parent or any person residing
43 with such parent has been found guilty of, or pled guilty to, any of the following offenses when
44 a child was the victim:

45 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
46 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
47 566.209, 566.212, or 566.215;

48 (b) A violation of section 568.020;

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

50 (d) A violation of section 568.065;

51 (e) A violation of section 568.080;

52 (f) A violation of section 568.090; or

53 (g) A violation of section 568.175.

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

60 4. The general assembly finds and declares that it is the public policy of this state that
61 frequent, continuing and meaningful contact with both parents after the parents have separated
62 or dissolved their marriage is in the best interest of the child, except for cases where the court
63 specifically finds that such contact is not in the best interest of the child, and that it is the public
64 policy of this state to encourage parents to participate in decisions affecting the health, education
65 and welfare of their children, and to resolve disputes involving their children amicably through
66 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
67 custody arrangement which will best assure both parents participate in such decisions and have
68 frequent, continuing and meaningful contact with their children so long as it is in the best
69 interests of the child.

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

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

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

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

80 (4) Sole custody to either parent; or

81 (5) Third-party custody or visitation:

82 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
83 or the welfare of the child requires, and it is in the best interests of the child, then custody,
84 temporary custody or visitation may be awarded to any other person or persons deemed by the
85 court to be suitable and able to provide an adequate and stable environment for the child. Before
86 the court awards custody, temporary custody or visitation to a third person under this
87 subdivision, the court shall make that person a party to the action;

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

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

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

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

107 9. Any judgment providing for custody shall include a specific written parenting plan
108 setting forth the terms of such parenting plan arrangements specified in subsection [7] 8 of
109 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section
110 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody
111 plan approved and ordered by the court shall be in the court's discretion and shall be in the best
112 interest of the child.

113 10. Unless a parent has been denied custody rights pursuant to this section or visitation
114 rights under section 452.400, both parents shall have access to records and information
115 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
116 If the parent without custody has been granted restricted or supervised visitation because the
117 court has found that the parent with custody or any child has been the victim of domestic
118 violence, as defined in section 455.010, by the parent without custody, the court may order that
119 the reports and records made available pursuant to this subsection not include the address of the
120 parent with custody or the child. Unless a parent has been denied custody rights pursuant to this
121 section or visitation rights under section 452.400, any judgment of dissolution or other applicable
122 court order shall specifically allow both parents access to such records and reports.

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

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

13. If the court finds that domestic violence or abuse, as defined in section 455.010 has occurred, the court shall make specific findings of fact to show that the custody or visitation 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 **or abuse**, 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;

- 15 b. A violation of section 568.020;
- 16 c. A violation of subdivision (2) of subsection 1 of section 568.060;
- 17 d. A violation of section 568.065;
- 18 e. A violation of section 568.080;
- 19 f. A violation of section 568.090; or
- 20 g. A violation of section 568.175.

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

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

30 (3) The court shall consider the parent's history of inflicting, or tendency to inflict,
31 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on
32 other persons and shall grant visitation in a manner that best protects the child and the parent or
33 other family or household member who is the victim of domestic violence, and any other
34 children for whom the parent has custodial or visitation rights from any further harm.

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

39 2. (1) The court may modify an order granting or denying visitation rights whenever
40 modification would serve the best interests of the child, but the court shall not restrict a parent's
41 visitation rights unless it finds that the visitation would endanger the child's physical health or
42 impair his or her emotional development.

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

- 46 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
47 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
48 566.209, 566.212, or 566.215;
- 49 b. A violation of section 568.020;
- 50 c. A violation of subdivision (2) of subsection 1 of section 568.060;

- 51 d. A violation of section 568.065;
- 52 e. A violation of section 568.080;
- 53 f. A violation of section 568.090; or
- 54 g. A violation of section 568.175.

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

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

66 3. The court shall mandate compliance with its order by all parties to the action,
67 including parents, children and third parties. In the event of noncompliance, the aggrieved
68 person may file a verified motion for contempt. If custody, visitation or third-party custody is
69 denied or interfered with by a parent or third party without good cause, the aggrieved person may
70 file a family access motion with the court stating the specific facts which constitute a violation
71 of the judgment of dissolution, legal separation or judgment of paternity. The state courts
72 administrator shall develop a simple form for pro se motions to the aggrieved person, which shall
73 be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit clerk,
74 shall explain to aggrieved parties the procedures for filing the form. Notice of the fact that clerks
75 will provide such assistance shall be conspicuously posted in the clerk's offices. The location
76 of the office where the family access motion may be filed shall be conspicuously posted in the
77 court building. The performance of duties described in this section shall not constitute the
78 practice of law as defined in section 484.010. Such form for pro se motions shall not require the
79 assistance of legal counsel to prepare and file. The cost of filing the motion shall be the standard
80 court costs otherwise due for instituting a civil action in the circuit court.

81 4. Within five court days after the filing of the family access motion pursuant to
82 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
83 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
84 served upon the respondent by personal process server as provided by law or by any sheriff.
85 Such service shall be served at the earliest time and shall take priority over service in other civil

86 actions, except those of an emergency nature or those filed pursuant to chapter 455. The motion
87 shall contain the following statement in boldface type:

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

91 (1) AN ORDER FOR A COMPENSATORY

92 PERIOD OF CUSTODY, VISITATION OR
93 THIRD-PARTY CUSTODY AT A TIME
94 CONVENIENT FOR THE AGGRIEVED
95 PARTY NOT LESS THAN THE PERIOD OF
96 TIME DENIED;

97 (2) PARTICIPATION BY THE VIOLATOR IN

98 COUNSELING TO EDUCATE THE
99 VIOLATOR ABOUT THE IMPORTANCE OF
100 PROVIDING THE CHILD WITH A
101 CONTINUING AND MEANINGFUL
102 RELATIONSHIP WITH BOTH PARENTS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

453.015. As used in sections 453.010 to 453.400, the following terms mean:

2 (1) **"Coerce", to persuade an unwilling person to do something by force or threats;**

3 (2) "Minor" or "child", any person who has not attained the age of eighteen years or any
4 person in the custody of the children's division who has not attained the age of twenty-one;

5 [(2)] (3) "Parent", a birth parent or parents of a child, including the putative father of the
6 child, as well as the husband of a birth mother at the time the child was conceived, or a parent
7 or parents of a child by adoption. The putative father shall have no legal relationship unless he
8 has acknowledged the child as his own by affirmatively asserting his paternity;

9 [(3)] (4) "Putative father", the alleged or presumed father of a child including a person
10 who has filed a notice of intent to claim paternity with the putative father registry established in
11 section 192.016 and a person who has filed a voluntary acknowledgment of paternity pursuant
12 to section 193.087;

13 [(4)] (5) "Stepparent", the spouse of a biological or adoptive parent. The term does not
14 include the state if the child is a ward of the state. The term does not include a person whose
15 parental rights have been terminated.

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

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

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

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

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

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

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

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

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

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

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