

FIRST REGULAR SESSION

HOUSE BILL NO. 1151

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE UNSICKER.

2270H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 452.705, 452.730, 452.885, and 487.110, RSMo, and to enact in lieu thereof fifteen new sections relating to child custody.

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

Section A. Sections 452.705, 452.730, 452.885, and 487.110, RSMo, are repealed and
2 fifteen new sections enacted in lieu thereof, to be known as sections 452.705, 452.730,
3 452.885, 452.1100, 452.1102, 452.1104, 452.1106, 452.1108, 452.1110, 452.1112, 452.1114,
4 452.1118, 452.1120, 452.1122, and 487.110, to read as follows:

452.705. As used in sections 452.700 to 452.930:

- 2 (1) "Abandoned" means left without provision for reasonable and necessary care or
3 supervision;
- 4 (2) "Child" means an individual who has not attained eighteen years of age;
- 5 (3) "Child custody determination" means a judgment, decree, or other order of a court
6 providing for the legal custody, physical custody, or visitation with respect to a child. The
7 term includes a permanent, temporary, initial, or modification order. The term shall not
8 include an order relating to child support or other monetary obligation of an individual;
- 9 (4) "Child custody proceeding" means a proceeding in which legal custody, physical
10 custody, or visitation with respect to a child is an issue. The term includes a proceeding for
11 divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of
12 parental rights, and protection from domestic violence in which the issue may appear. The
13 term shall not include a proceeding involving juvenile delinquency, contractual emancipation,
14 or enforcement under sections 452.850 to 452.915;
- 15 (5) "Commencement" means the filing of the first pleading in a proceeding;

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.

16 (6) "Court" means an entity authorized under the law of a state to establish, enforce,
17 or modify a child custody determination;

18 (7) "Decree" or "custody decree" means a custody determination contained in a
19 judicial decree or order made in a custody proceeding, and includes an initial decree and a
20 modification decree;

21 (8) "Home state" means the state in which a child has lived with a parent or a person
22 acting as a parent for at least six consecutive months immediately prior to the commencement
23 of a child custody proceeding. In the case of a child less than six months of age, the term
24 means the state in which the child has lived from birth with any of the persons mentioned. A
25 period of temporary absence of any of the mentioned persons is part of such period;

26 (9) "Initial determination" means the first child custody determination concerning a
27 particular child;

28 (10) "Issuing court" means the court making a child custody determination for which
29 enforcement is sought under sections 452.700 to 452.930;

30 (11) "Issuing state" means the state in which a child custody determination is made;

31 (12) "Litigant" means a person, including a parent, grandparent, or stepparent, who
32 claims a right to custody or visitation with respect to a child;

33 (13) "Modification" means a child custody determination that changes, replaces,
34 supersedes or is otherwise made after a previous determination concerning the same child,
35 whether or not it is made by the court that made the previous determination;

36 (14) "Person" includes government, a governmental subdivision, agency or
37 instrumentality, or any other legal or commercial entity;

38 (15) "Person acting as a parent" means a person, other than a parent, who:

39 (a) Has physical custody of the child or has had physical custody for a period of six
40 consecutive months, including any temporary absence, within one year immediately prior to
41 the commencement of a child custody proceeding; and

42 (b) Has been awarded legal custody by a court or claims a right to legal custody under
43 the law of this state;

44 (16) "Physical custody" means the physical care and supervision of a child;

45 (17) "State" means a state of the United States, the District of Columbia, Puerto Rico,
46 the United States Virgin Islands, or any territory or insular possession subject to the
47 jurisdiction of the United States;

48 (18) "Warrant" means an order issued by a court authorizing law enforcement officers
49 to take physical custody of a child;

50 (19) **"Wrongful removal" means the taking of a child that breaches rights of**
51 **custody or visitation given or recognized under the law of this state.**

452.730. 1. A court of this state may communicate with a court in another state
2 concerning a proceeding arising under sections 452.700 to 452.930 **or arising under sections**
3 **452.1100 to 452.1122.**

4 2. The court may allow the parties to participate in the communication. If the parties
5 are not able to participate in the communication, the parties shall be given the opportunity to
6 present facts and legal arguments before a decision on jurisdiction is made.

7 3. A communication between courts on schedules, calendars, court records, and
8 similar matters may occur without informing the parties. A record need not be made of such
9 communication.

10 4. Except as provided in subsection 3 of this section, a record shall be made of the
11 communication. The parties shall be informed promptly of the communication and granted
12 access to the record.

13 5. For the purposes of this section, "record" means information that is inscribed on a
14 tangible medium, or that which is stored in an electronic or other medium and is retrievable in
15 perceivable form. A record includes notes or transcripts of a court reporter who listened to a
16 conference call between the courts, an electronic recording of a telephone call, a
17 memorandum or an electronic record of the communication between the courts, or a
18 memorandum or an electronic record made by a court after the communication.

452.885. 1. **(1) Upon the filing of a petition seeking enforcement of a child custody**
2 **determination**~~[, the petitioner may file]~~ **with a verified application for the issuance of a**
3 **warrant to take physical custody of the child or upon the filing of a petition under sections**
4 **452.1100 to 452.1122, the court may issue an ex parte warrant to take physical custody**
5 **of the child if the court finds, upon review of the petition or verified application or upon**
6 **the testimony of the petitioner or other witnesses, that the child is likely to suffer serious**
7 **imminent physical harm or there is a credible risk that the child is imminently likely to**
8 **suffer wrongful removal** ~~[from this state].~~

9 **(2) Prior to issuing a warrant in response to a petition filed under sections**
10 **452.1100 to 452.1122 and before determining the placement of the child after the**
11 **warrant is executed, the court may order a search of the relevant databases of the**
12 **National Crime Information Center system and similar state databases to determine if**
13 **the petitioner or respondent has a history of domestic violence, stalking, or child abuse**
14 **or neglect.**

15 2. ~~[If the court, upon the testimony of the petitioner or other witnesses, finds that the~~
16 ~~child is likely to suffer serious imminent physical harm or be imminently removed from this~~
17 ~~state, the court may issue a warrant to take physical custody of the child. The petition shall be~~
18 ~~heard on the next judicial day after the warrant is executed. The warrant shall include the~~
19 ~~statements required under subsection 2 of section 452.870.~~

20 ~~3-~~ A warrant to take physical custody of a child shall:

21 (1) Recite the facts **upon** which a ~~[conclusion]~~ **determination** of serious imminent
22 physical harm or **a credible risk of imminent wrongful** removal from the jurisdiction is
23 based;

24 (2) Direct law enforcement officers to take physical custody of the child immediately;
25 ~~[and]~~

26 (3) **State the date and time for the hearing on the petition;**

27 (4) Provide for the **safe interim** placement of the child pending **further order of the**
28 **court or final relief; and**

29 (5) **Include the statements required under subsection 2 of section 452.870 if a**
30 **warrant is issued in response to a petition seeking enforcement of a child custody**
31 **determination.**

32 ~~[4-]~~ 3. The respondent shall be served with the petition, warrant and order
33 immediately after the child is taken into physical custody.

34 4. **The respondent shall be afforded an opportunity to be heard at the earliest**
35 **possible time after the ex parte warrant is executed but no later than the next judicial**
36 **day unless a hearing on that date is impossible. In that event, the court shall hold the**
37 **hearing on the first judicial day possible.**

38 5. **If the court finds, after a hearing, that a petitioner sought a warrant under**
39 **subsection 1 of this section for the purpose of harassment or in bad faith, the court may**
40 **award the respondent reasonable attorney's fees, costs, and expenses.**

41 ~~[5-]~~ 6. A warrant to take physical custody of a child, **issued by this state or another**
42 **state**, is enforceable throughout this state. If the court finds on the basis of the testimony of
43 the petitioner or other witness that a less intrusive remedy is not effective, the court may
44 authorize law enforcement officers to enter private property to take physical custody of the
45 child. If required by the exigency of the case, the court may authorize law enforcement
46 officers to make a forcible entry at any hour.

47 ~~[6-]~~ 7. The court may impose conditions on the placement of a child to ensure the
48 appearance of the child and the child's custodian.

49 8. **This section does not affect the availability of relief allowed under the laws of**
50 **this state other than sections 452.700 to 452.930 and sections 452.1100 to 452.1122.**

2 **452.1100. Sections 452.1100 to 452.1122 may be cited as the "Uniform Child**
3 **Abduction Prevention Act".**

4 **452.1102. In sections 452.1100 to 452.1122:**

2 (1) **"Abduction" means the wrongful removal or wrongful retention of a child;**

3 (2) **"Child" means an unemancipated individual who is less than eighteen years**
4 **of age;**

5 (3) "Child abduction prevention measures" means measures and conditions that
6 are reasonably calculated to prevent the abduction of a child, including provisions of
7 subsections 3, 4, and 5 of section 452.1114, and other measures that the court deems
8 appropriate to prevent the abduction of a child;

9 (4) "Child-custody determination" means a judgment, decree, or other order of
10 a court providing for the legal custody, physical custody, or visitation with respect to a
11 child. The term includes a permanent, temporary, initial, and modification order;

12 (5) "Child custody proceeding" means a proceeding in which legal custody,
13 physical custody, or visitation with respect to a child is at issue. The term includes a
14 proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency,
15 guardianship, paternity, termination of parental rights, or protection from domestic
16 violence;

17 (6) "Court" means an entity authorized under the law of a state to establish,
18 enforce, or modify a child-custody determination;

19 (7) "Petition" includes a motion or its equivalent;

20 (8) "Record" means information that is inscribed on a tangible medium or that
21 is stored in an electronic or other medium and is retrievable in perceivable form;

22 (9) "State" means a state of the United States, the District of Columbia, Puerto
23 Rico, the United States Virgin Islands, or any territory or insular possession subject to
24 the jurisdiction of the United States. The term includes a federally recognized Indian
25 tribe or nation;

26 (10) "Travel document" means records relating to a travel itinerary, including
27 travel tickets, passes, reservations for transportation, or accommodations. The term
28 does not include a passport or visa;

29 (11) "Warrant" means an order issued by a court authorizing law enforcement
30 officers to take physical custody of a child;

31 (12) "Wrongful removal" means the taking of a child that breaches rights of
32 custody or visitation given or recognized under the law of this state;

33 (13) "Wrongful retention" means the keeping or concealing of a child that
34 breaches rights of custody or visitation given or recognized under the law of this state.

452.1104. Sections 452.730, 452.735, and 452.820 of the uniform child custody
2 jurisdiction and enforcement act apply to cooperation and communications among
3 courts in proceedings under sections 452.1100 to 452.1122.

452.1106. 1. A court on its own motion may order abduction prevention
2 measures in a child custody proceeding if the court finds that the evidence establishes a
3 credible risk of abduction of the child.

4 **2. A party to a child custody determination or another individual or entity**
5 **having a right under the law of this state or any other state to seek a child custody**
6 **determination for the child may file a petition seeking abduction prevention measures to**
7 **protect the child under sections 452.1100 to 452.1122.**

8 **3. A prosecutor or public authority designated under section 452.910 may seek a**
9 **warrant to take physical custody of a child under section 452.885 or other appropriate**
10 **prevention measures.**

452.1108. 1. A petition under sections 452.1100 to 452.1122 may be filed only in a
2 **court that has jurisdiction to make a child custody determination with respect to the**
3 **child at issue under sections 452.700 to 452.930.**

4 **2. A court of this state has temporary emergency jurisdiction under section**
5 **452.755 if the court finds a credible risk of abduction.**

452.1110. A petition under sections 452.1100 to 452.1122 must be verified and
2 **include a copy of any existing child custody determination, if available. The petition**
3 **must specify the risk factors for abduction, including the relevant factors described in**
4 **section 452.1112. Subject to subsection 5 of section 452.780, if reasonably ascertainable,**
5 **the petition must contain:**

6 **(1) The name, date of birth, and gender of the child;**

7 **(2) The customary address and current physical location of the child;**

8 **(3) The identity, customary address, and current physical location of the**
9 **respondent;**

10 **(4) A statement of whether a prior action to prevent abduction or domestic**
11 **violence has been filed by a party or other individual or entity having custody of the**
12 **child, and the date, location, and disposition of the action;**

13 **(5) A statement of whether a party to the proceeding has been arrested for a**
14 **crime related to domestic violence, stalking, or child abuse or neglect, and the date,**
15 **location, and disposition of the case; and**

16 **(6) Any other information required to be submitted to the court for a child**
17 **custody determination under section 452.780.**

452.1112. 1. In determining whether there is a credible risk of abduction of a
2 **child, the court shall consider any evidence that the petitioner or respondent:**

3 **(1) Has previously abducted or attempted to abduct the child;**

4 **(2) Has threatened to abduct the child;**

5 **(3) Has recently engaged in activities that may indicate a planned abduction,**
6 **including:**

7 **(a) Abandoning employment;**

8 **(b) Selling a primary residence;**

- 9 (c) Terminating a lease;
- 10 (d) Closing bank or other financial management accounts, liquidating assets,
11 hiding or destroying financial documents, or conducting any unusual financial
12 activities;
- 13 (e) Applying for a passport or visa or obtaining travel documents for the
14 respondent, a family member, or the child; or
- 15 (f) Seeking to obtain the child's birth certificate or school or medical records;
- 16 (4) Has engaged in domestic violence, stalking, or child abuse or neglect;
- 17 (5) Has refused to follow a child custody determination;
- 18 (6) Lacks strong familial, financial, emotional, or cultural ties to the state or the
19 United States;
- 20 (7) Has strong familial, financial, emotional, or cultural ties to another state or
21 country;
- 22 (8) Is likely to take the child to a country that:
- 23 (a) Is not a party to the Hague Convention on the Civil Aspects of International
24 Child Abduction and does not provide for the extradition of an abducting parent or for
25 the return of an abducted child;
- 26 (b) Is a party to the Hague Convention on the Civil Aspects of International
27 Child Abduction but:
- 28 a. The Hague Convention on the Civil Aspects of International Child Abduction
29 is not in force between the United States and that country;
- 30 b. Is noncompliant according to the most recent compliance report issued by the
31 United States Department of State; or
- 32 c. Lacks legal mechanisms for immediately and effectively enforcing a return
33 order under the Hague Convention on the Civil Aspects of International Child
34 Abduction;
- 35 (c) Poses a risk that the child's physical or emotional health or safety would be
36 endangered in the country because of specific circumstances relating to the child or
37 because of human rights violations committed against children;
- 38 (d) Has laws or practices that would:
- 39 a. Enable the respondent, without due cause, to prevent the petitioner from
40 contacting the child;
- 41 b. Restrict the petitioner from freely traveling to or exiting from the country
42 because of the petitioner's gender, nationality, marital status, or religion; or
- 43 c. Restrict the child's ability legally to leave the country after the child reaches
44 the age of majority because of a child's gender, nationality, or religion;

45 (e) Is included by the United States Department of State on a current list of state
46 sponsors of terrorism;

47 (f) Does not have an official United States diplomatic presence in the country; or

48 (g) Is engaged in active military action or war, including a civil war, to which the
49 child may be exposed;

50 (9) Is undergoing a change in immigration or citizenship status that would
51 adversely affect the respondent's ability to remain in the United States legally;

52 (10) Has had an application for United States citizenship denied;

53 (11) Has forged or presented misleading or false evidence on government forms
54 or supporting documents to obtain or attempt to obtain a passport, a visa, travel
55 documents, a Social Security card, a driver's license, or other government-issued
56 identification card or has made a misrepresentation to the United States government;

57 (12) Has used multiple names to attempt to mislead or defraud; or

58 (13) Has engaged in any other conduct the court considers relevant to the risk of
59 abduction.

60 2. In the hearing on a petition under sections 452.1100 to 452.1122, the court
61 shall consider any evidence that the respondent believed in good faith that the
62 respondent's conduct was necessary to avoid imminent harm to the child or respondent
63 and any other evidence that may be relevant to whether the respondent may be
64 permitted to remove or retain the child.

452.1114. 1. If a petition is filed under sections 452.1100 to 452.1122, the court
2 may enter an order that must include:

3 (1) The basis for the court's exercise of jurisdiction;

4 (2) The manner in which notice and opportunity to be heard were given to the
5 persons entitled to notice of the proceeding;

6 (3) A detailed description of each party's custody and visitation rights and
7 residential arrangements for the child;

8 (4) A provision stating that a violation of the order may subject the party in
9 violation to civil and criminal penalties; and

10 (5) Identification of the child's country of habitual residence at the time of the
11 issuance of the order.

12 2. If, at a hearing on a petition under sections 452.1100 to 452.1122 or on the
13 court's own motion, the court after reviewing the evidence finds a credible risk of
14 abduction of the child, the court shall enter an abduction prevention order. The order
15 must include the provisions required by subsection 1 of this section and measures and
16 conditions, including those in subsections 3, 4, and 5 of this section, that are reasonably
17 calculated to prevent abduction of the child, giving due consideration to the potential

18 **harm to the child from an abduction, the legal and practical difficulties of returning the**
19 **child to the jurisdiction if abducted, and the reasons for the potential abduction,**
20 **including evidence of domestic violence, stalking, or child abuse or neglect.**

21 **3. An abduction prevention order may include one or more of the following:**

22 **(1) An imposition of travel restrictions that require that a party traveling with**
23 **the child outside a designated geographical area provide the other party with the**
24 **following:**

25 **(a) The travel itinerary of the child;**

26 **(b) A list of physical addresses and telephone numbers at which the child can be**
27 **reached at specified times; and**

28 **(c) Copies of all travel documents;**

29 **(2) A prohibition of the respondent directly or indirectly:**

30 **(a) Removing the child from this state, the United States, or another geographic**
31 **area without permission of the court or the petitioner's written consent;**

32 **(b) Removing or retaining the child in violation of a child custody**
33 **determination;**

34 **(c) Removing the child from school or a child care or similar facility; or**

35 **(d) Approaching the child at any location other than a site designated for**
36 **supervised visitation;**

37 **(3) A requirement that a party register the order in another state as a**
38 **prerequisite to allowing the child to travel to that state;**

39 **(4) With regard to the child's passport:**

40 **(a) A direction that the petitioner place the child's name in the United States**
41 **Department of State's Child Passport Issuance Alert Program;**

42 **(b) A requirement that the respondent surrender to the court or the petitioner's**
43 **attorney any United States or foreign passport issued in the child's name, including a**
44 **passport issued in the name of both the parent and the child; and**

45 **(c) A prohibition upon the respondent from applying on behalf of the child for a**
46 **new or replacement passport or visa;**

47 **(5) As a prerequisite to exercising custody or visitation, a requirement that the**
48 **respondent provide:**

49 **(a) To the United States Department of State Office of Children's Issues and the**
50 **relevant foreign consulate or embassy, an authenticated copy of the order detailing**
51 **passport and travel restrictions for the child;**

52 **(b) To the court:**

53 **a. Proof that the respondent has provided the information in paragraph (a) of**
54 **this subdivision; and**

55 **b. An acknowledgment in a record from the relevant foreign consulate or**
56 **embassy that no passport application has been made, or passport issued, on behalf of the**
57 **child;**

58 **(c) To the petitioner, proof of registration with the United States Embassy or**
59 **other United States diplomatic presence in the destination country and with the Central**
60 **Authority for the Hague Convention on the Civil Aspects of International Child**
61 **Abduction, if that Convention is in effect between the United States and the destination**
62 **country, unless one of the parties objects; and**

63 **(d) A written waiver under 5 U.S.C. Section 552a of the Privacy Act of 1974, as**
64 **amended, with respect to any document, application, or other information pertaining to**
65 **the child authorizing its disclosure to the court and the petitioner; and**

66 **(6) Upon the petitioner's request, a requirement that the respondent obtain an**
67 **order from the relevant foreign country containing terms identical to the child custody**
68 **determination issued in the United States.**

69 **4. In an abduction prevention order, the court may impose conditions on the**
70 **exercise of custody or visitation that:**

71 **(1) Limit visitation or require that visitation with the child by the respondent be**
72 **supervised until the court finds that supervision is no longer necessary and order the**
73 **respondent to pay the costs of supervision;**

74 **(2) Require the respondent to post a bond or provide other security in an**
75 **amount sufficient to serve as a financial deterrent to abduction, the proceeds of which**
76 **may be used to pay for the reasonable expenses of recovery of the child, including**
77 **reasonable attorneys' fees and costs if there is an abduction; and**

78 **(3) Require the respondent to obtain education on the potentially harmful effects**
79 **to the child from abduction.**

80 **5. To prevent imminent abduction of a child, a court may:**

81 **(1) Issue a warrant to take physical custody of the child;**

82 **(2) Direct the use of law enforcement to take any action reasonably necessary to**
83 **locate the child, obtain return of the child, or enforce a custody determination under**
84 **sections 452.1100 to 452.1122 or the law of this state other than sections 452.1100 to**
85 **452.1122; or**

86 **(3) Grant any other relief allowed under the law of this state other than sections**
87 **452.1100 to 452.1122.**

88 **6. The remedies provided in sections 452.1100 to 452.1122 are cumulative and do**
89 **not affect the availability of other remedies to prevent abduction.**

452.1118. An abduction prevention order remains in effect until the earliest of:

2 **(1) The time stated in the order;**

- 3 **(2) The emancipation of the child;**
4 **(3) The child's attaining eighteen years of age; or**
5 **(4) The time the order is modified, revoked, vacated, or superseded by a court**
6 **with jurisdiction under sections 452.740, 452.745, and 452.750 and applicable law of this**
7 **state.**

452.1120. In applying and construing sections 452.1100 to 452.1122,
2 **consideration must be given to the need to promote uniformity of the law with**
3 **respect to its subject matter among states that enact it.**

452.1122. Sections 452.1100 to 452.1122 modifies, limits, and supersedes the
2 **federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section**
3 **7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C.**
4 **Section 7001(c), or authorize electronic delivery of any of the notices described in**
5 **Section 103(b) of that act, 15 U.S.C. Section 7003(b).**

 487.110. The uniform child custody jurisdiction **and enforcement** act, as enacted in
2 sections [~~452.440 to 452.550~~] **452.700 to 452.930**, shall apply to all **child** custody
3 proceedings, **as defined in section 452.705**, in the family court.

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