

SECOND REGULAR SESSION

SENATE BILL NO. 1115

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time March 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6647S.011

AN ACT

To repeal sections 452.340 and 452.375, RSMo, and to enact in lieu thereof two new sections relating to child custody.

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

Section A. Sections 452.340 and 452.375, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.340 and 452.375, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors [including] **and entering written findings of fact and conclusions of law for each of the following:**

- (1) The financial needs and resources of the child;
 - (2) The financial resources and needs of the parents;
 - (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
 - (4) The physical and emotional condition of the child, and the child's educational needs;
 - (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
 - (6) The reasonable work-related child care expenses of each parent.
2. The obligation of the parent ordered to make support payments shall

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

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

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

33 (1) Dies;

34 (2) Marries;

35 (3) Enters active duty in the military;

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

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

40 (6) Reaches age twenty-one, unless the provisions of the child support
41 order specifically extend the parental support order past the child's twenty-first
42 birthday for reasons provided by subsection 4 of this section.

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

46 5. If when a child reaches age eighteen, the child is enrolled in and
47 attending a secondary school program of instruction, the parental support
48 obligation shall continue, if the child continues to attend and progresses toward
49 completion of said program, until the child completes such program or reaches
50 age twenty-one, whichever first occurs. If the child is enrolled in an institution
51 of vocational or higher education not later than October first following graduation
52 from a secondary school or completion of a graduation equivalence degree
53 program and so long as the child enrolls for and completes at least twelve hours
54 of credit each semester, not including the summer semester, at an institution of

55 vocational or higher education and achieves grades sufficient to reenroll at such
56 institution, the parental support obligation shall continue until the child
57 completes his or her education, or until the child reaches the age of twenty-one,
58 whichever first occurs. To remain eligible for such continued parental support,
59 at the beginning of each semester the child shall submit to each parent a
60 transcript or similar official document provided by the institution of vocational
61 or higher education which includes the courses the child is enrolled in and has
62 completed for each term, the grades and credits received for each such course, and
63 an official document from the institution listing the courses which the child is
64 enrolled in for the upcoming term and the number of credits for each such
65 course. When enrolled in at least twelve credit hours, if the child receives failing
66 grades in half or more of his or her courseload in any one semester, payment of
67 child support may be terminated and shall not be eligible for
68 reinstatement. Upon request for notification of the child's grades by the
69 noncustodial parent, the child shall produce the required documents to the
70 noncustodial parent within thirty days of receipt of grades from the education
71 institution. If the child fails to produce the required documents, payment of child
72 support may terminate without the accrual of any child support arrearage and
73 shall not be eligible for reinstatement. If the circumstances of the child
74 manifestly dictate, the court may waive the October first deadline for enrollment
75 required by this subsection. If the child is enrolled in such an institution, the
76 child or parent obligated to pay support may petition the court to amend the
77 order to direct the obligated parent to make the payments directly to the child.
78 As used in this section, an "institution of vocational education" means any
79 postsecondary training or schooling for which the student is assessed a fee and
80 attends classes regularly. "Higher education" means any community college,
81 college, or university at which the child attends classes regularly. A child who
82 has been diagnosed with a developmental disability, as defined in section 630.005,
83 or whose physical disability or diagnosed health problem limits the child's ability
84 to carry the number of credit hours prescribed in this subsection, shall remain
85 eligible for child support so long as such child is enrolled in and attending an
86 institution of vocational or higher education, and the child continues to meet the
87 other requirements of this subsection. A child who is employed at least fifteen
88 hours per week during the semester may take as few as nine credit hours per
89 semester and remain eligible for child support so long as all other requirements
90 of this subsection are complied with.

91 6. The court shall consider ordering a parent to waive the right to claim
92 the tax dependency exemption for a child enrolled in an institution of vocational
93 or higher education in favor of the other parent if the application of state and
94 federal tax laws and eligibility for financial aid will make an award of the
95 exemption to the other parent appropriate.

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

110 8. The Missouri supreme court shall have in effect a rule establishing
111 guidelines by which any award of child support shall be made in any judicial or
112 administrative proceeding. Said guidelines shall contain specific, descriptive and
113 numeric criteria which will result in a computation of the support obligation. The
114 guidelines shall address how the amount of child support shall be calculated
115 when an award of joint physical custody results in the child or children spending
116 equal or substantially equal time with both parents and the directions and
117 comments and any tabular representations of the directions and comments for
118 completion of the child support guidelines and a subsequent form developed to
119 reflect the guidelines shall reflect the ability to obtain up to a fifty percent
120 adjustment or credit below the basic child support amount for joint physical
121 custody or visitation as described in subsection 11 of this section. The Missouri
122 supreme court shall publish child support guidelines and specifically list and
123 explain the relevant factors and assumptions that were used to calculate the child
124 support guidelines. Any rule made pursuant to this subsection shall be reviewed
125 by the promulgating body not less than once every four years to ensure that its
126 application results in the determination of appropriate child support award

127 amounts.

128 9. There shall be a rebuttable presumption, in any judicial or
129 administrative proceeding for the award of child support, that the amount of the
130 award which would result from the application of the guidelines established
131 pursuant to subsection 8 of this section is the correct amount of child support to
132 be awarded. A written finding or specific finding on the record in a judicial or
133 administrative proceeding that the application of the guidelines would be unjust
134 or inappropriate in a particular case, after considering all relevant factors,
135 including the factors set out in subsection 1 of this section, is required if
136 requested by a party and shall be sufficient to rebut the presumption in the
137 case. The written finding or specific finding on the record shall detail the specific
138 relevant factors that required a deviation from the application of the guidelines.

139 10. Pursuant to this or any other chapter, when a court determines the
140 amount owed by a parent for support provided to a child by another person, other
141 than a parent, prior to the date of filing of a petition requesting support, or when
142 the director of the family support division establishes the amount of state debt
143 due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or
144 director shall use the guidelines established pursuant to subsection 8 of this
145 section. The amount of child support resulting from the application of the
146 guidelines shall be applied retroactively for a period prior to the establishment
147 of a support order and the length of the period of retroactivity shall be left to the
148 discretion of the court or director. There shall be a rebuttable presumption that
149 the amount resulting from application of the guidelines under subsection 8 of this
150 section constitutes the amount owed by the parent for the period prior to the date
151 of the filing of the petition for support or the period for which state debt is being
152 established. In applying the guidelines to determine a retroactive support
153 amount, when information as to average monthly income is available, the court
154 or director may use the average monthly income of the noncustodial parent, as
155 averaged over the period of retroactivity, in determining the amount of presumed
156 child support owed for the period of retroactivity. The court or director may enter
157 a different amount in a particular case upon finding, after consideration of all
158 relevant factors, including the factors set out in subsection 1 of this section, that
159 there is sufficient cause to rebut the presumed amount.

160 11. The court may award child support in an amount that provides up to
161 a fifty percent adjustment below the basic child support amount authorized by the
162 child support guidelines described under subsection 8 of this section for custody

163 awards of joint physical custody where the child or children spend equal or
164 substantially equal time with both parents.

165 12. The obligation of a parent to make child support payments may be
166 terminated as follows:

167 (1) Provided that the state case registry or child support order contains
168 the child's date of birth, the obligation shall be deemed terminated without
169 further judicial or administrative process when the child reaches age twenty-one
170 if the child support order does not specifically require payment of child support
171 beyond age twenty-one for reasons provided by subsection 4 of this section;

172 (2) The obligation shall be deemed terminated without further judicial or
173 administrative process when the parent receiving child support furnishes a sworn
174 statement or affidavit notifying the obligor parent of the child's emancipation in
175 accordance with the requirements of subsection 4 of section 452.370, and a copy
176 of such sworn statement or affidavit is filed with the court which entered the
177 order establishing the child support obligation, or the family support division for
178 an order entered under section 454.470;

179 (3) The obligation shall be deemed terminated without further judicial or
180 administrative process when the parent paying child support files a sworn
181 statement or affidavit with the court which entered the order establishing the
182 child support obligation, or the family support division for an order entered under
183 section 454.470, stating that the child is emancipated and reciting the factual
184 basis for such statement; which statement or affidavit is served by the court or
185 division, as applicable, on the child support obligee; and which is either
186 acknowledged and affirmed by the child support obligee in writing, or which is
187 not responded to in writing within thirty days of receipt by the child support
188 obligee;

189 (4) The obligation shall be terminated as provided by this subdivision by
190 the court which entered the order establishing the child support obligation, or the
191 family support division for an order entered under section 454.470, when the
192 parent paying child support files a sworn statement or affidavit with the court
193 which entered the order establishing the child support obligation, or the family
194 support division, as applicable, stating that the child is emancipated and reciting
195 the factual basis for such statement; and which statement or affidavit is served
196 by the court or division, as applicable, on the child support obligee. If the obligee
197 denies the statement or affidavit, the court or division shall thereupon treat the
198 sworn statement or affidavit as a request for hearing and shall proceed to hear

199 and adjudicate such request for hearing as provided by law; provided that the
200 court may require the payment of a deposit as security for court costs and any
201 accrued court costs, as provided by law, in relation to such request for
202 hearing. When the division receives a request for hearing, the hearing shall be
203 held in the manner provided by section 454.475.

204 13. The court may enter a judgment terminating child support pursuant
205 to subdivisions (1) to (3) of subsection 12 of this section without necessity of a
206 court appearance by either party. The clerk of the court shall mail a copy of a
207 judgment terminating child support entered pursuant to subsection 12 of this
208 section on both the obligor and obligee parents. The supreme court may
209 promulgate uniform forms for sworn statements and affidavits to terminate
210 orders of child support obligations for use pursuant to subsection 12 of this
211 section and subsection 4 of section 452.370.

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

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

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

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

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

17 2. The court shall determine custody in accordance with the best interests
18 of the child. The court shall consider all relevant factors [including] **and enter**
19 **written findings of fact and conclusions of law for each of the following:**

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

22 (2) The needs of the child for a frequent, continuing and meaningful
23 relationship with both parents and the ability and willingness of parents to

24 actively perform their functions as mother and father for the needs of the child;
25 (3) The interaction and interrelationship of the child with parents,
26 siblings, and any other person who may significantly affect the child's best
27 interests;

28 (4) Which parent is more likely to allow the child frequent, continuing and
29 meaningful 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
32 any history of abuse of any individuals involved. If the court finds that a pattern
33 of domestic violence as defined in section 455.010 has occurred, and, if the court
34 also finds that awarding custody to the abusive parent is in the best interest of
35 the child, then the court shall enter written findings of fact and conclusions of
36 law. Custody and visitation rights shall be ordered in a manner that best
37 protects the child and any other child or children for whom the parent has
38 custodial or visitation rights, and the parent or other family or household member
39 who is the victim of domestic violence from any further harm;

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

42 (8) The wishes of a child as to the child's custodian.

43 The fact that a parent sends his or her child or children to a home school, as
44 defined in section 167.031, shall not be the sole factor that a court considers in
45 determining custody of such child or children.

46 3. (1) In any court proceedings relating to custody of a child, the court
47 shall not award custody or unsupervised visitation of a child to a parent if such
48 parent or any person residing with such parent has been found guilty of, or pled
49 guilty to, any of the following offenses when a child was the victim:

50 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060,
51 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111,
52 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

53 (b) A violation of section 568.020;

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

55 (d) A violation of section 568.065;

56 (e) A violation of section 568.080;

57 (f) A violation of section 568.090; or

58 (g) A violation of section 568.175.

59 (2) For all other violations of offenses in chapters 566 and 568 not

60 specifically listed in subdivision (1) of this subsection or for a violation of an
61 offense committed in another state when a child is the victim that would be a
62 violation of chapter 566 or 568 if committed in Missouri, the court may exercise
63 its discretion in awarding custody or visitation of a child to a parent if such
64 parent or any person residing with such parent has been found guilty of, or pled
65 guilty to, any such offense.

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

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

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

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

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

88 (4) Sole custody to either parent; or

89 (5) Third-party custody or visitation:

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

96 subdivision, the court shall make that person a party to the action;

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

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

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

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

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

126 10. Unless a parent has been denied custody rights pursuant to this
127 section or visitation rights under section 452.400, both parents shall have access
128 to records and information pertaining to a minor child, including, but not limited
129 to, medical, dental, and school records. If the parent without custody has been
130 granted restricted or supervised visitation because the court has found that the
131 parent with custody or any child has been the victim of domestic violence, as

132 defined in section 455.010, by the parent without custody, the court may order
133 that the reports and records made available pursuant to this subsection not
134 include the address of the parent with custody or the child. Unless a parent has
135 been denied custody rights pursuant to this section or visitation rights under
136 section 452.400, any judgment of dissolution or other applicable court order shall
137 specifically allow both parents access to such records and reports.

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

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

153 13. If the court finds that domestic violence or abuse, as defined in section
154 455.010 has occurred, the court shall make specific findings of fact to show that
155 the custody or visitation arrangement ordered by the court best protects the child
156 and the parent or other family or household member who is the victim of domestic
157 violence, as defined in section 455.010, and any other children for whom such
158 parent has custodial or visitation rights from any further harm.

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