

SECOND REGULAR SESSION

SENATE BILL NO. 964

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 21, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6001S.011

AN ACT

To repeal sections 452.375, 452.400, and 452.410, RSMo, and to enact in lieu thereof three new sections relating to child custody orders.

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

Section A. Sections 452.375, 452.400, and 452.410, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 452.375,
3 452.400, and 452.410, to read as follows:

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,] **approximate and reasonably equal**
12 periods of time during which a child resides with or is under the care and
13 supervision of each of the parents. Joint physical custody shall be shared by the
14 parents in such a way as to assure the child of **substantial**, frequent, continuing,
15 and meaningful contact with both parents;

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

18 2. The court shall determine custody in accordance with the best interests

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

19 of the child. The court shall consider all relevant factors including:

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. The fact that a
43 parent sends his or her child or children to a home school, as defined in section
44 167.031, shall not be the sole factor that a court considers in determining custody
45 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. (1) The general assembly finds and declares that it is the public policy
67 of 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 (2) **In determining the allocation of periods of physical custody,**
79 **the court shall presume that a parenting plan that equalizes to the**
80 **highest degree the amount of time the child may spend with each**
81 **parent is in the best interest of the child. The state courts**
82 **administrator shall modify the Form 68-A Parenting Plan, also known**
83 **as "Schedule J", to reflect the provisions of this subdivision and to**
84 **include that the default parenting plan shall include alternating weeks**
85 **with each parent, unless the parents submit an alternative parenting**
86 **plan.**

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

- 89 (1) Joint physical and joint legal custody to both parents, which shall not
90 be denied solely for the reason that one parent opposes a joint physical and joint

91 legal custody award. The residence of one of the parents shall be designated as
92 the address of the child for mailing and educational purposes;

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

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

97 (4) Sole custody to either parent; or

98 (5) Third-party custody or visitation:

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

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

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

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

125 8. As between the parents of a child, no preference [may] **shall** be given
126 to either parent in the awarding of custody because of that parent's age, sex, or

127 financial status, nor because of the age or sex of the child.

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

135 10. Unless a parent has been denied custody rights pursuant to this
136 section or visitation rights under section 452.400, both parents shall have access
137 to records and information pertaining to a minor child, including, but not limited
138 to, medical, dental, and school records. If the parent without custody has been
139 granted restricted or supervised visitation because the court has found that the
140 parent with custody or any child has been the victim of domestic violence, as
141 defined in section 455.010, by the parent without custody, the court may order
142 that the reports and records made available pursuant to this subsection not
143 include the address of the parent with custody or the child. Unless a parent has
144 been denied custody rights pursuant to this section or visitation rights under
145 section 452.400, any judgment of dissolution or other applicable court order shall
146 specifically allow both parents access to such records and reports.

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

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

162 13. If the court finds that domestic violence or abuse, as defined in section

163 455.010 has occurred, the court shall make specific findings of fact to show that
164 the custody or visitation arrangement ordered by the court best protects the child
165 and the parent or other family or household member who is the victim of domestic
166 violence, as defined in section 455.010, and any other children for whom such
167 parent has custodial or visitation rights from any further harm.

452.400. 1. (1) A parent not granted custody of the child is entitled to
2 reasonable visitation rights unless the court finds, after a hearing, that visitation
3 would endanger the child's physical health or impair his or her emotional
4 development. The court shall enter an order specifically detailing the visitation
5 rights of the parent without physical custody rights to the child and any other
6 children for whom such parent has custodial or visitation rights. In determining
7 the granting of visitation rights, the court shall consider evidence of domestic
8 violence. If the court finds that domestic violence has occurred, the court may
9 find that granting visitation to the abusive party is in the best interests of the
10 child.

11 (2) (a) The court shall not grant visitation to the parent not granted
12 custody if such parent or any person residing with such parent has been found
13 guilty of or pled guilty to any of the following offenses when a child was the
14 victim:

15 a. A felony violation of section 566.030, 566.032, 566.040, 566.060,
16 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111,
17 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

18 b. A violation of section 568.020;

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

20 d. A violation of section 568.065;

21 e. A violation of section 568.080;

22 f. A violation of section 568.090; or

23 g. A violation of section 568.175.

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

31 (3) The court shall consider the parent's history of inflicting, or tendency

32 to inflict, physical harm, bodily injury, assault, or the fear of physical harm,
33 bodily injury, or assault on other persons and shall grant visitation in a manner
34 that best protects the child and the parent or other family or household member
35 who is the victim of domestic violence, and any other children for whom the
36 parent has custodial or visitation rights from any further harm.

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

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

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

51 a. A felony violation of section 566.030, 566.032, 566.040, 566.060,
52 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111,
53 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

54 b. A violation of section 568.020;

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

56 d. A violation of section 568.065;

57 e. A violation of section 568.080;

58 f. A violation of section 568.090; or

59 g. A violation of section 568.175.

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

67 (3) When a court restricts a parent's visitation rights or when a court

68 orders supervised visitation because of allegations of abuse or domestic violence,
69 a showing of proof of treatment and rehabilitation shall be made to the court
70 before unsupervised visitation may be ordered. "Supervised visitation", as used
71 in this section, is visitation which takes place in the presence of a responsible
72 adult appointed by the court for the protection of the child.

73 3. The court shall mandate compliance with its order by all parties to the
74 action, including parents, children and third parties. In the event of
75 noncompliance, the aggrieved person may file a verified motion for contempt. If
76 custody, visitation or third-party custody is denied or interfered with by a parent
77 or third party without good cause, the aggrieved person may file a family access
78 motion with the court stating the specific facts which constitute a violation of the
79 judgment of dissolution, legal separation or judgment of paternity. The state
80 courts administrator shall develop a simple form for pro se motions to the
81 aggrieved person, which shall be provided to the person by the circuit
82 clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved
83 parties the procedures for filing the form. Notice of the fact that clerks will
84 provide such assistance shall be conspicuously posted in the clerk's offices. The
85 location of the office where the family access motion may be filed shall be
86 conspicuously posted in the court building. The performance of duties described
87 in this section shall not constitute the practice of law as defined in section
88 484.010. Such form for pro se motions shall not require the assistance of legal
89 counsel to prepare and file. The cost of filing the motion shall be the standard
90 court costs otherwise due for instituting a civil action in the circuit court.

91 4. Within five court days after the filing of the family access motion
92 pursuant to subsection 3 of this section, the clerk of the court shall issue a
93 summons pursuant to applicable state law, and applicable local or supreme court
94 rules. A copy of the motion shall be personally served upon the respondent by
95 personal process server as provided by law or by any sheriff. Such service shall
96 be served at the earliest time and shall take priority over service in other civil
97 actions, except those of an emergency nature or those filed pursuant to chapter
98 455. The motion shall contain the following statement in boldface type:
99 "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO
100 RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF
101 SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK MAY RESULT
102 IN THE FOLLOWING:

103 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY,

104 VISITATION OR THIRD-PARTY CUSTODY AT A TIME
105 CONVENIENT FOR THE AGGRIEVED PARTY NOT LESS THAN
106 THE PERIOD OF TIME DENIED;

107 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO
108 EDUCATE THE VIOLATOR ABOUT THE IMPORTANCE OF
109 PROVIDING THE CHILD WITH A CONTINUING AND
110 MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

111 (3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS
112 AGAINST THE VIOLATOR;

113 (4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO
114 ENSURE FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

115 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING
116 TO REESTABLISH THE PARENT-CHILD RELATIONSHIP
117 BETWEEN THE AGGRIEVED PARTY AND THE CHILD; AND

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

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

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

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

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

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

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

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

142 **7. If the court finds that a parent has violated an order for**
143 **custody, visitation, or third-party custody without good cause for a**
144 **second or subsequent time, the court may deem such behavior as a**
145 **material change of circumstances and may order a modification to the**
146 **joint custody order to award primary custody of the child to the**
147 **aggrieved party.**

148 **8.** The reasonable expenses incurred as a result of denial or interference
149 with custody or visitation, including attorney's fees and costs of a proceeding to
150 enforce visitation rights, custody or third-party custody, shall be assessed, if
151 requested and for good cause, against the parent or party who unreasonably
152 denies or interferes with visitation, custody or third-party custody. In addition,
153 the court may utilize any and all powers relating to contempt conferred on it by
154 law or rule of the Missouri supreme court.

155 **[8.] 9.** Final disposition of a motion for a family access order filed
156 pursuant to this section shall take place not more than sixty days after the
157 service of such motion, unless waived by the parties or determined to be in the
158 best interest of the child. Final disposition shall not include appellate review.

159 **[9.] 10.** Motions filed pursuant to this section shall not be deemed an
160 independent civil action from the original action pursuant to which the judgment
161 or order sought to be enforced was entered.

452.410. 1. Except as provided in subsection 2 of this section, the court
2 shall not modify a prior custody decree unless it has jurisdiction under the
3 provisions of section 452.450 and it finds, upon the basis of facts that have arisen
4 since the prior decree or that were unknown to the court at the time of the prior
5 decree, that a change has occurred in the circumstances of the child or his
6 custodian and that the modification is necessary to serve the best interests of the
7 child. Notwithstanding any other provision of this section or sections 452.375 and
8 452.400, any custody order entered by any court in this state or any other state
9 prior to August 13, 1984, may, subject to jurisdictional requirements, be modified
10 to allow for joint custody in accordance with section 452.375, without any further
11 showing.

12 **2.** If either parent files a motion to modify an award of joint legal custody
13 or joint physical custody, each party shall be entitled to a change of judge as
14 provided by supreme court rule.

15 **3. Upon the motion of a parent to modify a prior custody decree**
16 **and for good cause shown, the court shall hold an expedited hearing on**
17 **the modification.**

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