

SECOND REGULAR SESSION

SENATE BILL NO. 857

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 3, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5528S.011

AN ACT

To repeal sections 210.117, 211.038, 452.375, and 452.400, RSMo, and to enact in lieu thereof four new sections relating to the placement of children.

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

Section A. Sections 210.117, 211.038, 452.375, and 452.400, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 210.117, 211.038, 452.375, and 452.400, to read as follows:

210.117. 1. A child taken into the custody of the state shall not be
2 reunited with a parent or placed in a home in which the parent or any person
3 residing in the home has been found guilty of any of the following offenses when
4 a child was the victim:

5 (1) A felony violation of section 566.030, 566.031, 566.032, 566.060,
6 566.061, 566.062, 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.100,
7 566.101, 566.111, 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, or
8 566.215;

9 (2) A violation of section 568.020;

10 (3) Abuse of a child under section 568.060 when such abuse is sexual in
11 nature;

12 (4) A violation of section 568.065;

13 (5) A violation of section 573.200;

14 (6) A violation of section 573.205; or

15 (7) A violation of section 568.175;

16 (8) A violation of section 566.040, 566.070, or 566.090 as such sections
17 existed prior to August 28, 2013; or

18 (9) A violation of section 566.212, 568.080, or 568.090 as such sections
19 existed prior to January 1, 2017.

20 2. For all other violations of offenses in chapters 566 and 568 not
21 specifically listed in subsection 1 of this section or for a violation of an offense
22 committed in another state when a child is the victim that would be a violation
23 of chapter 566 or 568, if committed in Missouri, the division may exercise its
24 discretion regarding the placement of a child taken into the custody of the state
25 in which a parent or any person residing in the home has been found guilty of
26 any such offense.

27 3. In any case where the children's division determines based on a
28 substantiated report of child abuse that a child has abused another child, the
29 abusing child shall be prohibited from returning to or residing in any residence,
30 facility, or school within one thousand feet of the residence of the abused child or
31 any child care facility or school that the abused child attends, unless and until
32 a court of competent jurisdiction determines that the alleged abuse did not occur
33 or the abused child reaches the age of eighteen, whichever earlier occurs. The
34 provisions of this subsection shall not apply when the abusing child and the
35 abused child are siblings or children living in the same home.

 211.038. 1. A child under the jurisdiction of the juvenile court shall not
2 be reunited with a parent or placed in a home in which the parent or any person
3 residing in the home has been found guilty of any of the following offenses when
4 a child was the victim:

5 (1) A felony violation of section 566.030, 566.031, 566.032, 566.060,
6 566.061, 566.062, 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.100,
7 566.101, 566.111, 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, or
8 566.215;

9 (2) A violation of section 568.020;

10 (3) Abuse of a child under section 568.060 when such abuse is sexual in
11 nature;

12 (4) A violation of section 568.065;

13 (5) A violation of section 573.200;

14 (6) A violation of section 573.205; or

15 (7) A violation of section 568.175;

16 (8) A violation of section 566.040, 566.070, or 566.090 as such sections
17 existed prior to August 28, 2013; or

18 (9) A violation of section 566.212, 568.080, or 568.090 as such sections
19 existed prior to January 1, 2017.

20 2. For all other violations of offenses in chapters 566 and 568 not

21 specifically listed in subsection 1 of this section or for a violation of an offense
22 committed in another state when a child is the victim that would be a violation
23 of chapter 566 or 568 if committed in Missouri, the juvenile court may exercise
24 its discretion regarding the placement of a child under the jurisdiction of the
25 juvenile court in a home in which a parent or any person residing in the home
26 has been found guilty of, or pled guilty to, any such offense.

27 3. If the juvenile court determines that a child has abused another child,
28 such abusing child shall be prohibited from returning to or residing in any
29 residence located within one thousand feet of the residence of the abused child,
30 or any child care facility or school that the abused child attends, until the abused
31 child reaches eighteen years of age. The prohibitions of this subsection shall not
32 apply where the alleged abuse occurred between siblings or children living in the
33 same home.

 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. When the parties have not reached an agreement on all issues
19 related to custody, the court shall consider all relevant factors and enter written
20 findings of fact and conclusions of law, including, but not limited to, the following:

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

23 (2) The needs of the child for a frequent, continuing and meaningful

24 relationship with both parents and the ability and willingness of parents to
25 actively perform their functions as mother and father for the needs of the child;

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

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

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

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

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

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

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

51 (a) A felony violation of section 566.030, 566.032, 566.031, 566.060,
52 566.062, 566.064, 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111,
53 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, 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 573.200;

58 (f) A violation of section 573.205; or

59 (g) A violation of section 568.175.

60 (2) For all other violations of offenses in chapters 566 and 568 not
61 specifically listed in subdivision (1) of this subsection 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 court may exercise
64 its discretion in awarding custody or visitation of a child to a parent if such
65 parent or any person residing with such parent has been found guilty of, or pled
66 guilty to, any such offense.

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

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

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

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

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

89 (4) Sole custody to either parent; or

90 (5) Third-party custody or visitation:

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

96 court awards custody, temporary custody or visitation to a third person under this
97 subdivision, the court shall make that person a party to the action;

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

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

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

117 8. As between the parents of a child, no preference may be given to either
118 parent in the awarding of custody because of that parent's age, sex, or financial
119 status, nor because of the age or sex of the child. The court shall not presume
120 that a parent, solely because of his or her sex, is more qualified than the other
121 parent to act as a joint or sole legal or physical custodian for the child.

122 9. Any judgment providing for custody shall include a specific written
123 parenting plan setting forth the terms of such parenting plan arrangements
124 specified in subsection 8 of section 452.310. Such plan may be a parenting plan
125 submitted by the parties pursuant to section 452.310 or, in the absence thereof,
126 a plan determined by the court, but in all cases, the custody plan approved and
127 ordered by the court shall be in the court's discretion and shall be in the best
128 interest of the child.

129 10. After August 28, 2016, every court order establishing or modifying
130 custody or visitation shall include the following language: "In the event of
131 noncompliance with this order, the aggrieved party may file a verified motion for

132 contempt. If custody, visitation, or third-party custody is denied or interfered
133 with by a parent or third party without good cause, the aggrieved person may file
134 a family access motion with the court stating the specific facts that constitute a
135 violation of the custody provisions of the judgment of dissolution, legal
136 separation, or judgment of paternity. The circuit clerk will provide the aggrieved
137 party with an explanation of the procedures for filing a family access motion and
138 a simple form for use in filing the family access motion. A family access motion
139 does not require the assistance of legal counsel to prepare and file."

140 11. No court shall adopt any local rule, form, or practice requiring a
141 standardized or default parenting plan for interim, temporary, or permanent
142 orders or judgments. Notwithstanding any other provision **of law** to the
143 contrary, a court may enter an interim order in a proceeding under this chapter,
144 provided that the interim order shall not contain any provisions about child
145 custody or a parenting schedule or plan without first providing the parties with
146 notice and a hearing, unless the parties otherwise agree.

147 12. Unless a parent has been denied custody rights pursuant to this
148 section or visitation rights under section 452.400, both parents shall have access
149 to records and information pertaining to a minor child including, but not limited
150 to, medical, dental, and school records. If the parent without custody has been
151 granted restricted or supervised visitation because the court has found that the
152 parent with custody or any child has been the victim of domestic violence, as
153 defined in section 455.010, by the parent without custody, the court may order
154 that the reports and records made available pursuant to this subsection not
155 include the address of the parent with custody or the child. Unless a parent has
156 been denied custody rights pursuant to this section or visitation rights under
157 section 452.400, any judgment of dissolution or other applicable court order shall
158 specifically allow both parents access to such records and reports.

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

168 associated with obtaining the requested information.

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

174 15. If the court finds that domestic violence or abuse as defined in section
175 455.010 has occurred, the court shall make specific findings of fact to show that
176 the custody or visitation arrangement ordered by the court best protects the child
177 and the parent or other family or household member who is the victim of domestic
178 violence, as defined in section 455.010, and any other children for whom such
179 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, 566.031, 566.060,
16 566.062, 566.064, 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111,
17 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, 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 573.200;

22 f. A violation of section 573.205; 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, 566.031, 566.060,
52 566.062, 566.064, 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111,
53 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, 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 573.200;

58 f. A violation of section 573.205; 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.
71 "Supervised visitation", as used in this section, is visitation which takes place in
72 the presence of a responsible adult appointed by the court for the protection of the
73 child.

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

92 4. Within five court days after the filing of the family access motion
93 pursuant to subsection 3 of this section, the clerk of the court shall issue a
94 summons pursuant to applicable state law, and applicable local or supreme court
95 rules. A copy of the motion shall be personally served upon the respondent by
96 personal process server as provided by law or by any sheriff. Such service shall

97 be served at the earliest time and shall take priority over service in other civil
98 actions, except those of an emergency nature or those filed pursuant to chapter
99 455. The motion shall contain the following statement in boldface type:

100 "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO
101 RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF
102 SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK MAY RESULT
103 IN THE FOLLOWING:

104 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY,
105 VISITATION OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR
106 THE AGGRIEVED PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

107 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO
108 EDUCATE THE VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE
109 CHILD WITH A CONTINUING AND MEANINGFUL RELATIONSHIP WITH
110 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
116 COUNSELING 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 COURT
120 COSTS ACTUALLY INCURRED BY THE AGGRIEVED PARTY AS A RESULT
121 OF THE DENIAL OF CUSTODY, VISITATION OR THIRD-PARTY CUSTODY."

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

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

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

132 (2) Participation by the violator in counseling to educate the violator

133 about the importance of providing the child with a continuing and meaningful
134 relationship with both parents;

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

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

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

141 7. The court shall consider, in a proceeding to enforce or modify a
142 permanent custody or visitation order or judgment, a party's violation, without
143 good cause, of a provision of the parenting plan, for the purpose of determining
144 that party's ability and willingness to allow the child frequent and meaningful
145 contact with the other party.

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

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

157 10. Motions filed pursuant to this section shall not be deemed an
158 independent civil action from the original action pursuant to which the judgment
159 or order sought to be enforced was entered.

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