

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 651

## 89TH GENERAL ASSEMBLY

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Reported from the Committee on Corrections and General Laws, February 16, 1998, with recommendation that the Senate Committee Substitute do pass.

S2488.09C

TERRY L. SPIELER, Secretary.

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### AN ACT

To repeal sections 452.150, 452.310, 452.355, 452.377, 452.405, 452.411, 452.416, 452.600 and 452.605, RSMo 1994, and sections 452.340, 452.375 and 452.400, RSMo Supp. 1997, relating to child custody and child support proceedings, and to enact in lieu thereof fifteen new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 452.150, 452.310, 452.355, 452.377, 452.405, 452.411, 452.416, 452.600 and 452.605, RSMo 1994, and sections 452.340, 452.375 and 452.400, RSMo Supp. 1997, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 452.150, 452.310, 452.340, 452.355, 452.373, 452.375, 452.377, 452.400, 452.401, 452.405, 452.411, 452.416, 452.600, 452.605 and 454.1031, to read as follows:

452.150. The father and mother living apart are entitled to an adjudication [of] **by** the circuit court as to their powers, rights and duties in respect to the custody and control and the services and earnings and management of the property of their unmarried minor children without any preference as between the said father and mother, and neither the father nor the mother has any right paramount to that of the other in respect to the custody and control or the services and earnings or of the management of the property of their said unmarried minor children; pending such adjudication the father or mother who actually has the custody and control of said unmarried minor children shall have the sole right to the custody and control and to the services and earnings and to the management of the property of said unmarried minor children. **The mere fact that one parent has actual custody of the minor children at the time of filing shall not create a preference for the court in its adjudication of custody, visitation and child**

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

**support.**

452.310. 1. All proceedings under sections 452.300 to 452.415 are commenced in the manner provided by the rules of the supreme court.

2. The petition in a proceeding for dissolution of marriage or legal separation shall be verified and shall allege the marriage is irretrievably broken and shall set forth:

- (1) The residence of each party and the length of residence in this state;
- (2) The date of the marriage and the place at which it was registered;
- (3) The date on which the parties separated;
- (4) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;
- (5) Any arrangements as to the custody and support of the children and the maintenance of a spouse; and
- (6) The relief sought.

3. In listing the names, ages, and addresses of any living children of the marriage, the party filing the petition shall state which party has actual custody of any minor children, and, upon the filing of the petition, all unemancipated, unmarried minor children shall come under the immediate jurisdiction of the court in which the action is filed, unless a petition alleging abuse or neglect of such minor children is pending in the juvenile court. Thereafter, until permitted to do so by order of the court, neither party shall remove such minor children from the jurisdiction of the court nor from the care and custody of the party which has **actual** custody of the children at the time the action is filed. **The mere fact that one parent has actual custody of the minor children at the time of filing shall not create a preference for the court in its adjudication of custody, visitation and child support.**

**4. The petitioner shall submit a proposed parenting plan at the time of filing of a petition involving custody or visitation issues. The respondent shall submit a proposed parenting plan when filing a responsive pleading in such cases. The proposed parenting plan shall set forth the arrangements that the party believes to be in the best interest of the minor children and shall:**

- (1) Provide for the child's physical care;**
- (2) Provide for the financial needs of the child including, but not limited to, child support, medical insurance and uninsured medical expenses; and**
- (3) Set forth the authority and responsibilities of each parent with respect to the child, including, but not limited to:**
  - (a) A residential schedule;**
  - (b) Holiday, birthday and vacation planning;**
  - (c) Weekend scheduling, including holidays and school holidays preceding or following weekends;**
  - (d) Decision making and responsibilities;**

**(e) Information sharing and access, including access to medical, dental and school information;**

**(f) Relocation of parents;**

**(g) Telephone access; and**

**(h) Transportation and transportation costs.**

[4.] **5.** The other party must be served in the manner provided by the rules of civil procedure and applicable court rules and may within thirty days after the date of service file a verified answer.

[5.] **6.** Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

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 his support, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

(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, **including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements;** [and]

(5) The child's physical and legal custody arrangements;

(6) The reasonable work-related child care expenses of each parent; **and**

**(7) The reasonable expenses associated with successive families of the parents.**

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the division of child support enforcement may determine the amount of the abatement under this subsection for any child support order. In such cases, upon notification by the division, the circuit clerk shall record the amount of abatement on the child support trusteeship record established pursuant to this chapter and chapter 454, RSMo.

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

when the child:

- (1) Dies;
- (2) Marries;
- (3) Enters active duty in the military;
- (4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent; or
- (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply.

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

5. If when a child reaches age eighteen, he is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend **and** progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree and so long as the child enrolls for and completes at least twelve hours of credit each term at an institution of vocational or higher education and achieves grades sufficient to re-enroll at such institution, the parental support obligation shall continue until the child completes his education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, the child shall submit to each parent a transcript provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. If the child is enrolled in such an institution, the child or obligated parent may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, college, or university at which the child attends classes regularly. **A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending postsecondary training or education, or so long as such child qualifies for support pursuant to subsection 4 of this section.**

6. [At the parent's option, a parent may pay one-half of the college room, board, tuition,

mandatory fees and book expenses of the child as a credit reduction in the amount of child support during the months when a child attends school, if such child is enrolled as a full-time student and living away from the family residence for a majority of the school year, unless provisions for payment of college expenses are specified in the parenting plan or court order; except that, if such payment of college expenses is less than the court-ordered child support, the parent shall pay the difference between such college expenses and the court-ordered payment as provided in the court order.] **A child's enrollment in higher education pursuant to the conditions set forth in subsection 5 of this section may constitute a change of circumstances such that the court may modify a prior child support order which did not provide for the payment of such higher education expenses and which did not include such expenses in the calculation of the child support order for that child. In establishing child support orders for children enrolled in higher education, the court shall consider all relevant factors including the factors listed in subsection 1 of this section, the financial resources of both parents and the child, the specific anticipated costs of the higher education and the available financial aid, if known. The court may make such orders regarding payment of such expenses as are in the child's best interest, including:**

**(1) If the child is living away from the residences of both parents for a majority of the school year, a credit reduction in child support payable during the months when the child resides at school shall be ordered if the court orders the obligor parent to pay specified school related expenses directly to the school or to the obligee parent. The court shall determine the amount of the credit reduction and shall order each parent to pay the amount or portion of the child's college expenses, including tuition, room and board, fees, books, equipment and travel expenses, which the court determines each parent can reasonably afford;**

**(2) If the child continues to reside with a parent or parents while enrolled in higher education, the court shall, in addition to child support, order each parent to pay the amount or portion of the child's college expenses, including tuition, room and board, books, fees, equipment and travel expenses, which the court determines each parent can reasonably afford;**

**(3) The court may make such additional orders as it deems appropriate, including ordering the parents and child to complete financial aid forms;**

**(4) The court shall consider the child's resources, including scholarships, financial aid and earnings from employment;**

**(5) The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a college age child in favor of the other parent if the application of state and federal tax laws and eligibility for financial aid will make an award of the exemption to the other parent appropriate; and**

**(6) That portion of the child support paid to the obligee parent may be subject**

**to income withholding pursuant to chapter 452 and the portion of the child support, if any, paid directly to the college shall not be subject to income withholding.**

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

8. Not later than October 13, 1989, the Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. By July 1, 1996, the guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending substantially equal time with both parents. Not later than July 1, 1998, the child support guidelines shall be published by the supreme court and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every three years to ensure that its application results in the determination of appropriate child support award amounts.

9. Beginning October 13, 1989, there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Under this or any other chapter, when a court determines the amount owed by a parent for support provided to his child by another person prior to the date of filing of a petition

requesting support, or when the director of the division of child support enforcement establishes the amount of state debt due under subdivision (2) of subsection 1 of section 454.465, RSMo, the court or director shall use the guidelines established under subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

452.355. 1. **Unless otherwise indicated**, the court from time to time after considering all relevant factors including the financial resources of both parties, **the merits of the case and the actions of the parties during the pendency of the action**, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under sections 452.300 to 452.415 and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

2. In any proceeding in which the nonpayment of child support is an issue under the provisions of a temporary or permanent court order or decree, if the court finds that the obligor has failed, without good cause, to comply with such order or decree to pay the child support, the court shall order the obligor to pay a reasonable amount for the cost of the suit to the obligee, including sums for legal services. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

3. For purposes of this section, an "obligor" is a person owing a duty of support and an "obligee" is a person to whom a duty of support is owed.

4. For purposes of this section, "good cause" includes any substantial reason why the defendant is unable to pay the child support as ordered. Good cause does not exist if the defendant purposely maintains his inability to pay.

**452.373. 1. When a person files a petition involving custody or visitation issues or a motion to modify custody or visitation and the respondent answers pursuant to section 452.310, the court may, except for good cause shown, order the parties to the**

**action to participate in an alternate dispute resolution program pursuant to supreme court rule to resolve any issues in dispute or may set a hearing in the matter. As used in this section, "good cause" includes, but is not limited to, a finding of domestic violence, as determined by an independent fact finder after all parties have received notice and an opportunity to be heard, but does not mean the absence of qualified mediators.**

**2. Any alternate dispute resolution program ordered by the court pursuant to subsection 1 of this section shall:**

**(1) Be paid for by the parties, the cost of which shall be reasonable and customary for the circuit in which the program is ordered;**

**(2) Not be binding on the parties;**

**(3) Not be ordered or used for contempt proceedings, for enforcement of existing custody or visitation orders which are unambiguous or which designate specific times or specific periods, or for a motion for a family access order pursuant to section 452.400; and**

**(4) Not be ordered or utilized for child support issues.**

**3. Within sixty days after the effective date of this section, the Missouri supreme court shall have in effect a rule allowing, but not requiring, each circuit to establish an alternate dispute resolution program for contested custody and visitation proceedings within six months of the adoption of the supreme court rule.**

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

**(1) "Custody", depending on the context, means joint legal custody, legal custody, joint physical custody or physical custody or any combination thereof;**

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

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

**(4) "Legal custody" confers upon one parent the primary, but not exclusive, decision-making rights, responsibilities and authority relating to the health, education and welfare of the child, and unless the court specifically declares otherwise, requires such parent to discuss with the other parent any decision affecting the health, education and welfare of their child;**



(5) **"Physical custody" confers upon one parent the primary, but not exclusive, responsibility to provide and establish a residence, care for and supervise the child;**

(6) **"Visitation" confers upon one parent parenting time with the child at specific times and for specific periods.**

2. The court shall determine **physical and legal** custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to his **physical and legal or physical or legal** custody;

(2) The wishes of a child as to his **physical and legal or physical or legal** custodian;

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

(4) The child's adjustment to his home, school, and community;

(5) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence has occurred, and, if the court also finds that awarding **physical and legal or physical or legal** custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. **Physical and legal or physical or legal** custody and visitation rights shall be ordered in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm;

(6) The needs of the child for a continuing relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;

(7) The intention of either parent to relocate [his] **that parent's principal residence or the principal residence of the child** outside the state **or more than fifty miles from the current principal residence of the child;** [and]

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

**(9) The proposed parenting plans submitted by both parents.**

3. The court shall not award **physical and legal or physical or legal** custody of a child to a parent if such parent has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo, when the child was the victim, or a violation of section 568.020, RSMo, when the child was the victim.

4. The general assembly finds and declares that it is the public policy of this state [to assure children] **that** frequent, **continuing** and meaningful contact with both parents after the parents have separated or dissolved their marriage **is in the best interest of the children, except for cases where the court specifically finds that such contact is not in the best interest of the children,** and that it is in the public interest to encourage parents to share

decision-making rights and responsibilities of child rearing. In order to effectuate this policy, the court shall determine the **physical and legal or physical or legal** custody arrangement which will best assure that parents share such decision-making responsibility and authority and such frequent, **continuing** and meaningful contact between the child and each parent, as is indicated in the best interests of the child under all relevant circumstances.

5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider [each of the following as follows] **physical and legal custody awards in the order of preference listed in subdivisions (1) to (5) of this subsection, except where there are no custody issues in dispute. The burden of coming forward with evidence that a particular custodial arrangement is not in the best interest of the child shall be upon the parent opposing such an award. In the event the court finds that a preferred custodial arrangement is not in the child's best interest, the court shall enter a written finding detailing the specific relevant factors that made such an arrangement not in the child's best interest and shall specify the custodial arrangement which the court finds is in the child's best interest. The order of preference shall be:**

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

(2) **Joint physical custody with one party granted legal custody. The residence of one of the parents shall be designated as the mailing address of the child;**

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

**(4) Sole physical and legal** custody to either parent; or

**[(3)] (5) Third party physical and legal or physical or legal** custody or visitation:

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

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

6. Unless otherwise decreed, parents are obligated to exchange information with one another concerning the health, education and welfare of the child. In a decree of sole **legal** custody, [a court may provide that parents] **unless the court specifically declares otherwise,**

**the legal custodian** shall confer with one another in the exercise of decision-making rights, responsibilities and authority. Upon a finding by the court that either parent has refused to exchange information with one another, which shall include but not be limited to the health, education and welfare of the child, the court shall order the parent to comply immediately and to pay the prevailing party a sum equal to the prevailing party's cost associated with obtaining the requested information, which shall include but not be limited to attorney's fees and court costs.

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

8. Any decree providing for joint **physical and joint legal** custody or **joint physical or joint legal custody** shall include a specific written plan setting forth the terms of such custody. Such plan may be suggested by both parents acting in concert, or one parent acting individually, or if neither of the foregoing occurs, the plan shall be provided by the court. The plan may include a provision for mediation of disputes. In all cases, the joint custody plan approved and ordered by the court shall be in the court's discretion **and shall be in the best interest of the child**.

9. Unless [a noncustodial] a parent has been denied **custody rights under section 452.375 or** visitation rights under section 452.400, **any judgment or decree of dissolution, declaration of paternity or other applicable court order shall, after August 28, 1998, specifically allow both parents** access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records[, shall not be denied to a parent because the parent is not the child's custodial parent]. If [a noncustodial] **the parent without custody** has been granted restricted or supervised visitation because the court has found that the [custodial] parent **with custody** or the child has been the victim of domestic violence, as defined in section 455.200, RSMo, by the [noncustodial] parent **without custody**, the court may order that the reports and records made available pursuant to this subsection not include the address of the [custodial] parent **with custody** or the child.

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

11. An award of joint **physical and joint legal** custody or **joint physical or joint legal custody** does not preclude an award of child support pursuant to section 452.340 **and applicable**

**supreme court rules.** The court shall consider the factors contained in section 452.340 **and applicable supreme court rules** in determining an amount reasonable or necessary for the support of the child.

12. If the court finds that domestic violence has occurred, the court shall make specific findings of fact to show that the **physical and legal or physical or legal** custody or visitation arrangement ordered by the court best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm.

452.377. **1. Any person entitled to the custody or visitation of a child shall not relocate such person's residence or the residence of the child without first providing written notice by registered mail to any person with custody or visitation rights. Written notice shall be provided at least sixty days in advance of the proposed relocation. For purposes of this chapter, "relocate" or "relocation" means a change in the principal residence of a child or any person entitled to the custody or visitation of a child for a period of ninety days or more, but does not include a temporary absence from the principal residence. The notice of the proposed relocation shall include the following information:**

- (1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;**
- (2) The home telephone number of the new residence, if known;**
- (3) The date of the intended move or proposed relocation;**
- (4) A brief statement of the specific reasons for the proposed relocation; and**
- (5) A proposal for a revised schedule of custody or visitation with the child, if applicable.**

**2. A person entitled to the custody or visitation of a child shall not [change] relocate such person's principal residence or the principal residence of the child to another state, or remove the child from this state for a period of time exceeding ninety days, or relocate such person's principal residence or the principal residence of the child more than fifty miles from the current principal residence of the child except upon order of the court or with the written consent of the [parties] persons with custody or visitation rights. Where [the noncustodial] a person has been given custody or visitation rights by the custody decree, such court permission may be granted only after notice to the person having [visitation] such rights and after opportunity for hearing.**

**3. A person required to give notice of a proposed relocation pursuant to this section has a continuing duty to provide a change in or addition to the information required by this section as soon as such information becomes known.**

**4. A person entitled by court order to custody or visitation with a child may, within thirty days upon receiving written notice of a relocation pursuant to subsection 2 of this section, file a motion objecting to a proposed relocation of the principal**

residence of any other person entitled to custody or visitation or to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation. Such motion shall be accompanied by an affidavit setting forth the specific factual basis supporting a prohibition of the relocation. The person seeking relocation shall file a response to the motion within fifteen days and shall include a counter-affidavit setting forth the facts in support of the relocation as well as a proposed revised schedule for custody or visitation.

5. If the parties agree to a revised schedule of custody or visitation, they may submit the terms of such agreement to the court with a written affidavit signed by all parties with rights to custody or visitation assenting to the terms of the agreement and the court may order the revised schedule without a hearing.

6. When determining the relocation issue, the court shall consider all relevant factors including:

- (1) Whether the relocation is in the best interest of the child;
- (2) The nature, quality, extent of involvement and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, the child's siblings and other significant persons in the child's life;
- (3) The age, developmental stage and needs of the child, and the likely impact that the relocation will have on the child's physical, educational and emotional development taking into consideration any special needs of the child;
- (4) The feasibility of preserving the relationship between the nonrelocating person and the child through suitable custody or visitation arrangements considering the distance of the move and the financial resources of the parties to permit frequent, continuing and meaningful contact;
- (5) Whether there is an established pattern of conduct of the person seeking relocation either to promote or deter the relationship of the child and the nonrelocating person;
- (6) The reasons for the relocation and the reasons for the opposition to the relocation;
- (7) Any prior written agreement by the nonrelocating person consenting to the relocation or any prior written agreement by the person seeking to relocate which indicates an agreement not to relocate in the future;
- (8) Whether a person seeking or opposing the relocation has completely and in a timely manner complied with the notice requirements;
- (9) The likelihood of the person relocating to comply with a custody or visitation order;
- (10) The presence or absence of the child's extended family in the relocation site and at the current residence; and

**(11) Any other factor affecting the best interest of the child.**

**7. If a temporary order authorizes a party to relocate before a final judgment, the court shall not give undue weight to the temporary relocation as a factor in reaching its final decision.**

**8. The person seeking to relocate shall have the burden of proving that the proposed relocation is made in good faith and is in the best interest of the child.**

**9. If relocation is permitted:**

**(1) The court shall order contact with the nonrelocating person including custody or visitation and telephone access sufficient to assure that the child has frequent, continuing and meaningful contact with the nonrelocating person unless the child's best interest warrant otherwise; and**

**(2) The court shall specify how the transportation costs will be allocated between the parties and adjust the child support, as appropriate, considering the costs of transportation.**

**10. After August 28, 1998, every court order establishing or modifying custody or visitation shall include the following language: "You, as a party to this action, are ordered to notify, in writing by registered mail and at least sixty days prior to the proposed relocation, each party to this action of any proposed relocation of your principal residence if you are entitled to custody or visitation, or of any proposed relocation of the principal residence of the child, including the following information:**

**(1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;**

**(2) The home telephone number of the new residence, if known;**

**(3) The date of the intended move or proposed relocation;**

**(4) A brief statement of the specific reasons for the proposed relocation; and**

**(5) A proposal for a revised schedule of custody or visitation with the child, if applicable.**

**Your obligation to provide this information to each party continues as long as you or any other person by virtue of this order is entitled to custody or visitation with a child covered by this order. Your failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, your failure to notify a party of a relocation of the child may be considered in a proceeding to modify custody or visitation with the child. Reasonable costs and attorney fees shall be assessed against you if you fail to give the required notice."**

**11. Violation of the provisions of this section or a court order under this section [may] shall be a class A misdemeanor and shall be deemed a change of circumstance under section 452.410, allowing the court to modify the prior custody decree.**

452.400. 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his emotional development. [The court shall define the noncustodial parent's visitation periods in detail at the request of either party.] **The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights.** In determining the granting of visitation rights, the court shall consider evidence of domestic violence. If the court finds that domestic violence has occurred, the court may find that granting visitation to the abusive party is in the best interests of the child. The court shall not grant visitation to the parent not granted custody if such parent has been found guilty of or pled guilty to a felony violation of chapter 566, RSMo, when the child was the victim, or a violation of section 568.020, RSMo, when the child was the victim. The court shall consider the parent's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on other persons and shall grant visitation in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. The court, **if requested by a party**, shall make specific findings of fact to show that the visitation arrangements made by the court best protects the child or the parent or other family or household member who is the victim of domestic violence from any further harm.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his emotional development. When a court restricts a parent's visitation rights or when a court orders supervised visitation because of allegations of abuse or domestic violence, a showing of proof of treatment and rehabilitation shall be made to the court before unsupervised visitation may be ordered. "Supervised visitation", as used in this section, is visitation which takes place in the presence of a responsible adult appointed by the court for the protection of the child.

3. The court shall mandate compliance with its order by both [the custodial parent] **parents** and the child. [In the event of noncompliance,] **If a parent has been granted specific or unambiguous visitation or custody rights, and such specific or unambiguous rights are denied or interfered with by the other parent, the [noncustodial] parent having specific or unambiguous visitation or custody rights may file a motion for contempt[.] or a motion for a family access order.**

**4. Within sixty days after the effective date of this section, the Missouri supreme court shall have in effect a rule requiring each circuit to establish procedures for handling family access motions within six months of the adoption of the supreme court rule. Such procedures shall include, but not be limited to, the following:**

**(1) A simple pro se form supplied by the clerk of the court which shall not**

**require the assistance of legal counsel to complete and file;**

**(2) The cost of filing the motion shall be the standard filing fee plus a fee not to exceed twenty-five dollars;**

**(3) The hearing on the motion shall be held not more than fourteen days after the service of process; and**

**(4) Final disposition of a motion for a family access order filed pursuant to this section shall take place not more than forty-five days after the service of such motion. Final disposition shall not include appellate review.**

5. Upon a finding by the court that its order for visitation **or custody** has not been complied with, without good cause, the court shall [define the noncustodial parent's visitation in detail and shall exercise its discretion in providing] **provide** a remedy, which shall include, but not be limited to, a compensatory period of visitation or [temporary] custody at a time convenient for the [noncustodial] parent **denied visitation or custody** not less than the period of time denied, [together with] **and, if requested by a party, a mandatory** judgment in an amount not less than the reasonable expenses, **attorneys fees and court costs actually** incurred by the [noncustodial] parent as a result of **the denial of visitation or custody. Such order may include a provision that the sheriff or other law enforcement officer shall enforce the rights of either parent to custody or visitation, as the case may be, unless the court issues a subsequent order pursuant to chapters 210, 211 or 455, RSMo, to limit or deny either parent's access to the child.**

[4.] **6.** The **reasonable expenses**, attorney's fees and **court** costs of a proceeding to enforce visitation **or custody** rights shall, **if requested by a party**, be assessed against the parent who [unreasonably], **without good cause**, denies or interferes with visitation **or custody**. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

**7. The intentional denial or interference with visitation or custody of a child from the other parent, without good cause, shall constitute a change of circumstances which may justify a modification of custody.**

**8. For purposes of supreme court rule 51, motions filed pursuant to this section shall not be deemed to be an independent civil action if the judge or commissioner designated to rule on the motion is the same judge or commissioner that entered the order which is the subject of a motion for a family access order or contempt.**

**9. A violation of the terms and conditions of a family access order shall be a class A misdemeanor, unless the person has twice previously plead guilty to or been found guilty of violating a family access order within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony.**

**452.401. The family access fee established in section 452.400 shall not exceed twenty-five dollars and shall be charged and collected by every clerk of the court in this**



**state to defray costs associated with the family access motion. The court may waive such fee, in whole or in part, upon motion of the party and for good cause shown.**

452.405. 1. Except as otherwise **ordered by the court or** agreed by the parties in writing at the time of the custody decree, the **legal** custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing[,] finds, upon motion by the [noncustodial] parent **without legal custody**, that in the absence of a specific limitation of the **legal** custodian's authority the child's physical health would be endangered or his emotional development impaired.

**2. The legal custodian shall not exercise legal custody in such a way as to detrimentally impact the other parent's visitation or custody rights.**

[2.] **3.** The court may order the county welfare office or the county juvenile officer to exercise continuing supervision over the case.

452.411. If either parent of a child changes his residence to another state, such change of residence of the parent shall be deemed a change of circumstances under section 452.410, allowing the court to modify a prior **visitation or** custody decree.

452.416. 1. Notwithstanding any other provision of law to the contrary, whenever a parent in emergency military service has a change in income due to such military service, such change in income shall be considered a change in circumstances so substantial and continuing as to make the terms of any order or judgment for child support or visitation unreasonable.

2. Upon receipt of a notarized letter from the commanding officer of a noncustodial parent in emergency military service which contains the date of the commencement of emergency military service and the compensation of the parent in emergency military service, the director of the division of child support enforcement shall take appropriate action to seek modification of the order or judgment of child support in accordance with the guidelines and criteria set forth in **section 452.340 and applicable** supreme court [rule 88.01] **rules**. Such notification to the director shall constitute an application for services under section 454.425, RSMo.

3. Upon return from emergency military service the parent shall notify the director of the division of child support enforcement who shall take appropriate action to seek modification of the order or judgment of child support in accordance with the guidelines and criteria set forth in **section 452.340 and applicable** supreme court [rule 88.01] **rules**. Such notification to the director shall constitute an application for services under section 454.425, RSMo.

4. As used in this section, the term "emergency military service" means that the parent is a member of a reserve unit or national guard unit which is called into active military duty for a period of more than thirty days.

452.600. **1.** The circuit courts [of the fifth, sixth, twenty-third, twenty-ninth, thirtieth, thirty-first and thirty-eighth judicial circuits], by local rule, may establish a program of educational sessions for parties to actions for dissolution of marriage or in postjudgment

proceedings involving custody or support, concerning the effects of dissolution of marriage on minor children of the marriage. In lieu of establishing such a program, the circuit court may, by local rule, designate a similar program of educational sessions offered by a private or public entity.

**2. Within sixty days after the effective date of this section, the Missouri supreme court shall have in effect guidelines for the program of educational sessions. The reasonable expenses of the educational sessions shall be paid by the parties.**

452.605. In an action for dissolution of marriage involving minor children, or in a postjudgment proceeding wherein custody [or support] of minor children is to be determined by the court, the court may [on its own motion], **except for good cause**, order the parties, including the minor children, to attend educational sessions concerning the effects of **custody and the dissolution of marriage on children**[, if the court finds that doing so would be in the best interests of the minor children]. **As used in this section "good cause" includes, but is not limited to, situations where the parties have stipulated to the custody and visitation of the child or where the safety of a party or child may be endangered by attending the educational sessions.**

**454.1031. All penalties that apply to an obligor in sections 454.1000 to 454.1029 shall also apply to any person who has denied or interfered with any order for visitation or custody for two or more consecutive periods. Any such penalties shall be imposed by a court with jurisdiction and the division shall have no jurisdiction over such matters.**

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