

FIRST REGULAR SESSION

# HOUSE BILL NO. 304

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BRUNS (Sponsor), DAY, SCHAD, WELLS, DIXON, SCHAAF,  
RUESTMAN, McGHEE, BIVINS, DETHROW, PAGE, SATER, MOORE, CORCORAN,  
WALLACE AND SANDER (Co-sponsors).

Read 1st time January 9, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0985L.01I

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### AN ACT

To repeal section 452.400, RSMo, and to enact in lieu thereof one new section relating to child visitation, with a penalty provision.

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

Section A. Section 452.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.400, to read as follows:

452.400. 1. (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 or her emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights to the child and any other children for whom such parent has custodial or visitation 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.

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
13 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
14 566.209, 566.212, or 566.215, RSMo;

15 b. A violation of section 568.020, RSMo;

16 c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

17 d. A violation of section 568.065, RSMo;

18 e. A violation of section 568.080, RSMo;

19 f. A violation of section 568.090, RSMo; or

20 g. A violation of section 568.175, RSMo.

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

27 **(c) The court shall not grant unsupervised visitation to any parent who is required**  
28 **to register as a sex offender under sections 589.400 to 589.425, RSMo.**

29 (3) The court shall consider the parent's history of inflicting, or tendency to inflict,  
30 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on  
31 other persons and shall grant visitation in a manner that best protects the child and the parent or  
32 other family or household member who is the victim of domestic violence, and any other  
33 children for whom the parent has custodial or visitation rights from any further harm.

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

38 2. (1) The court may modify an order granting or denying visitation rights whenever  
39 modification would serve the best interests of the child, but the court shall not restrict a parent's  
40 visitation rights unless it finds that the visitation would endanger the child's physical health or  
41 impair his or her emotional development.

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

45 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
46 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
47 566.209, 566.212, or 566.215, RSMo;

- 48           b. A violation of section 568.020, RSMo;  
49           c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;  
50           d. A violation of section 568.065, RSMo;  
51           e. A violation of section 568.080, RSMo;  
52           f. A violation of section 568.090, RSMo; or  
53           g. A violation of section 568.175, RSMo.

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

60           **(c) The court shall not grant unsupervised visitation to any parent who is required**  
61 **to register as a sex offender under sections 589.400 to 589.425, RSMo.**

62           (3) When a court restricts a parent's visitation rights or when a court orders supervised  
63 visitation because of allegations of abuse or domestic violence, a showing of proof of treatment  
64 and rehabilitation shall be made to the court before unsupervised visitation may be ordered.  
65 "Supervised visitation", as used in this section, is visitation which takes place in the presence of  
66 a responsible adult appointed by the court for the protection of the child.

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

82           4. Within five court days after the filing of the family access motion pursuant to  
83 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable

84 state law, and applicable local or supreme court rules. A copy of the motion shall be personally  
85 served upon the respondent by personal process server as provided by law or by any sheriff.  
86 Such service shall be served at the earliest time and shall take priority over service in other civil  
87 actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The  
88 motion shall contain the following statement in boldface type:

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90 "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE  
91 CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO  
92 RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

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

96 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE  
97 VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A  
98 CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

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

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

103 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO  
104 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED  
105 PARTY AND THE CHILD; AND

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

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

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

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

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

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

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

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

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

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

138           9. Motions filed pursuant to this section shall not be deemed an independent civil action  
139 from the original action pursuant to which the judgment or order sought to be enforced was  
140 entered.

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