

SECOND REGULAR SESSION

HOUSE BILL NO. 2055

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SWAN.

5302H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Sections 452.375, 452.400, and 452.410, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 452.375, 452.400, and 452.410, to read as follows:

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

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

(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;

(3) "Joint physical custody" means an order awarding each of the parents [significant, but not necessarily equal,] **approximate and reasonably 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 **substantial**, frequent, continuing, and meaningful contact with both parents;

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

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

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.

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

19 (2) The needs of the child for a frequent, continuing and meaningful relationship with
20 both parents and the ability and willingness of parents to actively perform their functions as
21 mother and father for the needs of the child;

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

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

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

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

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

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

39 3. (1) In any court proceedings relating to custody of a child, the court shall not award
40 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
41 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
42 was the victim:

43 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
44 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
45 566.209, 566.212, or 566.215;

46 (b) A violation of section 568.020;

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

48 (d) A violation of section 568.065;

49 (e) A violation of section 568.080;

50 (f) A violation of section 568.090; or

51 (g) A violation of section 568.175.

52 (2) For all other violations of offenses in chapters 566 and 568 not specifically listed in
53 subdivision (1) of this subsection or for a violation of an offense committed in another state
54 when a child is the victim that would be a violation of chapter 566 or 568 if committed in
55 Missouri, the court may exercise its discretion in awarding custody or visitation of a child to a
56 parent if such parent or any person residing with such parent has been found guilty of, or pled
57 guilty to, any such offense.

58 4. (1) The general assembly finds and declares that it is the public policy of this state
59 that frequent, continuing and meaningful contact with both parents after the parents have
60 separated or dissolved their marriage is in the best interest of the child, except for cases where
61 the court specifically finds that such contact is not in the best interest of the child, and that it is
62 the public policy of this state to encourage parents to participate in decisions affecting the health,
63 education and welfare of their children, and to resolve disputes involving their children amicably
64 through alternative dispute resolution. In order to effectuate these policies, the court shall
65 determine the custody arrangement which will best assure both parents participate in such
66 decisions and have frequent, continuing and meaningful contact with their children so long as
67 it is in the best interests of the child.

68 (2) **In determining the allocation of periods of physical custody, the court shall**
69 **presume that a parenting plan that equalizes to the highest degree the amount of time the**
70 **child may spend with each parent is in the best interest of the child. The state courts**
71 **administrator shall modify the Form 68-A Parenting Plan, also known as “Schedule J”, to**
72 **reflect the provisions of this subdivision and to include that the default parenting plan shall**
73 **include alternating weeks with each parent, unless the parents submit an alternative**
74 **parenting plan.**

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

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

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

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

85 (4) Sole custody to either parent; or

86 (5) Third-party custody or visitation:

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

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

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

103 7. Upon a finding by the court that either parent has refused to exchange information
104 with the other parent, which shall include but not be limited to information concerning the
105 health, education and welfare of the child, the court shall order the parent to comply immediately
106 and to pay the prevailing party a sum equal to the prevailing party's cost associated with
107 obtaining the requested information, which shall include but not be limited to reasonable
108 attorney's fees and court costs.

109 8. As between the parents of a child, no preference [may] **shall** be given to either parent
110 in the awarding of custody because of that parent's age, sex, or financial status, nor because of
111 the age or sex of the child.

112 9. Any judgment providing for custody shall include a specific written parenting plan
113 setting forth the terms of such parenting plan arrangements specified in subsection [7] **8** of
114 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section
115 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody
116 plan approved and ordered by the court shall be in the court's discretion and shall be in the best
117 interest of the child.

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

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

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

136 12. An award of joint custody does not preclude an award of child support pursuant to
137 section 452.340 and applicable supreme court rules. The court shall consider the factors
138 contained in section 452.340 and applicable supreme court rules in determining an amount
139 reasonable or necessary for the support of the child.

140 13. If the court finds that domestic violence or abuse, as defined in section 455.010 has
141 occurred, the court shall make specific findings of fact to show that the custody or visitation
142 arrangement ordered by the court best protects the child and the parent or other family or
143 household member who is the victim of domestic violence, as defined in section 455.010, and
144 any other children for whom such 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 reasonable
2 visitation rights unless the court finds, after a hearing, that visitation would endanger the child's
3 physical health or impair his or her emotional development. The court shall enter an order
4 specifically detailing the visitation rights of the parent without physical custody rights to the
5 child and any other children for whom such parent has custodial or visitation rights. In
6 determining the granting of visitation rights, the court shall consider evidence of domestic
7 violence. If the court finds that domestic violence has occurred, the court may find that granting
8 visitation to the abusive party is in the best interests of the child.

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

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;

15 b. A violation of section 568.020;

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

17 d. A violation of section 568.065;

18 e. A violation of section 568.080;

19 f. A violation of section 568.090; or

20 g. A violation of section 568.175.

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

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

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

36 2. (1) The court may modify an order granting or denying visitation rights whenever
37 modification would serve the best interests of the child, but the court shall not restrict a parent's
38 visitation rights unless it finds that the visitation would endanger the child's physical health or
39 impair his or her emotional development.

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

43 a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,
44 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,
45 566.209, 566.212, or 566.215;

46 b. A violation of section 568.020;

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

48 d. A violation of section 568.065;

49 e. A violation of section 568.080;

50 f. A violation of section 568.090; or

51 g. A violation of section 568.175.

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

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

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

78 4. Within five court days after the filing of the family access motion pursuant to
79 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
80 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
81 served upon the respondent by personal process server as provided by law or by any sheriff.
82 Such service shall be served at the earliest time and shall take priority over service in other civil
83 actions, except those of an emergency nature or those filed pursuant to chapter 455. The motion
84 shall contain the following statement in boldface type: "PURSUANT TO SECTION 452.400,
85 RSMO, YOU ARE REQUIRED TO RESPOND TO THE CIRCUIT CLERK WITHIN TEN

86 DAYS OF THE DATE OF SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK
87 MAY RESULT IN THE FOLLOWING:

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

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

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

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

98 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO
99 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED
100 PARTY AND THE CHILD; AND

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

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

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

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

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

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

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

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

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

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

133 [8.] **9.** Final disposition of a motion for a family access order filed pursuant to this
134 section shall take place not more than sixty days after the service of such motion, unless waived
135 by the parties or determined to be in the best interest of the child. Final disposition shall not
136 include appellate review.

137 [9.] **10.** Motions filed pursuant to this section shall not be deemed an independent civil
138 action from the original action pursuant to which the judgment or order sought to be enforced
139 was entered.

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

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

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

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