

HOUSE BILL NO. 2460

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

6277H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 452.340 and 452.375, RSMo, and to enact in lieu thereof two new sections relating to findings by the court for dissolution of marriage proceedings.

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

Section A. Sections 452.340 and 452.375, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.340 and 452.375, to read as follows:

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 the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors [including] **and entering written findings of fact and conclusions of law for each of the following:**

- (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;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

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

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.

18 voluntarily relinquished physical custody of a child to the parent ordered to pay child support,
19 notwithstanding any periods of visitation or temporary physical and legal or physical or legal
20 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.
21 In a IV-D case, the family support division may determine the amount of the abatement pursuant
22 to this subsection for any child support order and shall record the amount of abatement in the
23 automated child support system record established pursuant to chapter 454. If the case is not a
24 IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the
25 automated child support system record established in chapter 454.

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

29 (1) Dies;

30 (2) Marries;

31 (3) Enters active duty in the military;

32 (4) Becomes self-supporting, provided that the custodial parent has relinquished the child
33 from parental control by express or implied consent;

34 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply;

35 or

36 (6) Reaches age twenty-one, unless the provisions of the child support order specifically
37 extend the parental support order past the child's twenty-first birthday for reasons provided by
38 subsection 4 of this section.

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

42 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
43 school program of instruction, the parental support obligation shall continue, if the child
44 continues to attend and progresses toward completion of said program, until the child completes
45 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an
46 institution of vocational or higher education not later than October first following graduation
47 from a secondary school or completion of a graduation equivalence degree program and so long
48 as the child enrolls for and completes at least twelve hours of credit each semester, not including
49 the summer semester, at an institution of vocational or higher education and achieves grades
50 sufficient to reenroll at such institution, the parental support obligation shall continue until the
51 child completes his or her education, or until the child reaches the age of twenty-one, whichever
52 first occurs. To remain eligible for such continued parental support, at the beginning of each
53 semester the child shall submit to each parent a transcript or similar official document provided

54 by the institution of vocational or higher education which includes the courses the child is
55 enrolled in and has completed for each term, the grades and credits received for each such
56 course, and an official document from the institution listing the courses which the child is
57 enrolled in for the upcoming term and the number of credits for each such course. When
58 enrolled in at least twelve credit hours, if the child receives failing grades in half or more of his
59 or her courseload in any one semester, payment of child support may be terminated and shall not
60 be eligible for reinstatement. Upon request for notification of the child's grades by the
61 noncustodial parent, the child shall produce the required documents to the noncustodial parent
62 within thirty days of receipt of grades from the education institution. If the child fails to produce
63 the required documents, payment of child support may terminate without the accrual of any child
64 support arrearage and shall not be eligible for reinstatement. If the circumstances of the child
65 manifestly dictate, the court may waive the October first deadline for enrollment required by this
66 subsection. If the child is enrolled in such an institution, the child or parent obligated to pay
67 support may petition the court to amend the order to direct the obligated parent to make the
68 payments directly to the child. As used in this section, an "institution of vocational education"
69 means any postsecondary training or schooling for which the student is assessed a fee and attends
70 classes regularly. "Higher education" means any community college, college, or university at
71 which the child attends classes regularly. A child who has been diagnosed with a developmental
72 disability, as defined in section 630.005, or whose physical disability or diagnosed health
73 problem limits the child's ability to carry the number of credit hours prescribed in this subsection,
74 shall remain eligible for child support so long as such child is enrolled in and attending an
75 institution of vocational or higher education, and the child continues to meet the other
76 requirements of this subsection. A child who is employed at least fifteen hours per week during
77 the semester may take as few as nine credit hours per semester and remain eligible for child
78 support so long as all other requirements of this subsection are complied with.

79 6. The court shall consider ordering a parent to waive the right to claim the tax
80 dependency exemption for a child enrolled in an institution of vocational or higher education in
81 favor of the other parent if the application of state and federal tax laws and eligibility for
82 financial aid will make an award of the exemption to the other parent appropriate.

83 7. The general assembly finds and declares that it is the public policy of this state that
84 frequent, continuing and meaningful contact with both parents after the parents have separated
85 or dissolved their marriage is in the best interest of the child except for cases where the court
86 specifically finds that such contact is not in the best interest of the child. In order to effectuate
87 this public policy, a court with jurisdiction shall enforce visitation, custody and child support
88 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or
89 future obligation of support and may transfer the physical and legal or physical or legal custody

90 of one or more children if it finds that a parent has, without good cause, failed to provide
91 visitation or physical and legal or physical or legal custody to the other parent pursuant to the
92 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
93 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
94 costs incurred by the prevailing party.

95 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
96 which any award of child support shall be made in any judicial or administrative proceeding.
97 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a
98 computation of the support obligation. The guidelines shall address how the amount of child
99 support shall be calculated when an award of joint physical custody results in the child or
100 children spending equal or substantially equal time with both parents and the directions and
101 comments and any tabular representations of the directions and comments for completion of the
102 child support guidelines and a subsequent form developed to reflect the guidelines shall reflect
103 the ability to obtain up to a fifty percent adjustment or credit below the basic child support
104 amount for joint physical custody or visitation as described in subsection 11 of this section. The
105 Missouri supreme court shall publish child support guidelines and specifically list and explain
106 the relevant factors and assumptions that were used to calculate the child support guidelines.
107 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less
108 than once every four years to ensure that its application results in the determination of
109 appropriate child support award amounts.

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

119 10. Pursuant to this or any other chapter, when a court determines the amount owed by
120 a parent for support provided to a child by another person, other than a parent, prior to the date
121 of filing of a petition requesting support, or when the director of the family support division
122 establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section
123 454.465, the court or director shall use the guidelines established pursuant to subsection 8 of this
124 section. The amount of child support resulting from the application of the guidelines shall be
125 applied retroactively for a period prior to the establishment of a support order and the length of

126 the period of retroactivity shall be left to the discretion of the court or director. There shall be
127 a rebuttable presumption that the amount resulting from application of the guidelines under
128 subsection 8 of this section constitutes the amount owed by the parent for the period prior to the
129 date of the filing of the petition for support or the period for which state debt is being established.
130 In applying the guidelines to determine a retroactive support amount, when information as to
131 average monthly income is available, the court or director may use the average monthly income
132 of the noncustodial parent, as averaged over the period of retroactivity, in determining the
133 amount of presumed child support owed for the period of retroactivity. The court or director may
134 enter a different amount in a particular case upon finding, after consideration of all relevant
135 factors, including the factors set out in subsection 1 of this section, that there is sufficient cause
136 to rebut the presumed amount.

137 11. The court may award child support in an amount that provides up to a fifty percent
138 adjustment below the basic child support amount authorized by the child support guidelines
139 described under subsection 8 of this section for custody awards of joint physical custody where
140 the child or children spend equal or substantially equal time with both parents.

141 12. The obligation of a parent to make child support payments may be terminated as
142 follows:

143 (1) Provided that the state case registry or child support order contains the child's date
144 of birth, the obligation shall be deemed terminated without further judicial or administrative
145 process when the child reaches age twenty-one if the child support order does not specifically
146 require payment of child support beyond age twenty-one for reasons provided by subsection 4
147 of this section;

148 (2) The obligation shall be deemed terminated without further judicial or administrative
149 process when the parent receiving child support furnishes a sworn statement or affidavit
150 notifying the obligor parent of the child's emancipation in accordance with the requirements of
151 subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the
152 court which entered the order establishing the child support obligation, or the family support
153 division for an order entered under section 454.470;

154 (3) The obligation shall be deemed terminated without further judicial or administrative
155 process when the parent paying child support files a sworn statement or affidavit with the court
156 which entered the order establishing the child support obligation, or the family support division
157 for an order entered under section 454.470, stating that the child is emancipated and reciting the
158 factual basis for such statement; which statement or affidavit is served by the court or division,
159 as applicable, on the child support obligee; and which is either acknowledged and affirmed by
160 the child support obligee in writing, or which is not responded to in writing within thirty days
161 of receipt by the child support obligee;

162 (4) The obligation shall be terminated as provided by this subdivision by the court which
163 entered the order establishing the child support obligation, or the family support division for an
164 order entered under section 454.470, when the parent paying child support files a sworn
165 statement or affidavit with the court which entered the order establishing the child support
166 obligation, or the family support division, as applicable, stating that the child is emancipated and
167 reciting the factual basis for such statement; and which statement or affidavit is served by the
168 court or division, as applicable, on the child support obligee. If the obligee denies the statement
169 or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a
170 request for hearing and shall proceed to hear and adjudicate such request for hearing as provided
171 by law; provided that the court may require the payment of a deposit as security for court costs
172 and any accrued court costs, as provided by law, in relation to such request for hearing. When
173 the division receives a request for hearing, the hearing shall be held in the manner provided by
174 section 454.475.

175 13. The court may enter a judgment terminating child support pursuant to subdivisions
176 (1) to (3) of subsection 12 of this section without necessity of a court appearance by either party.
177 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
178 to subsection 12 of this section on both the obligor and obligee parents. The supreme court may
179 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
180 support obligations for use pursuant to subsection 12 of this section and subsection 4 of section
181 452.370.

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

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

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

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

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

14 2. The court shall determine custody in accordance with the best interests of the child.
15 The court shall consider all relevant factors [including] **and enter written findings of fact and**
16 **conclusions of law for each of the following:**

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.

37

38 The fact that a parent sends his or her child or children to a home school, as defined in section
39 167.031, shall not be the sole factor that a court considers in determining custody of such child
40 or children.

41 3. (1) In any court proceedings relating to custody of a child, the court shall not award
42 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
43 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
44 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;

48 (b) A violation of section 568.020;

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

50 (d) A violation of section 568.065;

51 (e) A violation of section 568.080;

52 (f) A violation of section 568.090; or

53 (g) A violation of section 568.175.

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

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

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

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

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

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

80 (4) Sole custody to either parent; or

81 (5) Third-party custody or visitation:

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

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

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

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

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

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

107 9. Any judgment providing for custody shall include a specific written parenting plan
108 setting forth the terms of such parenting plan arrangements specified in subsection 7 of section
109 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
110 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
111 approved and ordered by the court shall be in the court's discretion and shall be in the best
112 interest of the child.

113 10. Unless a parent has been denied custody rights pursuant to this section or visitation
114 rights under section 452.400, both parents shall have access to records and information
115 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
116 If the parent without custody has been granted restricted or supervised visitation because the
117 court has found that the parent with custody or any child has been the victim of domestic
118 violence, as defined in section 455.010, by the parent without custody, the court may order that
119 the reports and records made available pursuant to this subsection not include the address of the
120 parent with custody or the child. Unless a parent has been denied custody rights pursuant to this
121 section or visitation rights under section 452.400, any judgment of dissolution or other applicable
122 court order shall specifically allow both parents access to such records and reports.

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

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

135 13. If the court finds that domestic violence or abuse, as defined in section 455.010 has
136 occurred, the court shall make specific findings of fact to show that the custody or visitation
137 arrangement ordered by the court best protects the child and the parent or other family or
138 household member who is the victim of domestic violence, as defined in section 455.010, and
139 any other children for whom such parent has custodial or visitation rights from any further harm.

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