

FIRST REGULAR SESSION

# HOUSE BILL NO. 566

97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE AUSTIN.

1265H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 452.400, RSMo, and to enact in lieu thereof one new section relating to visitation rights.

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Section A. Section 452.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.400, to read as follows: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

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

b. A violation of section 568.020;

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

d. A violation of section 568.065;

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 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, [or] 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:

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

88 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY,  
89 VISITATION OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT

90 FOR THE AGGRIEVED PARTY NOT LESS THAN THE PERIOD OF TIME  
91 DENIED;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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