

FIRST REGULAR SESSION

# HOUSE BILL NO. 1131

98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE SWAN.

2469H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 452.340 and 452.375, RSMo, and to enact in lieu thereof three new sections relating to child custody orders.

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*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Section A. Sections 452.340 and 452.375, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 452.015, 452.340, and 452.375, to read as  
3 follows:

2 **452.015. Any judge that has a family court docket or issues orders with regard to**  
3 **child custody, dissolution of a marriage involving a minor child, or any motion to modify**  
4 **a custody or dissolution order shall attend three hours of annual training on the subject**  
5 **of parental alienation.**

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support,  
2 the court may order either or both parents owing a duty of support to a child of the marriage to  
3 pay an amount reasonable or necessary for the support of the child, including an award  
4 retroactive to the date of filing the petition, without regard to marital misconduct, after  
5 considering all relevant factors including:

- 6 (1) The financial needs and resources of the child;
- 7 (2) The financial resources and needs of the parents;
- 8 (3) The standard of living the child would have enjoyed had the marriage not been  
9 dissolved;
- 10 (4) The physical and emotional condition of the child, and the child's educational needs;

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.

11 (5) The child's physical and legal custody arrangements, including the amount of time  
12 the child spends with each parent and the reasonable expenses associated with the custody or  
13 visitation arrangements; and

14 (6) The reasonable work-related child care expenses of each parent.

15 2. The obligation of the parent ordered to make support payments shall abate, in whole  
16 or in part, for such periods of time in excess of thirty consecutive days that the other parent has  
17 voluntarily relinquished physical custody of a child to the parent ordered to pay child support,  
18 notwithstanding any periods of visitation or temporary physical and legal or physical or legal  
19 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.  
20 In a IV-D case, the family support division may determine the amount of the abatement pursuant  
21 to this subsection for any child support order and shall record the amount of abatement in the  
22 automated child support system record established pursuant to chapter 454. If the case is not a  
23 IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the  
24 automated child support system record established in chapter 454.

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

28 (1) Dies;

29 (2) Marries;

30 (3) Enters active duty in the military;

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

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

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

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

41 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary  
42 school program of instruction, the parental support obligation shall continue, if the child  
43 continues to attend and progresses toward completion of said program, until the child completes  
44 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an  
45 institution of vocational or higher education not later than October first following graduation  
46 from a secondary school or completion of a graduation equivalence degree program and so long

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

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

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

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

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

118           10. Pursuant to this or any other chapter, when a court determines the amount owed by  
119 a parent for support provided to a child by another person, other than a parent, prior to the date  
120 of filing of a petition requesting support, or when the director of the family support division  
121 establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section  
122 454.465, the court or director shall use the guidelines established pursuant to subsection 8 of this  
123 section. The amount of child support resulting from the application of the guidelines shall be  
124 applied retroactively for a period prior to the establishment of a support order and the length of  
125 the period of retroactivity shall be left to the discretion of the court or director. There shall be  
126 a rebuttable presumption that the amount resulting from application of the guidelines under  
127 subsection 8 of this section constitutes the amount owed by the parent for the period prior to the  
128 date of the filing of the petition for support or the period for which state debt is being established.  
129 In applying the guidelines to determine a retroactive support amount, when information as to  
130 average monthly income is available, the court or director may use the average monthly income  
131 of the noncustodial parent, as averaged over the period of retroactivity, in determining the  
132 amount of presumed child support owed for the period of retroactivity. The court or director may  
133 enter a different amount in a particular case upon finding, after consideration of all relevant  
134 factors, including the factors set out in subsection 1 of this section, that there is sufficient cause  
135 to rebut the presumed amount.

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

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

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

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

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

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

174 **13. If both parents are awarded joint physical and joint legal custody equally under**  
175 **subsection 2 of section 452.375, neither parent shall have an obligation to pay child support**  
176 **to the other parent. Medical expenses shall be paid by both parents equally, with the**  
177 **parent providing health insurance for the child to receive a credit for the amount of**  
178 **premiums paid for the child's health care coverage.**

179 **14.** The court may enter a judgment terminating child support pursuant to subdivisions  
180 (1) to (3) of subsection 12 of this section without necessity of a court appearance by either party.  
181 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant  
182 to subsection 12 of this section on both the obligor and obligee parents. The supreme court may  
183 promulgate uniform forms for sworn statements and affidavits to terminate orders of child  
184 support obligations for use pursuant to subsection 12 of this section and subsection 4 of section  
185 452.370.

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, **substantial**, and meaningful contact with  
12 both parents;

13 (4) "Third-party custody" means a third party designated as a legal and physical  
14 custodian pursuant to subdivision (5) of subsection [5] 6 of this section.

15 2. **The court shall determine custody by awarding joint physical and joint legal**  
16 **custody of the child to both parents equally in the absence of any compelling**  
17 **circumstances, unless both parents otherwise agree to a custody arrangement. The**  
18 **residence of one of the parents shall be designated as the address of the child for the**  
19 **purposes of determining what school district the child will attend. The residence of both**  
20 **parents shall be designated as the address of the child for all mailing purposes, including**  
21 **educational mailings. For the purposes of this section, "compelling circumstances" shall**  
22 **include, but not be limited to, any violation listed in subsection 4 of this section.**

23 3. **If the court has determined that compelling circumstances exist**, the court shall  
24 determine custody in accordance with the best interests of the child. The court shall consider all  
25 relevant factors including:

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

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

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

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

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

36 (6)] (2) The mental and physical health of all individuals involved, including any history  
37 of abuse of any individuals involved. If the court finds that a pattern of domestic violence as  
38 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the  
39 abusive parent is in the best interest of the child, then the court shall enter written findings of fact

40 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best  
41 protects the child and any other child or children for whom the parent has custodial or visitation  
42 rights, and the parent or other family or household member who is the victim of domestic  
43 violence from any further harm[;

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

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

48 [3.] 4. (1) In any court proceedings relating to custody of a child, the court shall not  
49 award custody or unsupervised visitation of a child to a parent if such parent or any person  
50 residing with such parent has been found guilty of, or pled guilty to, any of the following  
51 offenses when a child was the victim:

52 (a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,  
53 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,  
54 566.209, 566.212, or 566.215;

55 (b) A violation of section 568.020;

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

57 (d) A violation of section 568.065;

58 (e) A violation of section 568.080;

59 (f) A violation of section 568.090; or

60 (g) A violation of section 568.175.

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

67 [4.] 5. The general assembly finds and declares that it is the public policy of this state  
68 that frequent, continuing and meaningful contact with both parents after the parents have  
69 separated or dissolved their marriage is in the best interest of the child, except for cases where  
70 the court specifically finds that such contact is not in the best interest of the child, and that it is  
71 the public policy of this state to encourage parents to participate in decisions affecting the health,  
72 education and welfare of their children, and to resolve disputes involving their children amicably  
73 through alternative dispute resolution. [In order to effectuate these policies, the court shall  
74 determine the custody arrangement which will best assure both parents participate in such

75 decisions and have frequent, continuing and meaningful contact with their children so long as  
76 it is in the best interests of the child.

77           5.] **6.** Prior to awarding the appropriate custody arrangement in the best interest of the  
78 child **under subsection 3 of this section**, the court shall consider each of the following as  
79 follows:

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

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

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

88           (4) Sole custody to either parent; or

89           (5) Third-party custody or visitation:

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

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

98           [6. If the parties have not agreed to a custodial arrangement, or the court determines such  
99 arrangement is not in the best interest of the child,] **7. If the court determines that compelling**  
100 **circumstances exist and a custody arrangement under subsection 2 of this section is**  
101 **inappropriate**, the court shall include a written finding in the judgment or order based on the  
102 public policy in subsection [4] **5** of this section and each of the factors listed in [subdivisions (1)  
103 to (8) of] subsection [2] **3** of this section detailing the specific relevant factors that made a  
104 particular arrangement in the best interest of the child. If a proposed custodial arrangement is  
105 rejected by the court, the court shall include a written finding in the judgment or order detailing  
106 the specific relevant factors resulting in the rejection of such arrangement.

107           [7.] **8.** Upon a finding by the court that either parent has refused to exchange  
108 information with the other parent, which shall include but not be limited to information  
109 concerning the health, education and welfare of the child, the court shall order the parent to  
110 comply immediately and to pay the prevailing party a sum equal to the prevailing party's cost

111 associated with obtaining the requested information, which shall include but not be limited to  
112 reasonable attorney's fees and court costs.

113 [8.] 9. As between the parents of a child, no preference [may] **shall** be given to either  
114 parent in the awarding of custody because of that parent's age, sex, or financial status, nor  
115 because of the age or sex of the child.

116 [9.] 10. Any judgment providing for custody shall include a specific written parenting  
117 plan setting forth the terms of such parenting plan arrangements specified in subsection [7] 8 of  
118 section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section  
119 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody  
120 plan approved and ordered by the court shall be in the court's discretion and shall be in the best  
121 interest of the child.

122 [10.] 11. Unless a parent has been denied custody rights pursuant to this section or  
123 visitation rights under section 452.400, both parents shall have access to records and information  
124 pertaining to a minor child, including, but not limited to, medical, dental, and school records.  
125 If the parent without custody has been granted restricted or supervised visitation because the  
126 court has found that the parent with custody or any child has been the victim of domestic  
127 violence, as defined in section 455.010, by the parent without custody, the court may order that  
128 the reports and records made available pursuant to this subsection not include the address of the  
129 parent with custody or the child. Unless a parent has been denied custody rights pursuant to this  
130 section or visitation rights under section 452.400, any judgment of dissolution or other applicable  
131 court order shall specifically allow both parents access to such records and reports.

132 [11.] 12. Except as otherwise precluded by state or federal law, if any individual,  
133 professional, public or private institution or organization denies access or fails to provide or  
134 disclose any and all records and information, including, but not limited to, past and present  
135 dental, medical and school records pertaining to a minor child, to either parent upon the written  
136 request of such parent, the court shall, upon its finding that the individual, professional, public  
137 or private institution or organization denied such request without good cause, order that party to  
138 comply immediately with such request and to pay to the prevailing party all costs incurred,  
139 including, but not limited to, attorney's fees and court costs associated with obtaining the  
140 requested information.

141 [12.] 13. An award of joint custody [does not preclude] **precludes** an award of child  
142 support pursuant to section 452.340 and applicable supreme court rules. The court shall consider  
143 the factors contained in section 452.340 and applicable supreme court rules in determining an  
144 amount reasonable or necessary for the support of the child, **if applicable**.

145 [13.] 14. If the court finds that domestic violence or abuse, as defined in section 455.010  
146 has occurred, the court shall make specific findings of fact to show that the custody or visitation

147 arrangement ordered by the court best protects the child and the parent or other family or  
148 household member who is the victim of domestic violence, as defined in section 455.010, and  
149 any other children for whom such parent has custodial or visitation rights from any further harm.

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