

FIRST REGULAR SESSION

HOUSE BILL NO. 289

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY (127).

0927H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 452.310 and 452.400, RSMo, and to enact in lieu thereof two new sections relating to family law proceedings.

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

Section A. Sections 452.310 and 452.400, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.310 and 452.400, to read as follows:

452.310. 1. In any proceeding commenced pursuant to this chapter, the petition, a motion to modify, a motion for a family access order and a motion for contempt shall be verified. The petition in a proceeding for dissolution of marriage shall allege that the marriage is irretrievably broken and that therefore there remains no reasonable likelihood that the marriage can be preserved. The petition in a proceeding for legal separation shall allege that the marriage is not irretrievably broken and that therefore there remains a reasonable likelihood that the marriage can be preserved.

2. The petition in a proceeding for dissolution of marriage or legal separation shall set forth:

(1) The residence of each party, including the county, and the length of residence of each party in this state and in the county of residence;

(2) The date of the marriage and the place at which it is registered;

(3) The date on which the parties separated;

(4) The name, age, and address of each child, and the parent with whom each child has primarily resided for the sixty days immediately preceding the filing of the petition for dissolution of marriage or legal separation;

(5) Whether the wife is pregnant;

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 (6) The last four digits of the Social Security number of the petitioner, respondent and
19 each child;

20 (7) Any arrangements as to the custody and support of the children and the maintenance
21 of each party; and

22 (8) The relief sought.

23 3. Upon the filing of the petition in a proceeding for dissolution of marriage or legal
24 separation, each child shall immediately be subject to the jurisdiction of the court in which the
25 proceeding is commenced, unless a proceeding involving allegations of abuse or neglect of the
26 child is pending in juvenile court. Until permitted by order of the court, neither parent shall
27 remove any child from the jurisdiction of the court or from any parent with whom the child has
28 primarily resided for the sixty days immediately preceding the filing of a petition for dissolution
29 of marriage or legal separation.

30 4. The mere fact that one parent has actual possession of the child at the time of filing
31 shall not create a preference in favor of such parent in any judicial determination regarding
32 custody of the child.

33 5. The respondent shall be served in the manner provided by the rules of the supreme
34 court and applicable court rules and, to avoid an interlocutory judgment of default, shall file a
35 verified answer within thirty days of the date of service which shall not only admit or deny the
36 allegations of the petition, but shall also set forth:

37 (1) The last four digits of the Social Security number of the petitioner, respondent and
38 each child;

39 (2) Any arrangements as to the custody and support of the child and the maintenance of
40 each party; and

41 (3) The relief sought.

42 6. Previously existing defenses to divorce and legal separation, including but not limited
43 to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

44 7. The full Social Security number of each party and each child and the date of birth of
45 each child shall be provided in the manner required under section 509.520.

46 8. The petitioner and respondent shall submit a proposed parenting plan, either
47 individually or jointly, within thirty days after service of process or the filing of the entry of
48 appearance, whichever event first occurs of a motion to modify or a petition involving custody
49 or visitation issues. The proposed parenting plan shall set forth the arrangements that the party
50 believes to be in the best interest of the minor children and shall include but not be limited to:

51 (1) A specific written schedule detailing the custody, visitation and residential time for
52 each child with each party including:

53 (a) Major holidays stating which holidays a party has each year;

- 54 (b) School holidays for school-age children;
- 55 (c) The child's birthday, Mother's Day and Father's Day;
- 56 (d) Weekday and weekend schedules and for school-age children how the winter, spring,
57 summer and other vacations from school will be spent;
- 58 (e) The times and places for transfer of the child between the parties in connection with
59 the residential schedule;
- 60 (f) A plan for sharing transportation duties associated with the residential schedule;
- 61 (g) Appropriate times for telephone access;
- 62 (h) Suggested procedures for notifying the other party when a party requests a temporary
63 variation from the residential schedule;
- 64 (i) Any suggested restrictions or limitations on access to a party and the reasons such
65 restrictions are requested;
- 66 (2) A specific written plan regarding legal custody which details how the
67 decision-making rights and responsibilities will be shared between the parties including the
68 following:
- 69 (a) Educational decisions and methods of communicating information from the school
70 to both parties;
- 71 (b) Medical, dental and health care decisions including how health care providers will
72 be selected and a method of communicating medical conditions of the child and how emergency
73 care will be handled;
- 74 (c) Extracurricular activities, including a method for determining which activities the
75 child will participate in when those activities involve time during which each party is the
76 custodian;
- 77 (d) Child care providers, including how such providers will be selected;
- 78 (e) Communication procedures including access to telephone numbers as appropriate;
- 79 (f) A dispute resolution procedure for those matters on which the parties disagree or in
80 interpreting the parenting plan;
- 81 (g) If a party suggests no shared decision-making, a statement of the reasons for such a
82 request;
- 83 **(h) If a party to the action has a duly appointed legal guardian at the time the**
84 **parenting plan is created, then the parenting plan shall incorporate the authority of the**
85 **guardian as defined under section 452.400 and shall be adopted by the court in an**
86 **expressed written order in the dissolution decree;**
- 87 **(i) If a parent requires a duly appointed legal guardian after the parenting plan is**
88 **created and adopted by the court, the authority of the guardian as defined under section**

89 **452.400 shall automatically be incorporated into the parenting plan as if it were originally**
90 **incorporated into the parenting plan when it was created and adopted by the court; and**

91 **(j) A guardian who is awarded third-party joint custody of the child or children for**
92 **oversight supervision of the safety, health, care, support, education and welfare of the child**
93 **or children shall not be held financially responsible for the health, care, support, education**
94 **and welfare, or treatment of the child or children;**

95 (3) How the expenses of the child, including child care, educational and extraordinary
96 expenses as defined in the child support guidelines established by the supreme court, will be paid
97 including:

98 (a) The suggested amount of child support to be paid by each party;

99 (b) The party who will maintain or provide health insurance for the child and how the
100 medical, dental, vision, psychological and other health care expenses of the child not paid by
101 insurance will be paid by the parties;

102 (c) The payment of educational expenses, if any;

103 (d) The payment of extraordinary expenses of the child, if any;

104 (e) Child care expenses, if any;

105 (f) Transportation expenses, if any.

106 9. If the proposed parenting plans of the parties differ and the parties cannot resolve the
107 differences or if any party fails to file a proposed parenting plan, upon motion of either party and
108 an opportunity for the parties to be heard, the court shall enter a temporary order containing a
109 parenting plan setting forth the arrangements specified in subsection 8 of this section which will
110 remain in effect until further order of the court. The temporary order entered by the court shall
111 not create a preference for the court in its adjudication of final custody, child support or
112 visitation.

113 10. Within one hundred twenty days after August 28, 1998, the Missouri supreme court
114 shall have in effect guidelines for a parenting plan form which may be used by the parties
115 pursuant to this section in any dissolution of marriage, legal separation or modification
116 proceeding involving issues of custody and visitation relating to the child.

117 11. The filing of a parenting plan for any child over the age of eighteen for whom
118 custody, visitation, or support is being established or modified by a court of competent
119 jurisdiction is not required. Nothing in this section shall be construed as precluding the filing
120 of a parenting plan upon agreement of the parties or if ordered to do so by the court for any child
121 over the age of eighteen for whom custody, visitation, or support is being established or modified
122 by a court of competent jurisdiction.

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:

85

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

137 **10. A duly appointed legal guardian of a parent of a child shall have authority to**
138 **file and respond to a motion:**

139 **(1) For family access;**

140 **(2) To modify the parenting plan or dissolution decree;**

141 **(3) To modify child custody;**

142 **(4) To modify child support;**

143 **(5) To modify child visitations;**

144 **(6) For the guardian to be awarded third-party joint custody of the child and to file**
145 **a motion for contempt of court against the parent having custody of the child that provides**
146 **oversight supervision of the child's or children's care, health, education, support, welfare,**
147 **and safety upon showing by a preponderance of evidence that the parent having custody**
148 **of the child has engaged in a custom, pattern, or practice of violating any provision in the**
149 **parenting plan or dissolution decree; and**

150 **(7) For a change of the court's venue to the county where the guardian resides;**
151
152 **without having to be represented by legal counsel, being guilty of the unauthorized practice**
153 **of law as defined in sections 484.010 and 484.020, and having to file either a motion to**
154 **intervene or a motion to substitute. In addition, the guardian shall be deemed acting**
155 **lawfully under Missouri supreme court rule 52.02 in the course of filing or responding to**
156 **any such motion and shall have the right to appear before the court for and on the behalf**
157 **of the parent in filing or responding to any such motion.**

158 **11. A duly appointed legal guardian of a parent of the child shall be authorized and**
159 **appointed by the court to supervise any visitations between the parent whom he or she is**
160 **guardian of, and visitations between the child and the parent having a guardian shall be**
161 **authorized without the presence of the other parent provided that the guardian is present**
162 **during the visit and supervises the visitation.**

163 **12. A duly appointed legal guardian shall have the right and authority to intervene**
164 **on behalf of the parent whom he or she is guardian of if the child is placed in either a**
165 **short-term or long-term facility for medical, psychiatric, psychological, or behavioral care,**
166 **observation, or treatment and shall have the right and authority to receive protected health**
167 **information about the child upon providing the facility with the letters of guardianship.**
168 **This is an attempt to ensure that the parent whom he or she is guardian of is able to**
169 **exercise his or her parental rights in participating in the care or treatment decisions of the**
170 **child. The facility shall not restrict or prevent the guardian from exercising his or her**
171 **rights or authority without first obtaining leave of court.**

172 **13. A parent having custody of a child or children who wishes to file a motion to**
173 **amend the parenting plan, a dissolution decree, parental rights or custody, child support,**
174 **or visitation plan shall provide service of process upon the duly appointed legal guardian**
175 **of a parent of the child as provided in the Missouri rules of civil procedure, and service of**
176 **process shall not be deemed served unless it has been served directly upon the guardian.**
177 **Upon service of process, the guardian shall be deemed as lawfully acting under Missouri**
178 **supreme court rule 52.02 and shall have all legal rights, liberties, and privileges to respond**
179 **in filing pleadings and appearing before the court as if the guardian were the parent for**

180 **whom he or she is guardian, without having to be represented by legal counsel, being guilty**
181 **of the unauthorized practice of law as defined in sections 484.010 and 484.020, and having**
182 **to file either a motion to intervene or a motion to substitute.**

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