

FIRST REGULAR SESSION

# HOUSE BILL NO. 947

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WALLINGFORD.

2100H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 452.335, 452.370, and 452.375, RSMo, and to enact in lieu thereof three new sections relating to domestic relations.

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

Section A. Sections 452.335, 452.370, and 452.375, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 452.335, 452.370, and 452.375, to read as follows:

452.335. 1. In a proceeding for nonretroactive invalidity, dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order to either spouse, **which may be bridge, rehabilitative, or durational**, but only if it finds that the spouse seeking maintenance:

(1) Lacks sufficient property, including marital property apportioned to him **or her**, to provide for his **or her** reasonable needs; and

(2) Is unable to support himself **or herself** through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors, including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him **or her**, and his **or her** ability to meet his **or her** needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (2) The time necessary to acquire sufficient education or training to enable the party  
18 seeking maintenance to find appropriate employment;

19 (3) The comparative earning capacity of each spouse;

20 (4) The standard of living established during the marriage;

21 (5) The obligations and assets, including the marital property apportioned to him **or her**  
22 and the separate property of each party;

23 (6) The duration of the marriage;

24 (7) The age[;] and the physical and emotional condition of [~~the spouse seeking~~  
25 ~~maintenance~~] **each party**;

26 (8) The ability of the spouse from whom maintenance is sought to meet his **or her** needs  
27 while meeting those of the spouse seeking maintenance;

28 (9) The conduct of the parties during the marriage; and

29 (10) Any other relevant factors.

30 3. The maintenance order shall state if it is **bridge, rehabilitative, or durational and**  
31 **whether the order is** modifiable or nonmodifiable. The court may order maintenance which  
32 includes a termination date **in accordance with the provisions of this section**. Unless the  
33 maintenance order which includes a termination date is nonmodifiable, the court may order the  
34 maintenance decreased, increased, terminated, extended, or otherwise modified based upon a  
35 substantial and continuing change of circumstances which occurred prior to the termination date  
36 of the original order; **provided that no maintenance order shall be modified to extend its**  
37 **duration in excess of the limits established in this section, except as provided in subsection**  
38 **10 of this section**.

39 4. For purposes of determining maintenance only, a short-term marriage is a  
40 marriage having a duration of less than seven years; a moderate-term marriage is a  
41 marriage having a duration of seven years or more but less than seventeen years; and a  
42 long-term marriage is a marriage having a duration of seventeen years or more. The  
43 duration of a marriage is the period of time from the first day of the marriage until the  
44 date of the filing of a petition for dissolution of marriage or legal separation.

45 5. Bridge maintenance may be awarded to assist a party to a short-term marriage  
46 seeking maintenance with legitimate, identifiable short-term needs. The length of the  
47 maintenance shall not exceed two years. An award of bridge maintenance shall terminate  
48 upon the death of either party or upon the remarriage of the party receiving maintenance.  
49 An award of bridge maintenance shall not be modifiable in amount or duration.

50 6. (1) Rehabilitative maintenance may be awarded to assist a party to a short-term  
51 or moderate-term marriage seeking maintenance in establishing the capacity for self-  
52 support through either:

53           (a) The redevelopment of previous skills or credentials; or  
54           (b) The acquisition of education, training, or work experience necessary to develop  
55 appropriate employment skills or credentials.

56           (2) In order to award rehabilitative maintenance, there shall be a specific and  
57 defined rehabilitative plan, which shall be included as part of any order awarding  
58 rehabilitative maintenance. The length of the maintenance shall not exceed four years.

59           (3) An award of rehabilitative maintenance may be modified or terminated based  
60 upon a substantial change in circumstances, upon noncompliance with the rehabilitative  
61 plan, or upon completion of the rehabilitative plan; provided, that the length of the  
62 maintenance shall not be modified to exceed the limits set forth in this subsection, except  
63 as provided in subsection 10 of this section.

64           7. Durational maintenance may be awarded to provide for the needs and necessities  
65 of life as they were established during a moderate-term or long-term marriage. Durational  
66 maintenance may be awarded if such an award is appropriate upon consideration of the  
67 factors set forth in subsection 2 of this section.

68           8. A court shall not order durational maintenance that remains in effect for more  
69 than:

70           (1) Five years if the duration of the marriage was seven years or more but less than  
71 ten years;

72           (2) Seven years if the duration of the marriage was ten years or more but less than  
73 seventeen years; or

74           (3) Ten years if the duration of the marriage was seventeen years or more.  
75

76 An award of durational maintenance may be modified in accordance with the provisions  
77 of subsection 3 of this section; provided, that the length of the maintenance shall not be  
78 modified to exceed the limits set forth in this subsection, except as provided in subsection  
79 10 of this section.

80           9. In establishing the term of durational maintenance, and for purposes of  
81 maintenance modifications decided on or after August 28, 2021, the court shall consider  
82 all relevant factors, including, but not limited to:

83           (1) The ability of the spouse paying maintenance to retire;

84           (2) Whether the court or the parties considered the retirement of the spouse paying  
85 maintenance in previous agreements or maintenance awards, including whether the spouse  
86 receiving maintenance has foregone or relinquished claims, rights, or property in exchange  
87 for a more substantial or longer maintenance award;

88           (3) Access to health care by both of the spouses; and

89           **(4) The duration and amount of maintenance already paid.**

90           **10. Notwithstanding any other provision of law to the contrary, a court may award**  
91 **or modify rehabilitative or durational maintenance in excess of the limits set forth in this**  
92 **section if the court specifically finds, after consideration of all relevant factors, including**  
93 **those set forth in subsection 2 of this section, that such limits are not in the interests of**  
94 **fairness for the party seeking maintenance or modification of an existing maintenance**  
95 **order. The court shall enter written findings of fact and conclusions of law setting forth**  
96 **the grounds for exceeding the limits set forth in this section in the order establishing or**  
97 **modifying rehabilitative or durational maintenance.**

98           **11. An order awarding maintenance shall be subject to modification or termination**  
99 **if it can be shown that the recipient and another person have entered into a mutually**  
100 **supportive relationship that is the functional equivalent of marriage that has existed for**  
101 **at least twelve months of an eighteen-month period.**

102           **12. For purposes of modification of prior orders establishing maintenance, the**  
103 **standards set forth in this section shall be applicable to all initial actions and modifications**  
104 **decided on or after August 28, 2021.**

          452.370. 1. Except as otherwise provided in subsection 6 of section 452.325, **and in**  
2 **accordance with the provisions of section 452.335**, the provisions of any judgment respecting  
3 maintenance or support may be modified only upon a showing of changed circumstances so  
4 substantial and continuing as to make the terms unreasonable. In a proceeding for modification  
5 of any child support or maintenance judgment, the court, in determining whether or not a  
6 substantial change in circumstances has occurred, shall consider all financial resources of both  
7 parties, including the extent to which the reasonable expenses of either party are, or should be,  
8 shared by a spouse or other person with whom he or she cohabits, and the earning capacity of a  
9 party who is not employed. If the application of the child support guidelines and criteria set forth  
10 in section 452.340 and applicable supreme court rules to the financial circumstances of the  
11 parties would result in a change of child support from the existing amount by twenty percent or  
12 more, a prima facie showing has been made of a change of circumstances so substantial and  
13 continuing as to make the present terms unreasonable, if the existing amount was based upon the  
14 presumed amount pursuant to the child support guidelines.

15           2. When the party seeking modification has met the burden of proof set forth in  
16 subsection 1 of this section, the child support shall be determined in conformity with criteria set  
17 forth in section 452.340 and applicable supreme court rules.

18           3. Unless otherwise agreed in writing or expressly provided in the judgment, the  
19 obligation to pay future statutory maintenance is terminated upon the death of either party [or]  
20 , the remarriage of the party receiving maintenance, **or if it can be shown that the party**

21 **receiving maintenance and another person have entered into a mutually supportive**  
22 **relationship that is the functional equivalent of marriage that has existed for at least twelve**  
23 **months of an eighteen-month period.**

24 4. Unless otherwise agreed in writing or expressly provided in the judgment, provisions  
25 for the support of a child are terminated by emancipation of the child. The parent entitled to  
26 receive child support shall have the duty to notify the parent obligated to pay support of the  
27 child's emancipation and failing to do so, the parent entitled to receive child support shall be  
28 liable to the parent obligated to pay support for child support paid following emancipation of a  
29 minor child, plus interest.

30 5. If a parent has made an assignment of support rights to the family support division on  
31 behalf of the state as a condition of eligibility for benefits pursuant to the Temporary Assistance  
32 for Needy Families program and either party initiates a motion to modify the support obligation  
33 by reducing it, the state of Missouri shall be named as a party to the proceeding. The state shall  
34 be served with a copy of the motion by sending it by certified mail to the director of the family  
35 support division.

36 6. The court shall have continuing personal jurisdiction over both the obligee and the  
37 obligor of a court order for child support or maintenance for the purpose of modifying such  
38 order. Both obligee and obligor shall notify, in writing, the clerk of the court in which the  
39 support or maintenance order was entered of any change of mailing address. If personal service  
40 of the motion cannot be had in this state, the motion to modify and notice of hearing shall be  
41 served outside the state as provided by supreme court rule 54.14. The order may be modified  
42 only as to support or maintenance installments which accrued subsequent to the date of personal  
43 service. For the purpose of 42 U.S.C. Section 666(a)(9)(C), the circuit clerk shall be considered  
44 the appropriate agent to receive notice of the motion to modify for the obligee or the obligor, but  
45 only in those instances in which personal service could not be had in this state.

46 7. If a responsive pleading raising the issues of custody or visitation is filed in response  
47 to a motion to modify child support filed at the request of the family support division by a  
48 prosecuting attorney or circuit attorney or an attorney under contract with the division, such  
49 responsive pleading shall be severed upon request.

50 8. Notwithstanding any provision of this section which requires a showing of substantial  
51 and continuing change in circumstances, in a IV-D case filed pursuant to this section by the  
52 family support division as provided in section 454.400, the court shall modify a support order  
53 in accordance with the guidelines and criteria set forth in supreme court rule 88.01 and any  
54 regulations thereunder if the amount in the current order differs from the amount which would  
55 be ordered in accordance with such guidelines or regulations.

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 **There shall be a rebuttable presumption that an award of equal or approximately equal**  
16 **parenting time to each parent is in the best interests of the child. Such presumption is**  
17 **rebuttable only by a preponderance of the evidence in accordance with all relevant factors**  
18 **including, but not limited to, the factors contained in subdivisions (1) to (8) of this**  
19 **subsection. The presumption may be rebutted if the court finds that the parents have**  
20 **reached an agreement on all issues related to custody, or if the court finds that a pattern**  
21 **of domestic violence has occurred as set out in subdivision (6) of this subsection.** When the  
22 parties have not reached an agreement on all issues related to custody, the court shall consider  
23 all relevant factors and enter written findings of fact and conclusions of law, including, but not  
24 limited to, the following:

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

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

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

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

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

35 (6) The mental and physical health of all individuals involved, including any history of  
36 abuse of any individuals involved. If the court finds that a pattern of domestic violence as  
37 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the

38 abusive parent is in the best interest of the child, then the court shall enter written findings of fact  
39 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best  
40 protects the child and any other child or children for whom the parent has custodial or visitation  
41 rights, and the parent or other family or household member who is the victim of domestic  
42 violence from any further harm;

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

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

47 3. (1) In any court proceedings relating to custody of a child, the court shall not award  
48 custody or unsupervised visitation of a child to a parent if such parent or any person residing with  
49 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child  
50 was the victim:

51 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062,  
52 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203, 566.206,  
53 566.209, 566.211, or 566.215;

54 (b) A violation of section 568.020;

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

56 (d) A violation of section 568.065;

57 (e) A violation of section 573.200;

58 (f) A violation of section 573.205; or

59 (g) A violation of section 568.175.

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

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

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

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

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

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

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

86           (4) Sole custody to either parent; or

87           (5) Third-party custody or visitation:

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

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

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

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

110           8. As between the parents of a child, no preference may be given to either parent in the  
111 awarding of custody because of that parent's age, sex, or financial status, nor because of the age  
112 or sex of the child. The court shall not presume that a parent, solely because of his or her sex,  
113 is more qualified than the other parent to act as a joint or sole legal or physical custodian for the  
114 child.

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

121           10. After August 28, 2016, every court order establishing or modifying custody or  
122 visitation shall include the following language: "In the event of noncompliance with this order,  
123 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party  
124 custody is denied or interfered with by a parent or third party without good cause, the aggrieved  
125 person may file a family access motion with the court stating the specific facts that constitute a  
126 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment  
127 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the  
128 procedures for filing a family access motion and a simple form for use in filing the family access  
129 motion. A family access motion does not require the assistance of legal counsel to prepare and  
130 file."

131           11. No court shall adopt any local rule, form, or practice requiring a standardized or  
132 default parenting plan for interim, temporary, or permanent orders or judgments.  
133 Notwithstanding any other provision **of law** to the contrary, a court may enter an interim order  
134 in a proceeding under this chapter, provided that the interim order shall not contain any  
135 provisions about child custody or a parenting schedule or plan without first providing the parties  
136 with notice and a hearing, unless the parties otherwise agree.

137           12. Unless a parent has been denied custody rights pursuant to this section or visitation  
138 rights under section 452.400, both parents shall have access to records and information  
139 pertaining to a minor child including, but not limited to, medical, dental, and school records. If  
140 the parent without custody has been granted restricted or supervised visitation because the court  
141 has found that the parent with custody or any child has been the victim of domestic violence, as  
142 defined in section 455.010, by the parent without custody, the court may order that the reports  
143 and records made available pursuant to this subsection not include the address of the parent with  
144 custody or the child. A court shall order that the reports and records made available under this  
145 subsection not include the address of the parent with custody if the parent with custody is a

146 participant in the address confidentiality program under section 589.663. Unless a parent has  
147 been denied custody rights pursuant to this section or visitation rights under section 452.400, any  
148 judgment of dissolution or other applicable court order shall specifically allow both parents  
149 access to such records and reports.

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

158         14. An award of joint custody does not preclude an award of child support pursuant to  
159 section 452.340 and applicable supreme court rules. The court shall consider the factors  
160 contained in section 452.340 and applicable supreme court rules in determining an amount  
161 reasonable or necessary for the support of the child.

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

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