

FIRST REGULAR SESSION

HOUSE BILL NO. 334

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TATE.

0372H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.117, 211.038, 452.375, and 452.400, RSMo, and to enact in lieu thereof four new sections relating to children being placed in the custody of certain offenders, with penalty provisions.

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

Section A. Sections 210.117, 211.038, 452.375, and 452.400, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 210.117, 211.038, 452.375, and 452.400, to read as follows:

210.117. 1. A child taken into the custody of the state shall not be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of any of the following offenses when a child was the victim:

(1) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062, 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, or 566.215;

(2) A violation of section 568.020;

(3) Abuse of a child under section 568.060 when such abuse is sexual in nature;

(4) A violation of section 568.065;

(5) A violation of section 573.200;

(6) A violation of section 573.205; or

(7) A violation of section 568.175;

(8) A violation of section 566.040, 566.070, or 566.090 as such sections existed prior to August 28, 2013; or

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.

15 (9) A violation of section 566.212, 568.080, or 568.090 as such sections existed prior
16 to January 1, 2017.

17 2. For all other violations of offenses in chapters 566 and 568 not specifically listed in
18 subsection 1 of this section or for a violation of an offense committed in another state when a
19 child is the victim that would be a violation of chapter 566 or 568, if committed in Missouri, the
20 division may exercise its discretion regarding the placement of a child taken into the custody of
21 the state in which a parent or any person residing in the home has been found guilty of any such
22 offense.

23 3. In any case where the children's division determines based on a substantiated report
24 of child abuse that a child has abused another child, the abusing child shall be prohibited from
25 returning to or residing in any residence, facility, or school within one thousand feet of the
26 residence of the abused child or any child care facility or school that the abused child attends,
27 unless and until a court of competent jurisdiction determines that the alleged abuse did not occur
28 or the abused child reaches the age of eighteen, whichever earlier occurs. The provisions of this
29 subsection shall not apply when the abusing child and the abused child are siblings or children
30 living in the same home.

211.038. 1. A child under the jurisdiction of the juvenile court shall not be reunited with
2 a parent or placed in a home in which the parent or any person residing in the home has been
3 found guilty of any of the following offenses when a child was the victim:

4 (1) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062,
5 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.100, 566.101, 566.111, 566.151,
6 566.203, 566.206, 566.209, **566.210**, 566.211, or 566.215;

7 (2) A violation of section 568.020;

8 (3) Abuse of a child under section 568.060 when such abuse is sexual in nature;

9 (4) A violation of section 568.065;

10 (5) A violation of section 573.200;

11 (6) A violation of section 573.205; or

12 (7) A violation of section 568.175;

13 (8) A violation of section 566.040, 566.070, or 566.090 as such sections existed prior
14 to August 28, 2013; or

15 (9) A violation of section 566.212, 568.080, or 568.090 as such sections existed prior
16 to January 1, 2017.

17 2. For all other violations of offenses in chapters 566 and 568 not specifically listed in
18 subsection 1 of this section or for a violation of an offense committed in another state when a
19 child is the victim that would be a violation of chapter 566 or 568 if committed in Missouri, the
20 juvenile court may exercise its discretion regarding the placement of a child under the

21 jurisdiction of the juvenile court in a home in which a parent or any person residing in the home
22 has been found guilty of, or pled guilty to, any such offense.

23 3. If the juvenile court determines that a child has abused another child, such abusing
24 child shall be prohibited from returning to or residing in any residence located within one
25 thousand feet of the residence of the abused child, or any child care facility or school that the
26 abused child attends, until the abused child reaches eighteen years of age. The prohibitions of
27 this subsection shall not apply where the alleged abuse occurred between siblings or children
28 living in the same home.

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 When the parties have not reached an agreement on all issues related to custody, the court shall
16 consider all relevant factors and enter written findings of fact and conclusions of law, including,
17 but not limited to, the following:

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

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

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

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

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

28 (6) The mental and physical health of all individuals involved, including any history of
29 abuse of any individuals involved. If the court finds that a pattern of domestic violence as
30 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the
31 abusive parent is in the best interest of the child, then the court shall enter written findings of fact
32 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best
33 protects the child and any other child or children for whom the parent has custodial or visitation
34 rights, and the parent or other family or household member who is the victim of domestic
35 violence from any further harm;

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

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

40 3. (1) In any court proceedings relating to custody of a child, the court shall not award
41 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
42 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
43 was the victim:

44 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060, 566.061, 566.062,
45 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111, 566.151, 566.203, 566.206,
46 566.209, **566.210**, 566.211, or 566.215;

47 (b) A violation of section 568.020;

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

49 (d) A violation of section 568.065;

50 (e) A violation of section 573.200;

51 (f) A violation of section 573.205; or

52 (g) A violation of section 568.175.

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

59 4. The general assembly finds and declares that it is the public policy of this state that
60 frequent, continuing and meaningful contact with both parents after the parents have separated
61 or dissolved their marriage is in the best interest of the child, except for cases where the court
62 specifically finds that such contact is not in the best interest of the child, and that it is the public
63 policy of this state to encourage parents to participate in decisions affecting the health, education

64 and welfare of their children, and to resolve disputes involving their children amicably through
65 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
66 custody arrangement which will best assure both parents participate in such decisions and have
67 frequent, continuing and meaningful contact with their children so long as it is in the best
68 interests of the child.

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

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

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

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

79 (4) Sole custody to either parent; or

80 (5) Third-party custody or visitation:

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

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

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

97 7. Upon a finding by the court that either parent has refused to exchange information
98 with the other parent, which shall include but not be limited to information concerning the
99 health, education and welfare of the child, the court shall order the parent to comply immediately

100 and to pay the prevailing party a sum equal to the prevailing party's cost associated with
101 obtaining the requested information, which shall include but not be limited to reasonable
102 attorney's fees and court costs.

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

108 9. Any judgment providing for custody shall include a specific written parenting plan
109 setting forth the terms of such parenting plan arrangements specified in subsection 8 of section
110 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
111 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
112 approved and ordered by the court shall be in the court's discretion and shall be in the best
113 interest of the child.

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

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

130 12. Unless a parent has been denied custody rights pursuant to this section or visitation
131 rights under section 452.400, both parents shall have access to records and information
132 pertaining to a minor child including, but not limited to, medical, dental, and school records. If
133 the parent without custody has been granted restricted or supervised visitation because the court
134 has found that the parent with custody or any child has been the victim of domestic violence, as
135 defined in section 455.010, by the parent without custody, the court may order that the reports

136 and records made available pursuant to this subsection not include the address of the parent with
137 custody or the child. A court shall order that the reports and records made available under this
138 subsection not include the address of the parent with custody if the parent with custody is a
139 participant in the address confidentiality program under section 589.663. Unless a parent has
140 been denied custody rights pursuant to this section or visitation rights under section 452.400, any
141 judgment of dissolution or other applicable court order shall specifically allow both parents
142 access to such records and reports.

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

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

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

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, **566.031**, 566.032, [~~566.031,~~] 566.060, **566.061**,
13 566.062, 566.064, 566.067, 566.068, [~~566.061,~~] 566.083, [~~566.101,~~] 566.100, **566.101**, 566.111,
14 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, 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 573.200;

19 f. A violation of section 573.205; 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, **566.031**, 566.032, [~~566.031,~~] 566.060, **566.061**,
44 566.062, 566.064, 566.067, 566.068, [~~566.061,~~] 566.083, [~~566.101,~~] 566.100, **566.101**, 566.111,
45 566.151, 566.203, 566.206, 566.209, **566.210**, 566.211, 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 573.200;
50 f. A violation of section 573.205; 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
62 "Supervised visitation", as used in this section, is visitation which takes place in the presence of
63 a responsible adult appointed by the court for the protection of the child.

64 3. The court shall mandate compliance with its order by all parties to the action,
65 including parents, children and third parties. In the event of noncompliance, the aggrieved
66 person may file a verified motion for contempt. If custody, visitation or third-party custody is
67 denied or interfered with by a parent or third party without good cause, the aggrieved person may
68 file a family access motion with the court stating the specific facts which constitute a violation
69 of the judgment of dissolution, legal separation or judgment of paternity. The state courts
70 administrator shall develop a simple form for pro se motions to the aggrieved person, which shall
71 be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit clerk,
72 shall explain to aggrieved parties the procedures for filing the form. Notice of the fact that clerks
73 will provide such assistance shall be conspicuously posted in the clerk's offices. The location
74 of the office where the family access motion may be filed shall be conspicuously posted in the
75 court building. The performance of duties described in this section shall not constitute the
76 practice of law as defined in section 484.010. Such form for pro se motions shall not require the
77 assistance of legal counsel to prepare and file. The cost of filing the motion shall be the standard
78 court costs otherwise due for instituting a civil action in the circuit court.

79 4. Within five court days after the filing of the family access motion pursuant to
80 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
81 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
82 served upon the respondent by personal process server as provided by law or by any sheriff.
83 Such service shall be served at the earliest time and shall take priority over service in other civil

84 actions, except those of an emergency nature or those filed pursuant to chapter 455. The motion
85 shall contain the following statement in boldface type:

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

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

92 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE
93 THE 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 court shall consider, in a proceeding to enforce or modify a permanent custody
125 or visitation order or judgment, a party's violation, without good cause, of a provision of the
126 parenting plan, for the purpose of determining that party's ability and willingness to allow the
127 child frequent and meaningful contact with the other party.

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

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

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

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