

FIRST REGULAR SESSION

HOUSE BILL NO. 852

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

1766H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 452.400, RSMo, and to enact in lieu thereof one new section relating to family access motions.

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

Section A. Section 452.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.400, to read as follows:

452.400. 1. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his or her emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights to the child and any other children for whom such parent has custodial or visitation rights. In determining the granting of visitation rights, the court shall consider evidence of domestic violence. If the court finds that domestic violence has occurred, the court may find that granting visitation to the abusive party is in the best interests of the child.

(2) (a) The court shall not grant visitation to the parent not granted custody if such parent or any person residing with such parent has been found guilty of or pled guilty to any of the following offenses when a child was the victim:

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

b. A violation of section 568.020;

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

d. A violation of section 568.065;

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

- 18 e. A violation of section 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, 566.032, 566.031, 566.060, 566.062, 566.064,
44 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111, 566.151, 566.203, 566.206,
45 566.209, 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.

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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 **waived**.
78 **If, however, the court finds that the order for custody, visitation, or third-party custody**
79 **has been complied with, the person filing such motion shall pay** the standard court costs
80 otherwise due for instituting a civil action in the circuit court.

81 4. Within five court days after the filing of the family access motion pursuant to
82 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
83 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
84 served upon the respondent by personal process server as provided by law or by any sheriff. **Any**
85 **costs associated with such service shall be waived by the court; except that, if the court**
86 **finds that the order for custody, visitation, or third-party custody has been complied with,**
87 **the person filing such motion shall be responsible for any such costs under this subsection.**
88 Such service shall be served at the earliest time and shall take priority over service in other civil

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

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

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

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

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

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

105 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO
106 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED
107 PARTY AND THE CHILD; AND

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

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

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

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

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

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

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

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

130 7. The court shall consider, in a proceeding to enforce or modify a permanent custody
131 or visitation order or judgment, a party's violation, without good cause, of a provision of the
132 parenting plan, for the purpose of determining that party's ability and willingness to allow the
133 child frequent and meaningful contact with the other party.

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

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

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

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