In Your Child's Best Interest

A HANDBOOK FOR SEPARATING/DIVORCING PARENTS

Includes information about:

- Parents Who Represent Themselves
- Court Ordered Programs
- Mediation
- Parenting Plan
- Deploying Military Parents
- Motion for Family Access Order
- Assumptions in Calculating Child Support
- Child Support and College Enrollment
- Termination of Child Support
- Relocation
- Paternity

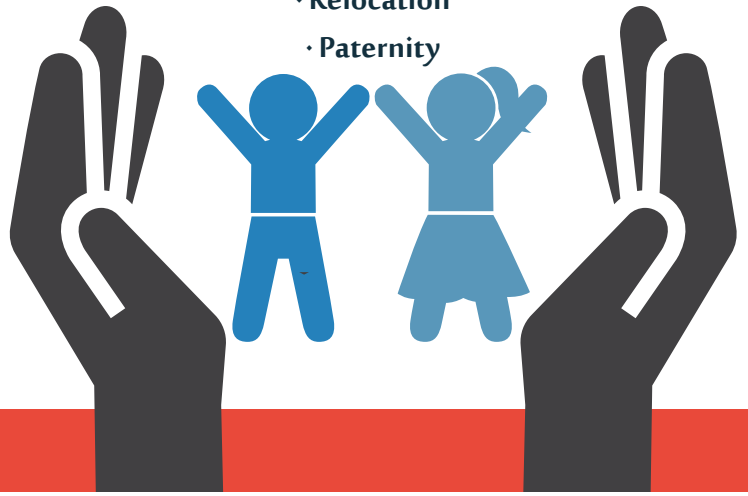


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Definition of Terms

To understand this handbook, you should review the following terms:

Answer - A written response to a petition.

Custody – Joint legal custody, sole legal custody, joint physical custody, sole physical custody, or any combination thereof.

Dissolution (Divorce) – The process by which a marriage is ended.

Entry of Appearance – A document filed with the court stating that an individual or his or her attorney will appear at a court proceeding.

Family Violence – Attempting to cause or causing bodily injury to a family or household member, or placing a family or household member in fear of physical harm.

Guardian Ad Litem (GAL) – An attorney appointed by the court to consider and protect the child's best interest. The court may order the parties to pay the GAL fees.

In Forma Pauperis – In the manner of an indigent who is allowed to not pay filing fees and court costs.

Joint Legal Custody – Parents share the decision-making rights, responsibilities, and authority relating to the health, education, and welfare of a child.

Joint Physical Custody – Each parent has significant but not necessarily equal periods of time during which a child resides with him or her or is under his or her care and supervision.

Judgment of Dissolution – A court order containing the terms under which a marriage is ended.

Judgment of Legal Separation – A court order containing the terms under which a married couple will live separately.

Motion to Modify – A written request to a court to change specific provisions of a judgment of dissolution or legal separation.

Modification Judgment – A court order containing changes in the terms of a judgment of dissolution or legal separation.

Mediation – A process in which a trained, neutral person, often appointed by the court, helps parents make decisions about and for their children.

Parenting Plan – A written plan of how parents will provide for the care and well-being of their child.

Parenting Time – The time each parent spends with his or her child.

Personal Service – Delivery of a summons by a sheriff or private process server to the person against whom a petition or motion has been filed.

Petition – A written request to a court for action on a certain matter.

Petitioner – The person who files a petition with the court.

Pro Se – A person who represents him or herself in a court proceeding without the help of a lawyer.

Respondent – The person who files an answer to a petition.

Sole Legal Custody – One parent has the decision-making rights, responsibilities, and authority relating to the health, education, and welfare of a child.

Sole Physical Custody – A child resides primarily with one parent or is under the care and supervision primarily of one parent.

Summons – Notifies the person against whom a petition or motion has been filed of the date to appear in court or to file an answer.

Third-Party Custody – Another person, often a relative, named by the court having legal and physical custody of a child.

Visitation – The right of a parent to spend time with his or her child.

Parents Who Represent Themselves

If you plan to represent yourself in a family law matter (divorce, modification of child custody or child support, or paternity), you are required to complete the Litigant Awareness Program and file your certificate with the court. The litigant awareness program can be found here: https://www.selfrepresent.mo.gov/page.jsp?id=5240.

Forms and additional resources can also be found on the “Representing Yourself” website.

Court Ordered Programs

Parent Education:
A parent education program makes parents aware of the many issues and problems faced by a child when family situations change and provides parents with information to help them recognize and respond to their child's needs.

Both parents must attend educational sessions concerning the effects of a dissolution on a child. The court also may order that the child participate.

Child Counseling:
The court may order counseling for a child to help the child deal with his or her feelings and to cope better with the stress and change involved in his or her parent's dissolution.

Who pays the cost of these programs?
The court may divide any cost of these services between the parents.



Mediation

What is mediation?
If parents are unable to work together to resolve disputes involving their child, they may try mediation. A mediator is a trained neutral person who helps parents resolve disagreements about child related issues.

What are the benefits of mediation?
Mediation is beneficial because it:

- Helps parents establish their own agreement about what is best for their child;
- Gives each parent an opportunity to express his or her views;
- Can save time and attorney fees;
- Promotes early and meaningful communication between parents; and
- Reduces conflict among all family members.

Who pays for mediation?
The court may divide any cost of these services between the parents.

Where can I get more information?
The name and telephone number of counselors and mediators in your area may be available in the circuit clerk's office in your local courthouse.

Parenting Plan

What is a parenting plan?
A parenting plan is a written plan of how parents will provide for the care and well-being of their child. A parenting plan:

- Must always be "in the best interest of the child";
- Must be presented to the court for approval; and
- Is binding on the parents once approved by the court.

What is in the best interest of the child?
The law requires the courts to consider these factors:

- The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties.
- The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child.
- The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests.
- Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent.
- The child's adjustment to the child's home, school, and community.
- The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence as defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm.
- The intention of either parent to relocate the principal residence of the child.
- The wishes of a child as to the child's custodian. The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, shall not be the sole factor that a court considers in determining custody of such child or children.

Why have a parenting plan?

- It is required by law under 452.310.8, RSMo.
- It allows parents to choose what works best for their child.
- It puts the needs of the child ahead of the wishes of either parent.
- It can be a guide to solving future problems.
- It can help continue the parent-child relationship.
- To maximize to the highest degree amount of time the child may spend with each parent.

When do I need to do a parenting plan?
The petitioner and the respondent, either individually or jointly, must submit a parenting plan in any dissolution or legal separation where there are children of the marriage.

A parenting plan also must be filed where a motion to modify involves custody, visitation or child related issues.

The plan must be filed within thirty (30) days after service of the summons or the filing of an entry of appearance, whichever occurs first.

A parenting plan is optional if the child is over the age of 18. However, the court still may order that a parenting plan be filed or the parties may agree to file a parenting plan.

What is included in a parenting plan?
When preparing your parenting plan, remember that specific information in the following four areas must be included:

<u>Custody and Parenting Time</u>
Your child, whenever possible, needs to have frequent, continuing and meaningful contact with both parents. Your plan must specify:

- The legal custody and physical custody arrangements for your child;

- Which parent will provide the primary residence for your child;
- How much parenting time your child will spend with each parent including a schedule for vacations and holidays;
- Where your child will be exchanged and how your child will be transported for all scheduled parenting time;
- How the parents will make and communicate needed changes in parenting time schedules; and
- Any restrictions necessary to protect your child.

Decision-Making Rights and Responsibilities

- Parents should attempt to share responsibility for making all major decisions regarding their child.
- Your plan must state how decisions will be made in all areas of your child's life, including education, medical and dental care, selection of health care providers, selection of child care providers, activities, and religious upbringing.
- If responsibility for making a decision in any area of your child's life will not be shared, your plan must state who will make the decision and must explain why it is not in your child's best interest to share making the decision.
- Your plan must specify how parents will communicate information such as personal contact, telephone, mail, electronic mail, etc.

Dispute Resolution (Problem-Solving)

Your plan must state how parents will resolve disagreements on child-related issues. Parents are encouraged to use the court only as a last resort to settle disputes and first to:

- Work together to reach a decision they both agree is best for their child; or
- Try alternative dispute resolution such as counseling or mediation.

Expenses of the Child

Both parents are responsible for their child's expenses. Your plan must include the amount of child support to be paid by one parent to the other parent.

It may be necessary to include in your plan how other items, such as insurance, medical and dental care, educational costs, extra-curricular activities, and child care will be paid.

Does this favor mothers/fathers more?

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

Where can I get more information?

You can get more information on parenting plans including guidelines and a suggested parenting plan form from:

- An attorney
- A professional mediator
- The circuit clerk's office in your local courthouse
- https://www.selfrepresent.mo.gov/page.jsp?id=3832

* No court shall adopt any local rule, form, or practice requiring a standardized or default parenting plan for interim, temporary, or permanent orders or judgements.

Deploying Military Parents

Various child custody and visitation rights are set out for deploying military parents. See Section 452.413, RSMo for more detailed information. Some of those rights include:

- A court cannot enter a final order modifying an existing custody or visitation order until 90 days after a deployment ends;
- Deployment or potential deployment must not be the only factor for a modification of custody or visitation order;

- Allows an existing order of custody or visitation to be temporarily modified to accommodate a parent's deployment and allow for custody or visitation during the leave time of a deployed parent;
- A temporary modification order ends no later than 30 days after the return of the deployed parent;
- The court may delegate, with the deployed parent's consent, the deploying parent's visitation rights to a family member with a close relationship to the minor child for the duration of the deployment;
- A deployed parent may be allowed, with the court's permission, to present testimony and evidence by affidavit or electronic means in support, custody and visitation matters;
- If no custody or visitation order exists and a parent's deployment is imminent, upon the filing of initial pleadings by either parent, the court shall expedite a hearing to establish temporary custody or visitation.

Motion for Family Access Order

What is the purpose of the Motion for Family Access Order?
You may file a motion for family access order with the court if you believe your rights to custody, visitation or third party custody under a judgment of dissolution, legal separation, paternity or modification have been violated, and:

1. You and the person against whom you are filing the motion are parties to the judgment of dissolution, legal separation, paternity or modification.
2. You have rights to custody, visitation or third party custody under the judgment of dissolution, legal separation, paternity or modification.
3. The person against whom you are filing the motion has denied or interfered with your rights to custody or visitation or third party custody without good cause.

You will be required to state in your motion how and when the person against whom you are filing the motion has violated your rights to custody or visitation or third party custody without good cause. Clerks of the court can explain to you the procedure for completing the form. You do not need an attorney to file a motion for family access order.

What information do I need to file this motion?
Your judgment of dissolution, legal separation, paternity or modification contains the information you need to complete the motion including:

- Court case number
- Social security numbers of all parties
- County where the judgment of dissolution, legal separation, paternity or modification was entered.

Where do I file this motion?
You file the motion in the county in which the judgment of dissolution, legal separation or paternity was entered. But, if the judgment of dissolution, legal separation or paternity has been modified in a county other than the county in which the judgment originally was entered, you file the motion in the county in which the judgment was modified.

What happens after I file a Motion for Family Access Order?
You will receive a copy of the completed motion and completed summons at the time you file the motion. The summons advises you of the date, time, and court in which the hearing on the motion will be held.

What are the possible results of filing a Motion for Family Access Order?
At the initial hearing, the court may order alternative dispute resolution to assist you with the problems that caused the filing of the motion. You may be required to attend more than one mediation session. Any cost of the mediation sessions will be paid in the proportions determined by the court.

The motion cannot be used to change or modify any existing terms for custody or visitation or third party custody. Only the following orders are available:

- Provide a period of custody or visitation or third party custody not less than the period of time denied;
- Participate in counseling regarding the importance of providing the child with a continuing and meaningful relationship with both parents;
- Pay a fine of up to $500;
- Post a bond or security to ensure future compliance with the judgment;
- Pay the cost of counseling to re-establish the parent-child relationship;
- Pay the reasonable expenses incurred as a result of the denial of or interference with custody or visitation or third party custody.

Where can I get a copy of the Motion for Family Access Order?
The circuit clerk in your local courthouse can provide you with the motion, as well as instructions for its completion, and inform you of the costs for filing the motion. You may also access the forms on the courts website: http://www.courts.mo.gov/file.jsp?id=701. You may also wish to consult an attorney.

Assumptions in Calculating Child Support

What are the assumptions in calculating child support?
The Supreme Court of Missouri has identified the relevant factors and assumptions used in the child support guidelines as follows:

- There is no evidence that the expenditure patterns of parents in Missouri differ significantly from national estimates of child-rearing costs.
- The schedule of basic child support obligations is based on the income shares model, which seeks to apportion to the child the amount that the parents would have spent if the household were intact.

- All parental income is treated as earned income subject to federal and state withholding and FICA taxes.
- The schedule of basic child support obligations is prepared by converting net income to gross income using withholding tables for a single person.
- Net income is gross income less adjustments for federal, state, and social security taxes.
- Conversion of net income to gross income assumes one exemption and the standard deduction.
- The schedule of basic child support obligations assumes that the parent entitled to receive support claims the tax exemption for the children entitled to support.
- The schedule of basic child support obligations incorporates a "self-support reserve" to address the need of the parent obligated to pay support to maintain a minimum standard of living.
- The schedule of basic child support obligations excludes parental expenditures for child care and the child's share of health insurance premiums and extraordinary medical expenses.
- Unreimbursed medical expenses that exceed $250.00 per family per year are deemed extraordinary medical expenses.
- The schedule of basic child support obligations does not consider the costs of the parent obligated to pay support when that parent has physical custody of the children entitled to support.
- With respect to the adjustment for a portion of amounts expended on the children by the parent obligated to pay support during that parent's periods of overnight visitation or custody, the basic child support amount can be divided into three categories of expenditures.

Variable expenditures are child-related expenditures that vary directly with the amount of time a child spends with each parent, such as food. It has been assumed that variable expenditures represent 38% of the basic child support amount.

Duplicated fixed expenditures are child-related expenditures that do not vary with the amount of time a child spends with each parent but are incurred by both parents, such as housing. It has been assumed that duplicated fixed expenditures represent 30% of the basic child support amount.

Non-duplicated fixed expenditures are child-related expenditures that do not vary with the amount of time a child spends with each parent and are usually incurred by the parents in whose household a child resides the greater amount of time, such as clothing. It has been assumed that non-duplicated fixed expenditures represent 32% of the basic child support amount.

As it is assumed that the payment of non-duplicated fixed expenditures (32%) does not vary even when an award of custody results in a child or children spending substantially equal time with both parents (up to 50% per year), the maximum Line 11 adjustment is limited to 34%. Duplicated fixed expenditures (30%) plus variable expenditures (38%) equals 68%, and the maximum adjustment divided equally equals 34%. In appropriate circumstances, the adjustment may be up to 50%, especially when non-duplicated fixed expenditures are paid primarily by the parent obligated to pay support.

The amount of any adjustment to which a parent obligated to pay support is entitled for a portion of the amounts expended on the children who are the subject of this proceeding during periods of overnight visitation or custody assumes that the parent obligated to pay support will incur:

1. No significant expenditures for the children if that parent exercises visitation or custody for less than 36 periods per year;
2. Variable expenditures for the children if that parent exercises visitation or custody for 36 or more periods per year;
3. Duplicated fixed expenditures for the children if that parent exercises visitation or custody for 110 or more overnight periods per year; and
4. No significant non-duplicated fixed expenditures for the children.

Where can I get a copy of the child support guidelines?

You can get a copy of Form 14 entitled "Presumed Child Support Amount Calculation Worksheet," along with the Directions for Completion and Comments for Use from:

- An attorney;
- The Missouri Supreme Court Rules, Volume I;
- The circuit clerk's office in your local courthouse;
- Your local library; or
- https://www.courts.mo.gov/page.jsp?id=638

Child Support & College Enrollment

To remain eligible to receive child support following high school graduation up to age 21 a **child** must:

1. Enroll as a full time student by October 1st following high school graduation;
2. Enroll in and complete at least 12 hours of credit each semester, and receive a passing grade in at least half of the credit hours enrolled in, not to include summer, or enroll in and complete at least 9 hours of credit each semester if working at least 15 hours per week;
3. Achieve grades sufficient each semester to re-enroll for the next semester;
4. At the beginning of each semester, submit to each parent the following:

    - A transcript provided by the school which includes the courses enrolled in and completed each term,
    - The grades and credits received for each course, and
    - An official document, which lists the courses enrolled in for the next term.
5. Produce, upon request for notification of the child's grades by the noncustodial parent, the required documents to the noncustodial parent within thirty days of receipt of grades from the educational institution. If the child fails to produce the required documents, payment of child support may terminate without the accrual of any child support arrearage and shall not be eligible for reinstatement; and

6. Failure to comply with these notice requirements may result in lack of eligibility to receive support during a semester or termination of child support.

Termination of Child Support

The obligation of a parent to make child support payments may be terminated without further judicial or administrative process only where a claim is made that no child remains entitled to support:

- The parent receiving child support furnishes a sworn statement or affidavit notifying the parent paying support of the child's emancipation and a copy of the sworn statement or affidavit is filed either with the court if the order establishing support is a judicial order or with FSD-CSE if the order establishing support is an administrative order. The court may enter a judgment terminating child support without requiring a court appearance by either party.

- The parent paying child support files a sworn statement or affidavit either with the court if the order establishing support is a judicial order or with FSD-CSE if the order establishing support is an administrative order, stating that the child is emancipated and the factual basis for the emancipation. When the statement or affidavit is served by the court or FSD-CSE, as applicable, on the person receiving child support; he or she acknowledges in writing that the child is emancipated, or the person receiving child support does not respond within 30 days of receiving the affidavit of termination. The court may enter a judgment terminating child support without requiring a court appearance by either party.

- The parent paying child support files a sworn statement or affidavit either with the court if the order establishing support is a judicial order or with FSD-CSE if the order establishing support is an administrative order, stating that the child is emancipated and the factual basis of the child's emancipation. When the statement or affidavit is served by the court or FSD-CSE as applicable, on the person receiving child support he or she denies the statement or affidavit. The court or FSD-CSE shall treat the sworn statement or affidavit as a request for hearing and shall proceed to hear and adjudicate the request for hearing as provided by law. The court may enter a judgment terminating child support without requiring a court appearance by either party.

Relocation

What is relocation?
Relocation means a change in the principal residence of a child for a period of ninety (90) days or more, but does not include a temporary absence from the principal residence.



What happens if I want to move or relocate my child?
If you wish to relocate your child, or if you have custody or visitation rights with your child and wish to move, you must:

- Notify any person with custody or visitation rights about your plan to relocate or move.

- Provide notice in writing by certified mail, return receipt requested, at least sixty (60) days before you plan to relocate or move.
- Include in the notice (unless the court orders that you do not have to do so):

    · The city of your new residence and, if known, your new address and phone number;
    · The date you plan to relocate or move;
    · The reasons you plan to relocate, if applicable; and
    · How you think the custody and visitation plan should be changed, if applicable.

- Failure to provide the notice of a proposed relocation can result in the court ordering a change in custody or visitation.

How could my former spouse prevent my relocation?
You may relocate your child 60 days after the notice of relocation has been provided unless your former spouse files a motion with the court asking for an order to prevent the relocation. This motion must be filed within 30 days after receipt of the notice of relocation and must be accompanied by an affidavit stating the facts that support preventing the relocation.

You must then file a response within 14 days including an affidavit stating the facts that support the relocation, as well as a revised schedule of custody and visitation for your child.

How is a disagreement on relocation resolved?
Parents should try to agree on whether a proposed relocation should take place by following the steps in the Dispute Resolution section of their parenting plan.

If the parents agree, the court may order a new parenting plan, including a revised schedule of custody and visitation for the child, without a hearing.

If the parents cannot agree, the court will decide whether the relocation is proposed in good faith and is in the best interest of the child.

Where can I get more information?
Your attorney can answer any questions and give you advice about your legal rights and responsibilities.

Paternity

What is paternity?
Paternity means legal fatherhood. Missouri law recognizes only the legal father as having certain rights and responsibilities, including visitation or custody and child support. If parents are married, the husband is presumed to be the father of the child born during the marriage. If a child is born before the marriage and the parents subsequently marry, the child is legitimized. A child whose parents are not married has no legal father unless the parents establish paternity.

Why should paternity be established?
Knowing who both parents are can give a child a sense of belonging. Special family health problems may need to be identified. Employers usually require paternity to be established before a father can add his child to his health insurance plan. A child is not legally entitled to support from the father until paternity is established. Establishing paternity ensures that a child will be eligible for Social Security and veterans benefits to which the child might be entitled.

How is paternity established?

Paternity may be established after the baby is born and the parents sign an *Affidavit Acknowledging Paternity* at the hospital, before the hospital files the child's birth certificate. The father's name is added to the child's birth certificate and the man becomes the legal father.

When an *Affidavit Acknowledging Paternity* has not been completed in the hospital, parents can contact the Missouri Bureau of Vital Records at (573) 751-6378 or the Missouri Family Support Division (FSD) at (800) 859-7999 to get an *Affidavit*.

Either the mother or the man who believes he may be the child's father can apply for the FSDs assistance in establishing paternity. Either parent also can talk with a private attorney.

When the parents do not agree to establish paternity, the FSD or a court can order genetic tests. If the genetic test shows at least a 98% probability that the man is the child's biological father, according to Missouri law, he is presumed to be the father. If the man is found to be the father of the child he may be ordered to pay for genetic testing. FSD or the court may enter an order establishing paternity without the consent of the parents.

In order for a parent to assert custody or visitation paternity must be established.

What if I am not the biological father of the child(ren)?

If paternity already has been established and you believe that you are not the biological father of the child(ren), you have the right to file a petition with the court to have paternity set aside. In order to contest paternity, you must provide the court an affidavit with the petition that alleges evidence exists that was not considered when the original judgment was entered, and either one of the following:

1. Genetic testing was conducted within 90 days prior to the filing of the petition and the test results are attached to the affidavit, which indicate the petitioner has been excluded as the child's father; or
2. The petitioner is requesting the court to issue an order for genetic paternity testing.

If, based upon genetic testing, you are excluded from being the father, the court shall:

- Enter judgment setting aside the judgment of paternity and support.
- Remove any child support arrearage that may have accrued for the child(ren).
- Order the Department of Health and Senior Services to change the child(ren)'s birth certificate(s).

Laws Pertaining to this Publication

Legislation outlining the information contained in this handbook can be found in Sections 452.310 through 452.930, and 210.817 through 210.854, RSMo.

For more information please contact:

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State of Missouri — Office of State Courts Administrator
Revised February 2017