

SECOND REGULAR SESSION

HOUSE BILL NO. 2148

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DINKINS.

3972H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.854, 452.340, and 454.470, RSMo, and to enact in lieu thereof three new sections relating to the termination of child support obligations.

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

Section A. Sections 210.854, 452.340, and 454.470, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 210.854, 452.340, and 454.470,
3 to read as follows:

210.854. 1. In the event of the entry of a judgment or judgments of paternity and
2 support, whether entered in one judgment or separately, a person against whom such a
3 judgment or judgments have been entered may file a petition requesting a circuit court with
4 jurisdiction over the subject child or children to set aside said judgment or judgments in the
5 interests of justice and upon the grounds set forth in this section. Such a petition may be filed
6 at any time prior to December 31, 2011. After that date, the petition shall be filed within two
7 years of the entry of the original judgment of paternity and support or within two years of
8 entry of the later judgment in the case of separate judgments of paternity and support and
9 shall be filed in the county which entered the judgment or judgments of paternity and support.
10 Any such petition shall be served upon the biological mother and any other legal guardian or
11 custodian in the same manner provided for service of process in the rules of civil procedure.
12 The child or children shall be made a party and shall have a guardian ad litem appointed for
13 the child or children before any further proceedings are had. If the child or children are
14 recipients of IV-D services as defined in subdivision (8) of section 454.460, the family
15 support division shall also be made a party and shall be duly served.

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.

16 2. The petition shall include an affidavit executed by the petitioner alleging that
17 evidence exists which was not considered before entry of judgment and either:

18 (1) An allegation that genetic testing was conducted within ninety days prior to the
19 filing of such petition using DNA methodology to determine the probability or improbability
20 of paternity, and performed by an expert as defined in section 210.834. The affidavit shall
21 also allege that the test results, which are attached thereto, indicate that a person subject to the
22 child support payment order has been excluded as the child's father; or

23 (2) A request to the court for an order of genetic paternity testing using DNA
24 methodology.

25 3. The court, after a hearing wherein all interested parties have been given an
26 opportunity to present evidence and be heard, and upon a finding of probable cause to believe
27 said testing may result in a determination of nonpaternity, shall order the relevant parties to
28 submit to genetic paternity testing. The genetic paternity testing costs shall be paid by the
29 petitioner.

30 4. Upon a finding that the genetic test referred to herein was properly conducted,
31 accurate, and indicates that the person subject to the child support payment order has been
32 excluded as the child's father, the court shall, unless it makes written findings of fact and
33 conclusions of law that it is in the best interest of the parties not to do so:

34 (1) Grant relief on the petition and enter judgment setting aside the previous judgment
35 or judgments of paternity and support, or acknowledgment of paternity under section 210.823
36 only as to the child or children found not to be the biological child or children of the
37 petitioner;

38 (2) Extinguish any existing child support arrearage only as to the child or children
39 found not to be the biological child or children of the petitioner; and

40 (3) Order the department of health and senior services to modify the child's birth
41 certificate accordingly.

42 5. The provisions of this section shall not apply to grant relief to the parent of any
43 adopted child.

44 6. A finding under subsection 4 of this section shall constitute a material mistake of
45 fact under section 210.823.

46 7. The provisions of this section shall not be construed to create a cause of action to
47 recover child support or state debt, under subdivision (2) of subsection 1 of section 454.465
48 and subsection [10] 9 of section 452.340, that was previously paid pursuant to the order. The
49 petitioner shall have no right for reimbursement for any moneys previously paid pursuant to
50 said order.

51 8. Any petitioner who has pled guilty to or been found guilty of an offense for
52 criminal nonsupport under section 568.040, as to a child or children who have been found not

53 to be the biological child or children of the petitioner, may apply to the court in which the
54 petitioner pled guilty or was sentenced for an order to expunge from all official records all
55 recordations of his arrest, plea, trial, or conviction. If the court determines, after hearing, that
56 the petitioner has had a judgment or judgments of paternity and support set aside under this
57 section, the court shall enter an order of expungement. Upon granting of the order of
58 expungement under this subsection, the records and files maintained in any administrative or
59 court proceeding in an associate or circuit division of the circuit court under this section shall
60 be confidential and only available to the parties or by order of the court for good cause shown.
61 The effect of such order shall be to restore such person to the status he or she occupied prior
62 to such arrest, plea, or conviction and as if such event had never taken place. No person as to
63 whom such order has been entered shall be held thereafter under any provision of any law to
64 be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or
65 acknowledge such arrest, plea, trial, conviction, or expungement in response to any inquiry
66 made of him for any purpose whatsoever and no such inquiry shall be made for information
67 relating to an expungement under this section.

68 9. Beginning in 2010, the family support division shall track and report to the general
69 assembly the number of cases known to the division in which a court, within the calendar
70 year, set aside a previous judgment or judgments of paternity and support under subsection 4
71 of this section. The family support division shall submit the report annually by December
72 thirty-first.

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child
2 support, the court may order either or both parents owing a duty of support to a child of the
3 marriage to pay an amount reasonable or necessary for the support of the child, including an
4 award retroactive to the date of filing the petition, without regard to marital misconduct, after
5 considering all relevant factors including:

- 6 (1) The financial needs and resources of the child;
- 7 (2) The financial resources and needs of the parents;
- 8 (3) The standard of living the child would have enjoyed had the marriage not been
9 dissolved;
- 10 (4) The physical and emotional condition of the child, and the child's educational
11 needs;
- 12 (5) The child's physical and legal custody arrangements, including the amount of time
13 the child spends with each parent and the reasonable expenses associated with the custody or
14 visitation arrangements; and
- 15 (6) The reasonable work-related child care expenses of each parent.

16 2. The obligation of the parent ordered to make support payments shall abate, in
17 whole or in part, for such periods of time in excess of thirty consecutive days that the other

18 parent has voluntarily relinquished physical custody of a child to the parent ordered to pay
19 child support, notwithstanding any periods of visitation or temporary physical and legal or
20 physical or legal custody pursuant to a judgment of dissolution or legal separation or any
21 modification thereof. In a IV-D case, the family support division may determine the amount
22 of the abatement pursuant to this subsection for any child support order and shall record the
23 amount of abatement in the automated child support system record established pursuant to
24 chapter 454. If the case is not a IV-D case and upon court order, the circuit clerk shall record
25 the amount of abatement in the automated child support system record established in chapter
26 454.

27 3. Unless the circumstances of the child manifestly dictate otherwise and the court
28 specifically so provides, the obligation of a parent to make child support payments shall
29 terminate when the child:

30 (1) Dies;

31 (2) Marries;

32 (3) Enters active duty in the military;

33 (4) Becomes self-supporting, provided that the custodial parent has relinquished the
34 child from parental control by express or implied consent; **or**

35 (5) **Reaches age eighteen or receives a high school diploma or an equivalent**
36 **certificate of graduation in lieu of a high school diploma**, unless the provisions of **the**
37 **child support order specifically extend the parental support order past the child's**
38 **eighteenth birthday for reasons provided by** subsection 4 ~~[or 5]~~ of this section ~~[apply; or~~

39 ~~(6) Reaches age twenty-one, unless the provisions of the child support order~~
40 ~~specifically extend the parental support order past the child's twenty-first birthday for reasons~~
41 ~~provided by subsection 4 of this section].~~

42 4. If the child is physically or mentally incapacitated from supporting himself and
43 insolvent and unmarried, the court may extend the parental support obligation past the child's
44 eighteenth birthday.

45 5. ~~[If when a child reaches age eighteen, the child is enrolled in and attending a~~
46 ~~secondary school program of instruction, the parental support obligation shall continue, if the~~
47 ~~child continues to attend and progresses toward completion of said program, until the child~~
48 ~~completes such program or reaches age twenty-one, whichever first occurs. If the child is~~
49 ~~enrolled in an institution of vocational or higher education not later than October first~~
50 ~~following graduation from a secondary school or completion of a graduation equivalency~~
51 ~~degree program and so long as the child enrolls for and completes at least twelve hours of~~
52 ~~credit each semester, not including the summer semester, at an institution of vocational or~~
53 ~~higher education and achieves grades sufficient to reenroll at such institution, the parental~~
54 ~~support obligation shall continue until the child completes his or her education, or until the~~

~~55 child reaches the age of twenty one, whichever first occurs. To remain eligible for such
56 continued parental support, at the beginning of each semester the child shall submit to each
57 parent a transcript or similar official document provided by the institution of vocational or
58 higher education which includes the courses the child is enrolled in and has completed for
59 each term, the grades and credits received for each such course, and an official document
60 from the institution listing the courses which the child is enrolled in for the upcoming term
61 and the number of credits for each such course. When enrolled in at least twelve credit hours,
62 if the child receives failing grades in half or more of his or her courseload in any one
63 semester, payment of child support may be terminated and shall not be eligible for
64 reinstatement. Upon request for notification of the child's grades by the noneustodial parent,
65 the child shall produce the required documents to the noneustodial parent within thirty days of
66 receipt of grades from the education institution. If the child fails to produce the required
67 documents, payment of child support may terminate without the accrual of any child support
68 arrearage and shall not be eligible for reinstatement. If the circumstances of the child
69 manifestly dictate, the court may waive the October first deadline for enrollment required by
70 this subsection. If the child is enrolled in such an institution, the child or parent obligated to
71 pay support may petition the court to amend the order to direct the obligated parent to make
72 the payments directly to the child. As used in this section, an "institution of vocational
73 education" means any postsecondary training or schooling for which the student is assessed a
74 fee and attends classes regularly. "Higher education" means any community college, college,
75 or university at which the child attends classes regularly. A child who has been diagnosed
76 with a developmental disability, as defined in section 630.005, or whose physical disability or
77 diagnosed health problem limits the child's ability to carry the number of credit hours
78 prescribed in this subsection, shall remain eligible for child support so long as such child is
79 enrolled in and attending an institution of vocational or higher education, and the child
80 continues to meet the other requirements of this subsection. A child who is employed at least
81 fifteen hours per week during the semester may take as few as nine credit hours per semester
82 and remain eligible for child support so long as all other requirements of this subsection are
83 complied with.~~

84 6.] The court shall consider ordering a parent to waive the right to claim the tax
85 dependency exemption for a child enrolled in an institution of vocational or higher education
86 in favor of the other parent if the application of state and federal tax laws and eligibility for
87 financial aid will make an award of the exemption to the other parent appropriate.

88 [7.] 6. The general assembly finds and declares that it is the public policy of this state
89 that frequent, continuing and meaningful contact with both parents after the parents have
90 separated or dissolved their marriage is in the best interest of the child except for cases where
91 the court specifically finds that such contact is not in the best interest of the child. In order to

92 effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and
93 child support orders in the same manner. A court with jurisdiction may abate, in whole or in
94 part, any past or future obligation of support and may transfer the physical and legal or
95 physical or legal custody of one or more children if it finds that a parent has, without good
96 cause, failed to provide visitation or physical and legal or physical or legal custody to the
97 other parent pursuant to the terms of a judgment of dissolution, legal separation or
98 modifications thereof. The court shall also award, if requested and for good cause shown,
99 reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

100 ~~[8-]~~ 7. The Missouri supreme court shall have in effect a rule establishing guidelines
101 by which any award of child support shall be made in any judicial or administrative
102 proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which
103 will result in a computation of the support obligation. The guidelines shall address how the
104 amount of child support shall be calculated when an award of joint physical custody results in
105 the child or children spending equal or substantially equal time with both parents and the
106 directions and comments and any tabular representations of the directions and comments for
107 completion of the child support guidelines and a subsequent form developed to reflect the
108 guidelines shall reflect the ability to obtain up to a fifty percent adjustment or credit below the
109 basic child support amount for joint physical custody or visitation as described in subsection
110 ~~[4-]~~ 10 of this section. The Missouri supreme court shall publish child support guidelines and
111 specifically list and explain the relevant factors and assumptions that were used to calculate
112 the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by
113 the promulgating body not less than once every four years to ensure that its application results
114 in the determination of appropriate child support award amounts.

115 ~~[9-]~~ 8. There shall be a rebuttable presumption, in any judicial or administrative
116 proceeding for the award of child support, that the amount of the award which would result
117 from the application of the guidelines established pursuant to subsection ~~[8]~~ 7 of this section
118 is the correct amount of child support to be awarded. A written finding or specific finding on
119 the record in a judicial or administrative proceeding that the application of the guidelines
120 would be unjust or inappropriate in a particular case, after considering all relevant factors,
121 including the factors set out in subsection 1 of this section, shall be required and shall be
122 sufficient to rebut the presumption in the case. The written finding or specific finding on the
123 record shall detail the specific relevant factors that required a deviation from the application
124 of the guidelines.

125 ~~[10-]~~ 9. Pursuant to this or any other chapter, when a court determines the amount
126 owed by a parent for support provided to a child by another person, other than a parent, prior
127 to the date of filing of a petition requesting support, or when the director of the family support
128 division establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of

129 section 454.465, the court or director shall use the guidelines established pursuant to
130 subsection [8] 7 of this section. The amount of child support resulting from the application of
131 the guidelines shall be applied retroactively for a period prior to the establishment of a
132 support order and the length of the period of retroactivity shall be left to the discretion of the
133 court or director. There shall be a rebuttable presumption that the amount resulting from
134 application of the guidelines under subsection [8] 7 of this section constitutes the amount
135 owed by the parent for the period prior to the date of the filing of the petition for support or
136 the period for which state debt is being established. In applying the guidelines to determine a
137 retroactive support amount, when information as to average monthly income is available, the
138 court or director may use the average monthly income of the noncustodial parent, as averaged
139 over the period of retroactivity, in determining the amount of presumed child support owed
140 for the period of retroactivity. The court or director may enter a different amount in a
141 particular case upon finding, after consideration of all relevant factors, including the factors
142 set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed
143 amount.

144 ~~[11.]~~ **10.** If the court ~~[may award]~~ awards child support ~~[in an amount that provides~~
145 ~~up to], there shall be a rebuttable presumption in cases in which there is a custody award~~
146 **of joint physical custody where the child or children spend equal or substantially equal**
147 **time with both parents that the calculation of child support begins with a fifty percent**
148 **credit for overnight visitation or custody** adjustment below the basic child support amount
149 authorized by the child support guidelines described under subsection [8] 7 of this section ~~[for~~
150 ~~custody awards of joint physical custody where the child or children spend equal or~~
151 ~~substantially equal time with both parents].~~

152 ~~[12.]~~ **11.** The obligation of a parent to make child support payments may be
153 terminated as follows:

154 (1) Provided that the state case registry or child support order contains the child's date
155 of birth, the obligation shall be deemed terminated without further judicial or administrative
156 process when the child reaches age ~~[twenty-one]~~ **eighteen** if the child support order does not
157 specifically require payment of child support beyond age ~~[twenty-one]~~ **eighteen** for reasons
158 provided by subsection 4 of this section;

159 (2) The obligation shall be deemed terminated without further judicial or
160 administrative process when the parent receiving child support furnishes a sworn statement
161 or affidavit notifying the obligor parent of the child's emancipation in accordance with the
162 requirements of subsection 4 of section 452.370, and a copy of such sworn statement or
163 affidavit is filed with the court which entered the order establishing the child support
164 obligation, or the family support division for an order entered under section 454.470;

165 (3) The obligation shall be deemed terminated without further judicial or
166 administrative process when the parent paying child support files a sworn statement or
167 affidavit with the court which entered the order establishing the child support obligation, or
168 the family support division for an order entered under section 454.470, stating that the child is
169 emancipated and reciting the factual basis for such statement; which statement or affidavit is
170 served by the court or division, as applicable, on the child support obligee; and which is either
171 acknowledged and affirmed by the child support obligee in writing, or which is not responded
172 to in writing within thirty days of receipt by the child support obligee;

173 (4) The obligation shall be terminated as provided by this subdivision by the court
174 which entered the order establishing the child support obligation, or the family support
175 division for an order entered under section 454.470, when the parent paying child support
176 files a sworn statement or affidavit with the court which entered the order establishing the
177 child support obligation, or the family support division, as applicable, stating that the child is
178 emancipated and reciting the factual basis for such statement; and which statement or
179 affidavit is served by the court or division, as applicable, on the child support obligee. If the
180 obligee denies the statement or affidavit, the court or division shall thereupon treat the sworn
181 statement or affidavit as a request for hearing and shall proceed to hear and adjudicate such
182 request for hearing as provided by law; provided that the court may require the payment of a
183 deposit as security for court costs and any accrued court costs, as provided by law, in relation
184 to such request for hearing. When the division receives a request for hearing, the hearing
185 shall be held in the manner provided by section 454.475.

186 ~~[13.]~~ **12.** The court may enter a judgment terminating child support pursuant to
187 subdivisions (1) to (3) of subsection ~~[12]~~ **11** of this section without necessity of a court
188 appearance by either party. The clerk of the court shall mail a copy of a judgment terminating
189 child support entered pursuant to subsection ~~[12]~~ **11** of this section on both the obligor and
190 obligee parents. The supreme court may promulgate uniform forms for sworn statements and
191 affidavits to terminate orders of child support obligations for use pursuant to subsection ~~[12]~~
192 **11** of this section and subsection 4 of section 452.370.

454.470. 1. The director may issue a notice and finding of financial responsibility to
2 a parent who owes a state debt or who is responsible for the support of a child on whose
3 behalf the custodian of that child is receiving support enforcement services from the division
4 pursuant to section 454.425 if a court order has not been previously entered against that
5 parent, a court order has been previously entered but has been terminated by operation of law
6 or if a support order from another state has been entered but is not entitled to recognition
7 under sections 454.850 to 454.997. Service of the notice and finding shall be made on the
8 parent or other party in the manner prescribed for service of process in a civil action by an
9 authorized process server appointed by the director, or by certified mail, return receipt

10 requested. The director may appoint any uninterested party, including but not limited to
11 employees of the division, to serve such process. For purposes of this subsection, a parent
12 who refuses receipt of service by certified mail is deemed to have been served. Service upon
13 an obligee who is receiving support enforcement services under section 454.425 may be made
14 by regular mail. When appropriate to the circumstances of the individual action, the notice
15 shall state:

16 (1) The name of the person or agency with custody of the dependent child and the
17 name of the dependent child for whom support is to be paid;

18 (2) The monthly future support for which the parent shall be responsible;

19 (3) The state debt, if any, accrued and accruing, and the monthly payment to be made
20 on the state debt which has accrued;

21 (4) A statement of the costs of collection, including attorney's fees, which may be
22 assessed against the parent;

23 (5) That the parent shall be responsible for providing medical insurance for the
24 dependent child;

25 (6) That if a parent desires to discuss the amount of support that should be paid, the
26 parent or person having custody of the child may, within twenty days after being served,
27 contact the division office which sent the notice and request a negotiation conference. The
28 other parent or person having custody of the child shall be notified of the negotiated
29 conference and may participate in the conference. If no agreement is reached on the monthly
30 amount to be paid, the director may issue a new notice and finding of financial responsibility,
31 which may be sent to the parent required to pay support by regular mail addressed to the
32 parent's last known address or, if applicable, the parent's attorney's last known address. A
33 copy of the new notice and finding shall be sent by regular mail to the other parent or person
34 having custody of the child;

35 (7) That if a parent or person having custody of the child objects to all or any part of
36 the notice and finding of financial responsibility and no negotiation conference is requested,
37 within twenty days of the date of service the parent or person having custody of the child shall
38 send to the division office which issued the notice a written response which sets forth any
39 objections and requests a hearing; and, that if the director issues a new notice and finding of
40 financial responsibility, the parent or person having custody of the child shall have twenty
41 days from the date of issuance of the new notice to send a hearing request;

42 (8) That if such a timely response is received by the appropriate division office, and if
43 such response raises factual questions requiring the submission of evidence, the parent or
44 person having custody of the child shall have the right to a hearing before an impartial hearing
45 officer who is an attorney licensed to practice law in Missouri and, that if no timely written

46 response is received, the director may enter an order in accordance with the notice and finding
47 of financial responsibility;

48 (9) That the parent has the right to be represented at the hearing by an attorney of the
49 parent's own choosing;

50 (10) That the parent or person having custody of the child has the right to obtain
51 evidence and examine witnesses as provided for in chapter 536, together with an explanation
52 of the procedure the parent or person having custody of the child shall follow in order to
53 exercise such rights;

54 (11) That as soon as the order is entered, the property of the parent required to pay
55 support shall be subject to collection actions, including, but not limited to, wage withholding,
56 garnishment, liens, and execution thereon;

57 (12) A reference to sections 454.460 to 454.510;

58 (13) That the parent is responsible for notifying the division of any change of address
59 or employment;

60 (14) That if the parent has any questions, the parent should telephone or visit the
61 appropriate division office or consult an attorney; and

62 (15) Such other information as the director finds appropriate.

63 2. The statement of periodic future support required by subdivision (2) of subsection
64 1 of this section is to be computed under the guidelines established in subsection [8] 7 of
65 section 452.340.

66 3. Any time limits for notices or requests may be extended by the director, and such
67 extension shall have no effect on the jurisdiction of the court, administrative body, or other
68 entity having jurisdiction over the proceedings.

69 4. If a timely written response setting forth objections and requesting a hearing is
70 received by the appropriate division office, and if such response raises a factual question
71 requiring the submission of evidence, a hearing shall be held in the manner provided by
72 section 454.475. If no timely written response and request for hearing is received by the
73 appropriate division office, the director may enter an order in accordance with the notice, and
74 shall specify:

75 (1) The amount of periodic support to be paid, with directions on the manner of
76 payment;

77 (2) The amount of state debt, if any, accrued in favor of the department;

78 (3) The monthly payment to be made on state debt, if any;

79 (4) The amount of costs of collection, including attorney's fees, assessed against the
80 parent;

81 (5) The name of the person or agency with custody of the dependent child and the
82 name and birth date of the dependent child for whom support is to be paid;

83 (6) That the property of the parent is subject to collection actions, including, but not
84 limited to, wage withholding, garnishment, liens, and execution thereon; and

85 (7) If appropriate, that the parent shall provide medical insurance for the dependent
86 child, or shall pay the reasonable and necessary medical expenses of the dependent child.

87 5. The parent or person having custody of the child shall be sent a copy of the order
88 by regular mail addressed to the parent's last known address or, if applicable, the parent's
89 attorney's last known address. The order is final, and action by the director to enforce and
90 collect upon the order, including arrearages, may be taken from the date of issuance of the
91 order.

92 6. Copies of the orders issued pursuant to this section shall be mailed within fourteen
93 days of the issuance of the order.

94 7. Any parent or person having custody of the child who is aggrieved as a result of
95 any allegation or issue of fact contained in the notice and finding of financial responsibility
96 shall be afforded an opportunity for a hearing, upon the request in writing filed with the
97 director not more than twenty days after service of the notice and finding is made upon such
98 parent or person having custody of the child, and if in requesting such hearing, the aggrieved
99 parent or person having custody of the child raises a factual issue requiring the submission of
100 evidence.

101 8. At any time after the issuance of an order under this section, the director may issue
102 an order vacating that order if it is found that the order was issued without subject matter or
103 personal jurisdiction or if the order was issued without affording the obligor due process of
104 law.

✓