

FIRST REGULAR SESSION

HOUSE BILL NO. 1123

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (141).

2342H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 211.444, 211.447, 453.030, and 453.040, RSMo, and to enact in lieu thereof four new sections relating to the protection of children.

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

Section A. Sections 211.444, 211.447, 453.030, and 453.040, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 211.444, 211.447, 453.030, and 453.040, to read as follows:

211.444. The juvenile court may, upon petition of the **guardian ad litem**, juvenile officer, or a child-placing agency licensed under sections 210.481 to 210.536 in conjunction with a placement with such agency under subsection 6 of section 453.010 or a private attorney filing a petition for adoption under the provisions of chapter 453, terminate the rights of a parent or receive the consent to a specific adoption or waiver of consent to adoption executed by a parent or named father to a child, including a child who is a ward of the court, if the court finds that such termination, consent to a specific adoption, or waiver of consent to adoption is in the best interests of the child, and the parent or named father has, in a properly executed writing under section 453.030 or 453.050, consented to the termination of his or her parental rights, consented to a specific adoption, or waived consent to adoption.

211.447. 1. Any information that could justify the filing of a petition to terminate parental rights may be referred to the juvenile officer by any person. The juvenile officer shall make a preliminary inquiry and if it appears that the information could justify the filing of a petition, the juvenile officer may take further action, including filing a petition. If it does not appear to the juvenile officer that a petition should be filed, such officer shall so notify the

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.

6 informant in writing within thirty days of the referral. Such notification shall include the reasons
7 that the petition will not be filed.

8 2. Except as provided for in subsection 4 of this section, a petition to terminate the
9 parental rights of the child's parent or parents shall be filed by the juvenile officer or the division,
10 or if such a petition has been filed by another party, the juvenile officer or the division shall seek
11 to be joined as a party to the petition, when:

12 (1) Information available to the juvenile officer or the division establishes that the child
13 has been in foster care for at least fifteen of the most recent twenty-two months; or

14 (2) A court of competent jurisdiction has determined the child to be an abandoned infant.
15 For purposes of this subdivision, an "infant" means any child ~~[one-year]~~ **three years** of age or
16 under at the time of filing of the petition. The court may find that an infant has been abandoned
17 if:

18 (a) The parent has left the child under circumstances that the identity of the child was
19 unknown and could not be ascertained, despite diligent searching, and the parent has not come
20 forward to claim the child; or

21 (b) The parent has, ~~[without good cause, left the child without any provision for parental~~
22 ~~support and without making arrangements to visit or communicate with the child, although able~~
23 ~~to do so]~~ **for a period of sixty days immediately prior to the filing of the petition for**
24 **termination of parental rights, willfully, substantially, and continuously neglected to**
25 **provide the child with necessary care and protection;** or

26 (c) The parent has voluntarily relinquished a child under section 210.950; or

27 (3) A court of competent jurisdiction has determined that the parent has:

28 (a) Committed murder of another child of the parent; or

29 (b) Committed voluntary manslaughter of another child of the parent; or

30 (c) Aided or abetted, attempted, conspired or solicited to commit such a murder or
31 voluntary manslaughter; or

32 (d) Committed a felony assault that resulted in serious bodily injury to the child or to
33 another child of the parent; or

34 (4) The parent has been found guilty of or pled guilty to a felony violation of chapter
35 **565, 566, 567, 568,** or 573 when the child or any child ~~[in the family]~~ was a victim~~], or a~~
36 ~~violation of section 568.020 or 568.065 when the child or any child in the family was a victim]~~.
37 As used in this subdivision, a "child" means any person who was under eighteen years of age at
38 the time of the ~~[crime and who resided with such parent or was related within the third degree~~
39 ~~of consanguinity or affinity to such parent]~~ **offense.**

40 3. A termination of parental rights petition shall be filed by the juvenile officer or the
41 division, or if such a petition has been filed by another party, the juvenile officer or the division

42 shall seek to be joined as a party to the petition, within sixty days of the judicial determinations
43 required in subsection 2 of this section, except as provided in subsection 4 of this section.
44 Failure to comply with this requirement shall not deprive the court of jurisdiction to adjudicate
45 a petition for termination of parental rights which is filed outside of sixty days.

46 4. If grounds exist for termination of parental rights pursuant to subsection 2 of this
47 section, the **guardian ad litem**, juvenile officer, or the division may, but is not required to, file
48 a petition to terminate the parental rights of the child's parent or parents if:

49 (1) The child is being cared for by a relative; or

50 (2) There exists a compelling reason for determining that filing such a petition would
51 not be in the best interest of the child, as documented in the permanency plan which shall be
52 made available for court review; or

53 (3) The family of the child has not been provided such services as provided for in section
54 211.183.

55 5. The juvenile officer [øæ] , the division, **or the guardian ad litem** may file a petition
56 to terminate the parental rights of the child's parent when it appears that one or more of the
57 following grounds for termination exist:

58 (1) The child has been abandoned. For purposes of this subdivision a "child" means any
59 child over ~~[one-year]~~ **three years** of age at the time of filing of the petition. The court shall find
60 that the child has been abandoned if, for a period of six months or longer:

61 (a) The parent has left the child under such circumstances that the identity of the child
62 was unknown and could not be ascertained, despite diligent searching, and the parent has not
63 come forward to claim the child; or

64 (b) The parent has, ~~[without good cause, left the child without any provision for parental~~
65 ~~support and without making arrangements to visit or communicate with the child, although able~~
66 ~~to do so]~~ **for a period of six months immediately prior to the filing of the petition for**
67 **termination of parental rights, willfully, substantially, and continuously neglected to**
68 **provide the child with necessary care and protection;**

69 (2) The child has been abused or neglected. In determining whether to terminate parental
70 rights pursuant to this subdivision, the court shall consider and make findings on the following
71 conditions or acts of the parent:

72 (a) A mental condition which is shown by competent evidence either to be permanent
73 or such that there is no reasonable likelihood that the condition can be reversed and which
74 renders the parent unable to knowingly provide the child the necessary care, custody and control;

75 (b) Chemical dependency which prevents the parent from consistently providing the
76 necessary care, custody and control of the child and which cannot be treated so as to enable the
77 parent to consistently provide such care, custody and control;

78 (c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child
79 or any child in the family by the parent, including an act of incest, or by another under
80 circumstances that indicate that the parent knew or should have known that such acts were being
81 committed toward the child or any child in the family; or

82 (d) Repeated or continuous failure by the parent, although physically or financially able,
83 to provide the child with adequate food, clothing, shelter, or education as defined by law, or other
84 care and control necessary for the child's physical, mental, or emotional health and development.

85

86 Nothing in this subdivision shall be construed to permit discrimination on the basis of disability
87 or disease;

88 (3) The child has been under the jurisdiction of the juvenile court for a period of one
89 year, and the court finds that the conditions which led to the assumption of jurisdiction still
90 persist, or conditions of a potentially harmful nature continue to exist, that there is little
91 likelihood that those conditions will be remedied at an early date so that the child can be returned
92 to the parent in the near future, or the continuation of the parent-child relationship greatly
93 diminishes the child's prospects for early integration into a stable and permanent home. In
94 determining whether to terminate parental rights under this subdivision, the court shall consider
95 and make findings on the following:

96 (a) The terms of a social service plan entered into by the parent and the division and the
97 extent to which the parties have made progress in complying with those terms;

98 (b) The success or failure of the efforts of the juvenile officer, the division or other
99 agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to
100 provide a proper home for the child;

101 (c) A mental condition which is shown by competent evidence either to be permanent
102 or such that there is no reasonable likelihood that the condition can be reversed and which
103 renders the parent unable to knowingly provide the child the necessary care, custody and control;

104 (d) Chemical dependency which prevents the parent from consistently providing the
105 necessary care, custody and control over the child and which cannot be treated so as to enable
106 the parent to consistently provide such care, custody and control; or

107 (4) The child was conceived and born as a result of an act of ~~[forcible]~~ rape ~~[or rape in~~
108 ~~the first degree]~~. When the biological father has pled guilty to, or is convicted of, the ~~[forcible]~~
109 rape ~~[or rape in the first degree]~~ of the birth mother, such a plea or conviction shall be conclusive
110 evidence supporting the termination of the biological father's parental rights; or

111 (5) (a) The parent is unfit to be a party to the parent and child relationship because of
112 a consistent pattern of committing a specific abuse including, but not limited to, specific
113 conditions directly relating to the parent and child relationship which are determined by the court

114 to be of a duration or nature that renders the parent unable for the reasonably foreseeable future
115 to care appropriately for the ongoing physical, mental, or emotional needs of the child.

116 (b) It is presumed that a parent is unfit to be a party to the parent and child relationship
117 upon a showing that:

118 a. Within a three-year period immediately prior to the termination adjudication, the
119 parent's parental rights to one or more other children were involuntarily terminated pursuant to
120 subsection 2 or 4 of this section or subdivision (1), (2), or (3) of this subsection or similar laws
121 of other states;

122 b. If the parent is the birth mother and within eight hours after the child's birth, the child's
123 birth mother tested positive and over eight-hundredths of one percent blood alcohol content
124 pursuant to testing under section 577.020 for alcohol, or tested positive for cocaine, heroin,
125 methamphetamine, a controlled substance as defined in section 195.010, or a prescription drug
126 as defined in section 196.973, excepting those controlled substances or prescription drugs present
127 in the mother's body as a result of medical treatment administered to the mother, and the birth
128 mother is the biological mother of at least one other child who was adjudicated an abused or
129 neglected minor by the mother or the mother has previously failed to complete recommended
130 treatment services by the children's division through a family-centered services case;

131 c. If the parent is the birth mother and at the time of the child's birth or within eight hours
132 after a child's birth the child tested positive for alcohol, cocaine, heroin, methamphetamine, a
133 controlled substance as defined in section 195.010, or a prescription drug as defined in section
134 196.973, excepting those controlled substances or prescription drugs present in the mother's body
135 as a result of medical treatment administered to the mother, and the birth mother is the biological
136 mother of at least one other child who was adjudicated an abused or neglected minor by the
137 mother or the mother has previously failed to complete recommended treatment services by the
138 children's division through a family-centered services case; ~~or~~

139 d. Within a three-year period immediately prior to the termination adjudication, the
140 parent has pled guilty to or has been convicted of a felony involving the possession, distribution,
141 or manufacture of cocaine, heroin, or methamphetamine, and the parent is the biological parent
142 of at least one other child who was adjudicated an abused or neglected minor by such parent or
143 such parent has previously failed to complete recommended treatment services by the children's
144 division through a family-centered services case; **or**

145 **e. For at least fifteen of the twenty-two months prior to the filing of the petition, the**
146 **child has been in foster care under the jurisdiction of the juvenile court.**

147 6. The juvenile court may terminate the rights of a parent to a child upon a petition filed
148 by the **guardian ad litem**, juvenile officer, or the division, or in adoption cases, by a prospective
149 parent, if the court finds that the termination is in the best interest of the child and when it

150 appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to
151 subsection 2, 4 or 5 of this section.

152 7. When considering whether to terminate the parent-child relationship pursuant to
153 subsection 2 or 4 of this section or subdivision (1), (2), or (3) of subsection 5 of this section, the
154 court shall evaluate and make findings on the following factors, when appropriate and applicable
155 to the case:

156 (1) The emotional ties to the birth parent;

157 (2) The extent to which the parent has maintained regular visitation or other contact with
158 the child;

159 (3) The extent of payment by the parent for the cost of care and maintenance of the child
160 when financially able to do so including the time that the child is in the custody of the division
161 or other child-placing agency;

162 (4) Whether additional services would be likely to bring about lasting parental
163 adjustment enabling a return of the child to the parent within an ascertainable period of time;

164 (5) The parent's disinterest in or lack of commitment to the child;

165 (6) The conviction of the parent of a felony offense that the court finds is of such a
166 nature that the child will be deprived of a stable home for a period of years; provided, however,
167 that incarceration in and of itself shall not be grounds for termination of parental rights;

168 (7) Deliberate acts of the parent or acts of another of which the parent knew or should
169 have known that subjects the child to a substantial risk of physical or mental harm.

170 8. The court may attach little or no weight to infrequent visitations, communications, or
171 contributions. It is irrelevant in a termination proceeding that the maintenance of the
172 parent-child relationship may serve as an inducement for the parent's rehabilitation.

173 9. In actions for adoption pursuant to chapter 453, the court may hear and determine the
174 issues raised in a petition for adoption containing a prayer for termination of parental rights filed
175 with the same effect as a petition permitted pursuant to subsection 2, 4, or 5 of this section.

176 10. The disability or disease of a parent shall not constitute a basis for a determination
177 that a child is a child in need of care, for the removal of custody of a child from the parent, or for
178 the termination of parental rights without a specific showing that there is a causal relation
179 between the disability or disease and harm to the child.

180 11. A court of competent jurisdiction may terminate the parental rights of a biological
181 father of a child if he is an alleged perpetrator of forcible rape under section 566.030 as it existed
182 prior to August 28, 2013, or rape in the first degree under section 566.030 that resulted in the
183 conception and birth of the child. The biological mother who is the victim of the ~~[forcible]~~ rape
184 ~~[or rape in the first degree]~~ **that resulted in the conception and birth of the child** or, if she is
185 a minor, someone on her behalf may file a petition to terminate the parental rights of the

186 biological father. The court may terminate the parental rights of the biological father if the court
187 finds that by:

188 (1) Clear, cogent, and convincing evidence the biological father committed the act of
189 ~~[forcible] rape [or rape in the first degree]~~ against the biological mother;

190 (2) Clear, cogent, and convincing evidence the child was conceived as a result of that
191 act of ~~[forcible] rape [or rape in the first degree]~~; and

192 (3) The preponderance of the evidence the termination of the parental rights of the
193 biological father is in the best interests of the child.

194 12. In any action to terminate the parental rights of the biological father under subsection
195 11 of this section or subdivision (5) of subsection 5 of this section, a court of competent
196 jurisdiction may order that the mother and the child conceived and born as a result of ~~[forcible]~~
197 ~~rape [or rape in the first degree]~~ are entitled to obtain from the biological father certain payments,
198 support, beneficiary designations, or other financial benefits. The court shall issue such order
199 only if the mother gives her consent; provided, that the court shall first inform the mother that
200 such order may require or obligate the mother to have continuous or future communication and
201 contact with the biological father. Such order shall be issued without the biological father being
202 entitled to or granted any custody, guardianship, visitation privileges, or other parent-child
203 relationship, and may include any or all of the following:

204 (1) Payment for the reasonable expenses of the mother or the child, or both, related to
205 pregnancy, labor, delivery, postpartum care, newborn care, or early childhood care;

206 (2) Child support under this chapter or chapter 210, 452, or 454;

207 (3) All rights of the child to inherit under the probate code, as defined in section
208 472.010; provided that, for purposes of intestate succession, the biological father or his kindred
209 shall have no right to inherit from or through the child;

210 (4) The designation of the child as the beneficiary of a life or accidental death insurance
211 policy, annuity, contract, plan, or other product sold or issued by a life insurance company; or

212 (5) Any other payments, support, beneficiary designations, or financial benefits that are
213 in the best interests of the child or for the reasonable expenses of the mother, or both.

214

215 If the mother declines to seek a court order for child support under this subsection, no state
216 agency shall require the mother to do so in order to receive public assistance benefits for herself
217 or the child, including, but not limited to, benefits for temporary assistance for needy families,
218 supplemental nutrition assistance program, or MO HealthNet. The court order terminating the
219 parental rights of the biological father under subdivision (5) of subsection 5 of this section or
220 subsection 11 of this section shall serve as a sufficient basis for a good cause or other exemptions
221 under 42 U.S.C. Section 654(29) and the state agency shall not require the mother or the child

222 to otherwise provide the identity, location, income, or assets of the biological father or have
223 contact or communicate with the biological father. However, nothing in this subsection shall
224 prohibit a state agency from requesting that the mother assign any child support rights she
225 receives under this subsection to the state as a condition of receipt of public assistance benefits
226 under applicable federal and state law.

453.030. 1. In all cases the approval of the court of the adoption shall be required and
2 such approval shall be given or withheld as the welfare of the person sought to be adopted may,
3 in the opinion of the court, demand.

4 2. The written consent of the person to be adopted shall be required in all cases where
5 the person sought to be adopted is fourteen years of age or older, except where the court finds
6 that such child has not sufficient mental capacity to give the same. In a case involving a child
7 under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings
8 about his or her adoption by conducting an interview or interviews with the child, if appropriate
9 based on the child's age and maturity level, which shall be considered by the court as a factor in
10 determining if the adoption is in the child's best interests.

11 3. With the exceptions specifically enumerated in section 453.040, when the person
12 sought to be adopted is under the age of eighteen years, the written consent of the following
13 persons shall be required and filed in and made a part of the files and record of the proceeding:

14 (1) The mother of the child;

15 (2) Any man who:

16 (a) Is presumed to be the father pursuant to subdivision (1), (2), or (3) of subsection 1
17 of section 210.822; or

18 (b) Has filed an action to establish his paternity in a court of competent jurisdiction no
19 later than fifteen days after the birth of the child and has served a copy of the petition on the
20 mother in accordance with section 506.100; or

21 (c) Filed with the putative father registry pursuant to section 192.016 a notice of intent
22 to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after
23 the child's birth, and has filed an action to establish his paternity in a court of competent
24 jurisdiction no later than fifteen days after the birth of the child; and

25 (3) The child's current adoptive parents or other legally recognized mother and father.

26

27 Upon request by the petitioner and within one business day of such request, the clerk of the local
28 court shall verify whether such written consents have been filed with the court.

29 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section
30 may be executed before or after the birth of the child or before or after the commencement of the
31 adoption proceedings, and shall be executed in front of a judge or acknowledged before a notary

32 public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the
33 consenting birth parent of the consequences of the consent. In lieu of such acknowledgment, the
34 signature of the person giving such written consent shall be witnessed by the signatures of at
35 least two adult persons whose signatures and addresses shall be plainly written thereon. The two
36 adult witnesses shall not be the prospective adoptive parents or any attorney representing a party
37 to the adoption proceeding other than the attorney representing the party signing the consent.
38 The notary public or witnesses shall verify the identity of the party signing the consent.
39 Notwithstanding any other provision of law to the contrary, a properly executed written consent
40 under this subsection shall be considered irrevocable.

41 5. The written consent required in subdivision (1) of subsection 3 of this section by the
42 birth mother shall not be executed anytime before the child is forty-eight hours old. Such written
43 consent shall be executed in front of a judge or acknowledged before a notary public. If consent
44 is executed in front of a judge, it shall be the duty of the judge to advise the consenting party of
45 the consequences of the consent. In lieu of acknowledgment before a notary public, the signature
46 of the person giving such written consent shall be witnessed by the signatures of at least two
47 adult persons who are present at the execution whose signatures and addresses shall be plainly
48 written thereon and who determine and certify that the consent is knowingly and freely given.
49 The two adult witnesses shall not be the prospective adoptive parents or any attorney
50 representing a party to the adoption proceeding other than the attorney representing the party
51 signing the consent. The notary public or witnesses shall verify the identity of the party signing
52 the consent.

53 6. A consent is final when executed, unless the consenting party, prior to a final decree
54 of adoption, alleges and proves by clear and convincing evidence that the consent was not freely
55 and voluntarily given. The burden of proving the consent was not freely and voluntarily given
56 shall rest with the consenting party. Consents in all cases shall have been executed not more
57 than six months prior to the date the petition for adoption is filed.

58 7. A consent form shall be developed through rules and regulations promulgated by the
59 **children's division of the** department of social services. No rule or portion of a rule
60 promulgated under the authority of this section shall become effective unless it has been
61 promulgated pursuant to the provisions of chapter 536. If a written consent is obtained after
62 August 28, 1997, but prior to the development of a consent form by the department and the
63 written consent complies with the provisions of subsection 8 of this section, such written consent
64 shall be deemed valid.

65 8. However, the consent form must specify that:

66 (1) The birth parent understands the importance of identifying all possible fathers of the
67 child and may provide the names of all such persons; and

68 (2) The birth parent understands that if he denies paternity, but consents to the adoption,
69 he waives any future interest in the child.

70 9. The written consent to adoption required by subsection 3 and executed through
71 procedures set forth in subsection 5 of this section shall be valid and effective even though the
72 parent consenting was under eighteen years of age, if such parent was represented by a guardian
73 ad litem, at the time of the execution thereof.

74 10. Where the person sought to be adopted is eighteen years of age or older, his or her
75 written consent alone to his or her adoption shall be sufficient.

76 11. A birth parent, including a birth parent less than eighteen years of age, shall have the
77 right to legal representation ~~[and payment of any reasonable legal fees incurred throughout the~~
78 ~~adoption process]~~. In addition, the court may appoint an attorney to represent a birth parent if:

79 (1) **The court determines that a birth parent is in need of representation by counsel**
80 **or** a birth parent requests **such** representation;

81 (2) The court finds that hiring an attorney to represent such birth parent would cause a
82 financial hardship for the birth parent; and

83 (3) The birth parent is not already represented by counsel.

84 12. ~~[Except in cases where the court determines that the adoptive parents are unable to~~
85 ~~pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall~~
86 ~~order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid~~
87 ~~by the prospective adoptive parents or the child-placing agency.~~

88 ~~—————13.]~~ The court shall receive and acknowledge a written consent to adoption properly
89 executed by a birth parent under this section when such consent is in the best interests of the
90 child.

453.040. The consent to the adoption of a child is not required of:

2 (1) A parent whose rights with reference to the child have been terminated pursuant to
3 law, including section 211.444 or section 211.447 or other similar laws in other states;

4 (2) A parent of a child who has legally consented to a future adoption of the child;

5 (3) A parent whose identity is unknown and cannot be ascertained at the time of the
6 filing of the petition;

7 (4) A man who has not been established to be the father and who is not presumed by law
8 to be the father, and who, after the conception of the child, executes a verified statement denying
9 paternity and disclaiming any interest in the child and acknowledging that this statement is
10 irrevocable when executed and follows the consent as set forth in section 453.030;

11 (5) A parent or other person who has not executed a consent and who, after proper
12 service of process, fails to file an answer or make an appearance in a proceeding for adoption or
13 for termination of parental rights at the time such cause is heard;

14 (6) A parent who has a mental condition which is shown by competent evidence either
15 to be permanent or such that there is no reasonable likelihood that the condition can be reversed
16 and which renders the parent unable to knowingly provide the child the necessary care, custody
17 and control;

18 (7) A parent who has, for a period of at least six months, for a child ~~[one-year]~~ **over**
19 **three years** of age ~~[or older]~~, or at least sixty days, for a child ~~[under one-year]~~ **three years** of
20 age **or under**, immediately prior to the filing of the petition for adoption, ~~[willfully abandoned~~
21 ~~the child or, for a period of at least six months immediately prior to the filing of the petition for~~
22 ~~adoption,]~~ willfully, substantially and continuously neglected to provide ~~[him]~~ **the child** with
23 necessary care and protection;

24 (8) A parent whose rights to the child may be terminated for any of the grounds set forth
25 in section 211.447 and whose rights have been terminated after hearing and proof of such
26 grounds as required by sections 211.442 to 211.487. Such petition for termination may be filed
27 as a count in an adoption petition.

✓