MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **SB 327**	DATE: **4/20/2021**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

REGISTERED LOBBYIST:

WITNESS NAME: **JESSICA PETRIE**		PHONE NUMBER: **573-635-6092**	
REPRESENTING: **CHILDREN's TRUST FUND**		TITLE:	
ADDRESS: **PO BOX 1805**			
CITY: **JEFFERSON CITY**		STATE: **MO**	ZIP: **65109**
EMAIL: **jessica@wintonpolicygroup.com**	ATTENDANCE: **Written**	SUBMIT DATE: **4/20/2021 6:27 PM**	

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WITNESS NAME

REGISTERED LOBBYIST:

WITNESS NAME: **KAYCEE NAIL**		PHONE NUMBER: **314-630-5709**	
REPRESENTING: **FOSTERADOPT CONNECT**		TITLE:	
ADDRESS: **PO BOX 684**			
CITY: **JEFFERSON CITY**		STATE: **MO**	ZIP: **65102**
EMAIL: **kaycee@penman.group**	ATTENDANCE: **In-Person**	SUBMIT DATE: **4/20/2021 5:58 PM**	

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WITNESS NAME

REGISTERED LOBBYIST:

WITNESS NAME: **OLIVIA WILSON**		PHONE NUMBER: **573-634-4876**	
REPRESENTING: **FOSTER AND ADOPTIVE CARE COALITION, MISSOURI COALITION OF CHILDREN's AGENCIES**		TITLE:	
ADDRESS: **213 EAST CAPITOL**			
CITY: **JEFFERSON CITY**		STATE: **MO**	ZIP: **65102**
EMAIL:	ATTENDANCE:	SUBMIT DATE: **4/20/2021 12:00 AM**	

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WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ARNIE C. "HONEST-ABE" DIENOFF-STATE PUBLIC ADVOCAT**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **arniedienoff@yahoo.com**	ATTENDANCE: **Written**	SUBMIT DATE: **4/20/2021 2:01 PM**

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I am Opposed to this Bill. The Parental Rights Provision shall be removed. This Bill has a very Slippery-Slope. Beware!

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TESTIFYING: ☐ IN SUPPORT OF ☑ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **CHRIS R. BROWN**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **brown.cr@live.com**	ATTENDANCE: **Written**	SUBMIT DATE: **4/20/2021 2:35 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

To: Members of the House Committee on Emerging Issues Re: Senate Bill 327 Mr. Chairman and members of the Committee: As an attorney with over 7 years of experience working on child abuse/neglect cases as well as termination of parental rights cases, I offer this written statement opposing Senate Bill 327. I write specifically about the following provisions: changes to the definition of "abandonment" in §211.447.2(2) and §211.447.5(1) RSMo; the creation of a new presumption of parental unfitness in §211.447.5(5) RSMo; and changes involving attorneys fees in §453.030.11 through .12 RSMo. Changing the definition of "abandonment" in §211.447.2(2) and §211.447.5(1) RSMo. Under the current definition of "abandonment," a parent may be found to have abandoned their child if "The parent has, without good cause, left the child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so." This definition consists of two straightforward and easy-to-understand elements: the parent has (1) failed to provide support to the child, and (2) failed to communicate with the child. The proposed change to the definition of "abandonment" in SB327 destroys this simple definition in favor of one that is overbroad, vague, and wholly detached from anything resembling actual abandonment. Under the new proposed definition, a parent has abandoned the child if they have "willfully, substantially, and continuously neglected to provide the child with necessary care and protection." This new definition is problematic for several reasons. First, this definition does not describe what anyone would consider abandonment. It does not take into account whether the parent is visiting or communicating with the child or taking any steps to preserve the parent-child relationship. Under SB327's definition, for example, a parent who is regularly visiting with their child, attending all of their court hearings, and actively participating in their court-ordered services could still be found to have abandoned their child. Second, the new proposed definition is so overbroad and vague it would potentially encompass nearly every child who enters foster care. Essentially, every child who enter foster care does so because their parent or guardian is not providing them with "necessary care and protection." Further, the vast majority of foster care cases do not resolve themselves within six months (the requisite time period needed before abandonment can be considered). If SB327's proposed definition were to take effect, nearly every child in foster care for six months or longer could be found to be abandoned, without regard for whether the parent is communicating with them or actively making efforts to resolve whatever problem brought the child into foster care. It should go without saying that not every foster care case is appropriate for termination of parental rights, and not every child who enters foster care has been abandoned. The proposed language, "neglect[ing] to provide the child with necessary care and protection" looks far more like a generic definition of "neglect" than it does "abandonment."Third, the new proposed definition needlessly introduces new standards and terminology not found anywhere else in the Juvenile Code. "Willfully, substantially, and continuously" is a standard not used anywhere else in the termination of parental rights statute or elsewhere in the Juvenile Code. The phrase "necessary care

and protection" similarly does not appear in the termination of parental rights statue or the Juvenile Code. Introducing new standards or terminology only serves to cause confusion, particularly when other, similar phrases like providing "necessary care, custody and control" already appear throughout the statute.I can only surmise that the drafter(s) of SB327 intended to mimic the language used in the adoption statute, §453.040(7) RSMo, when crafting this change to abandonment findings under Chapter 211. However, given the straightforwardness and clarity of the current definition of "abandonment," this change is a step in the wrong direction. Even if the legislature is going to consider some of the other changes in SB327 that relate to abandoned infants or abandoned children (such as raising the abandoned infant age to 2 years from 1 year), I would urge you to strike any other changes to the current, clear definition of abandonment. New presumption of parental unfitness in §211.447.5(5) RSMo Senate Bill 327 also creates a new presumption of parental unfitness wherein a parent would be presumed unfit if their child has remained under the jurisdiction of the juvenile court for at least 15 of the most recent 22 months. While §211.447.5(5) RSMo already contains other presumptions of unfitness, the new presumption in SB327 is categorically different in that it relies solely on the passage of time rather than on specific actions by the parent or a specific set of circumstances.The presumptions of unfitness in §211.447.5(5) RSMo, when pled in a termination of parental right case, shift the burden of proof to the parent who must then disprove that they are unfit. The existing presumptions of unfitness are narrowly crafted and apply to a relatively specific set of circumstances. For example, one presumption applies if a parent has had their rights involuntarily terminated to a different child within the past 3 years. Another presumption applies if a mother tested positive for controlled substances at the time of the child's birth and she has had a previous child found to be abused or neglected.The presumption created by SB327, by contrast, is much broader and would apply to many more cases than any of the existing presumptions. This is because, by the time a termination of parental rights petition is filed (and especially by the time it goes to trial), the child will almost certainly have been under the court's jurisdiction for 15 of the most recent 22 months. This means that in a huge percentage (possibly a majority) of cases, the parent, and not the petitioner, could end up bearing the burden of proof. Again, though this burden shifting is not unheard of, it should be the exception and not the rule.The addition of a presumption of unfitness based purely on the amount of time the child has been under the court's jurisdiction serves little purpose that is not already contemplated by other parts of §211.447 RSMo. Even under the existing parental unfitness section, 211.447.5(5) RSMo, the court must already consider the "duration and nature" of the conditions affecting the parent-child relationship; and in considering whether the parent will be unable to appropriately care for the child "for the reasonably foreseeable future," the Court is naturally going to consider how much time the child has already spent in foster care and how much time the parent has already been given to correct the problems.Because presumptions should be reserved for more specific circumstances, and because the current termination of parental rights statute already take into account the time a child has spent under the court's jurisdiction, I would urge the legislature not to adopt the new presumption of unfitness proposed in SB327.Attorneys fees in §453.030.11 and .12 RSMo Currently, our adoption statute grants a birth parent the right to an attorney in an adoption case. The statute requires the court to order the adoptive parents to cover the birth parent's legal fees unless the court finds the adoptive parents are unable to pay, in which case pro bono counsel is appointed. This ensures that, if a birth parent wishes to consult with an attorney, they are able to do so. Senate Bill 327 effectively eliminates the birth parent's access to counsel if they are indigent. Although leaving in place the language stating a birth parent "shall have the right to legal representation," SB327 then goes on to strike all language about when a court should appoint them counsel and how it will be paid for. This change cannot be defended on the basis that it technically leaves in place a birth parent's right to counsel. Without providing an actual mechanism to appoint them counsel or any provisions for paying for said counsel, the "right to counsel" that SB327 leaves in place is completely hollow. Further, this cannot be defended on the basis that asking adoptive parents to cover the birth parent's legal fees creates a barrier to adoption since the current statute already provides an exception for cases in which adoptive parents cannot pay. The result of this change will be birth parents across the state who are left unrepresented in a proceeding that determines the fate of their relationship with their child. I can conceive of no purpose for this change other than making it easier to obtain consents to adoption from uninformed and uncounseled birth parents. Concluding Thoughts Termination of parental rights is often referred to as "the civil death penalty." It is, arguably, the most serious sanction the government can impose on a person, and the law should set high standards for proving these cases. The changes proposed in SB327 which I have described above, do not reflect the serious nature of termination of parental rights or adoption proceedings. The changes appear primarily aimed at making termination of parental rights and adoption cases easier, faster, and (at least in the case of eliminating attorney's fees for birth parents) cheaper. Neither the best interests of the child nor the rights of parents are adequately considered in this bill. I would hope that when sponsoring legislation, a legislator would make an effort to consult with the professionals in the field most affected by said legislation. It seems

apparent that did not happen in this case.I hope this body will take these concerns into consideration and either vote no on SB327 or demand substantial changes. I thank you for giving this matter the time and attention it deserves, Further, the views expressed in this written statement are my own and do not necessarily reflect the views of my employer.Sincerely, /s/ Chris R. Brown , Attorney at Law Mo. Bar No. 63732 3941 Castleman Ave. St. Louis, MO 63110 (314) 401-5311 Brown.CR@live.com