

SECOND REGULAR SESSION

# HOUSE BILL NO. 1933

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WILSON.

4389H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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

Section A. Sections 211.447 and 453.030, RSMo, are repealed and two new sections  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

211.447. 1. Any information that could justify the filing of a petition to terminate  
2 parental rights may be referred to the juvenile officer by any person. The juvenile officer  
3 shall make a preliminary inquiry and if it appears that the information could justify the filing  
4 of a petition, the juvenile officer may take further action, including filing a petition. If it does  
5 not appear to the juvenile officer that a petition should be filed, such officer shall so notify the  
6 informant in writing within thirty days of the referral. Such notification shall include the  
7 reasons 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  
10 division, or if such a petition has been filed by another party, the juvenile officer or the  
11 division shall seek to be joined as a party to the petition, when:

12 (1) Information available to the juvenile officer or the division establishes that the  
13 child 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  
15 child. For purposes of this subdivision, a "child" means any child under two years of age at  
16 the time of filing of the petition. The court may find that a child has been abandoned if:

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.

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

20 (b) The parent has, without good cause, left the child without any provision for  
21 parental support and without making arrangements to visit or communicate with the child,  
22 although able to do so, or, for a period of sixty days when the child was under one year of age,  
23 willfully, substantially, and continuously neglected to provide the child with necessary care  
24 and protection; or

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

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

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

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

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

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

33 (4) The parent has been found guilty of or pled guilty to a felony violation of chapter  
34 566, 567, 568, or 573 when the child or any child was a victim. As used in this subdivision, a  
35 "child" means any person who was under eighteen years of age at the time of the offense.

36 3. A termination of parental rights petition shall be filed by the juvenile officer or the  
37 division, or if such a petition has been filed by another party, the juvenile officer or the  
38 division shall seek to be joined as a party to the petition, within sixty days of the judicial  
39 determinations required in subsection 2 of this section, except as provided in subsection 4 of  
40 this section. Failure to comply with this requirement shall not deprive the court of  
41 jurisdiction to adjudicate a petition for termination of parental rights which is filed outside of  
42 sixty days.

43 4. If grounds exist for termination of parental rights pursuant to subsection 2 of this  
44 section, the juvenile officer or the division may, but is not required to, file a petition to  
45 terminate the parental rights of the child's parent or parents if:

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

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

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

52           5. The juvenile officer or the division may file a petition to terminate the parental  
53 rights of the child's parent when it appears that one or more of the following grounds for  
54 termination exist:

55           (1) The child has been abandoned. For purposes of this subdivision a "child" means  
56 any child two years of age or older at the time of filing of the petition. The court shall find  
57 that the child has been abandoned if, for a period of ~~six~~ **three** months or longer:

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

61           (b) The parent has, for a period of ~~six~~ **three** months immediately prior to the filing  
62 of the petition for termination of parental rights, willfully, substantially, and continuously  
63 neglected to provide the child with necessary care and protection;

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

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

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

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

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

82

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

85           (3) The child has been under the jurisdiction of the juvenile court for a period of one  
86 year, and the court finds that the conditions which led to the assumption of jurisdiction still  
87 persist, or conditions of a potentially harmful nature continue to exist, that there is little  
88 likelihood that those conditions will be remedied at an early date so that the child can be

89 returned to the parent in the near future, or the continuation of the parent-child relationship  
90 greatly diminishes the child's prospects for early integration into a stable and permanent  
91 home. In determining whether to terminate parental rights under this subdivision, the court  
92 shall consider and make findings on the following:

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

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

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

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

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

109 (5) (a) The parent is unfit to be a party to the parent and child relationship because of  
110 a consistent pattern of committing a specific abuse including, but not limited to, specific  
111 conditions directly relating to the parent and child relationship which are determined by the  
112 court to be of a duration or nature that renders the parent unable for the reasonably  
113 foreseeable future to care appropriately for the ongoing physical, mental, or emotional needs  
114 of the child.

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

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

121 b. If the parent is the birth mother and within eight hours after the child's birth, the  
122 child's birth mother tested positive and over eight-hundredths of one percent blood alcohol  
123 content pursuant to testing under section 577.020 for alcohol, or tested positive for cocaine,  
124 heroin, methamphetamine, a controlled substance as defined in section 195.010, or a  
125 prescription drug as defined in section 196.973, excepting those controlled substances or

126 prescription drugs present in the mother's body as a result of medical treatment administered  
127 to the mother, and the birth mother is the biological mother of at least one other child who  
128 was adjudicated an abused or neglected minor by the mother or the mother has previously  
129 failed to complete recommended treatment services by the children's division through a  
130 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  
132 hours after a child's birth the child tested positive for alcohol, cocaine, heroin,  
133 methamphetamine, a controlled substance as defined in section 195.010, or a prescription  
134 drug as defined in section 196.973, excepting those controlled substances or prescription  
135 drugs present in the mother's body as a result of medical treatment administered to the mother,  
136 and the birth mother is the biological mother of at least one other child who was adjudicated  
137 an abused or neglected minor by the mother or the mother has previously failed to complete  
138 recommended treatment services by the children's division through a family-centered services  
139 case;

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

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

148 6. The juvenile court may terminate the rights of a parent to a child upon a petition  
149 filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if  
150 the court finds that the termination is in the best interest of the child and when it appears by  
151 clear, cogent and convincing evidence that grounds exist for termination pursuant to  
152 subsection 2, 4 or 5 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

190 (1) Clear, cogent, and convincing evidence the biological father committed the act of  
191 forcible rape or rape in the first degree against the biological mother;

192 (2) Clear, cogent, and convincing evidence the child was conceived as a result of that  
193 act of forcible rape or rape in the first degree; and

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

196 12. In any action to terminate the parental rights of the biological father under  
197 subsection 11 of this section or subdivision (5) of subsection 5 of this section, a court of  
198 competent jurisdiction may order that the mother and the child conceived and born as a result  
199 of forcible rape or rape in the first degree are entitled to obtain from the biological father

200 certain payments, support, beneficiary designations, or other financial benefits. The court  
201 shall issue such order only if the mother gives her consent; provided, that the court shall first  
202 inform the mother that such order may require or obligate the mother to have continuous or  
203 future communication and contact with the biological father. Such order shall be issued  
204 without the biological father being entitled to or granted any custody, guardianship, visitation  
205 privileges, or other parent-child relationship, and may include any or all of the following:

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

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

209 (3) All rights of the child to inherit under the probate code, as defined in section  
210 472.010; provided that, for purposes of intestate succession, the biological father or his  
211 kindred shall have no right to inherit from or through the child;

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

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

217

218 If the mother declines to seek a court order for child support under this subsection, no state  
219 agency shall require the mother to do so in order to receive public assistance benefits for  
220 herself or the child, including, but not limited to, benefits for temporary assistance for needy  
221 families, supplemental nutrition assistance program, or MO HealthNet. The court order  
222 terminating the parental rights of the biological father under subdivision (5) of subsection 5 of  
223 this section or subsection 11 of this section shall serve as a sufficient basis for a good cause or  
224 other exemptions under 42 U.S.C. Section 654(29) and the state agency shall not require the  
225 mother or the child to otherwise provide the identity, location, income, or assets of the  
226 biological father or have contact or communicate with the biological father. However,  
227 nothing in this subsection shall prohibit a state agency from requesting that the mother assign  
228 any child support rights she receives under this subsection to the state as a condition of receipt  
229 of public assistance benefits 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  
3 may, 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

8 feelings about his or her adoption by conducting an interview or interviews with the child, if  
9 appropriate based on the child's age and maturity level, which shall be considered by the court  
10 as a factor in 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  
14 proceeding:

15 (1) The mother of the child;

16 (2) Any man who:

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

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

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

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

27

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

30 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this  
31 section may be executed before or after the birth of the child or before or after the  
32 commencement of the adoption proceedings, and shall be executed in front of a judge or  
33 acknowledged before a notary public. If consent is executed in front of a judge, it shall be the  
34 duty of the judge to advise the consenting birth parent of the consequences of the consent. In  
35 lieu of such acknowledgment, the signature of the person giving such written consent shall be  
36 witnessed by the signatures of at least two adult persons whose signatures and addresses shall  
37 be plainly written thereon. The two adult witnesses shall not be the prospective adoptive  
38 parents or any attorney representing a party to the adoption proceeding other than the attorney  
39 representing the party signing the consent. The notary public or witnesses shall verify the  
40 identity of the party signing the consent. Notwithstanding any other provision of law to the  
41 contrary, a properly executed written consent under this subsection shall be considered  
42 irrevocable.

43 5. The written consent required in subdivision (1) of subsection 3 of this section by  
44 the birth mother shall not be executed anytime before the child is forty-eight hours old. Such



45 written consent shall be executed in front of a judge or acknowledged before a notary public.  
46 If consent is executed in front of a judge, it shall be the duty of the judge to advise the  
47 consenting party of the consequences of the consent. In lieu of acknowledgment before a  
48 notary public, the signature of the person giving such written consent shall be witnessed by  
49 the signatures of at least two adult persons who are present at the execution whose signatures  
50 and addresses shall be plainly written thereon and who determine and certify that the consent  
51 is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive  
52 parents or any attorney representing a party to the adoption proceeding other than the attorney  
53 representing the party signing the consent. The notary public or witnesses shall verify the  
54 identity of the party signing the consent.

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

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

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

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

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

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

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

78         11. A birth parent, including a birth parent less than eighteen years of age, shall have  
79 the right to legal representation. In addition, the court may appoint an attorney to represent a  
80 birth parent less than eighteen years of age if:

81             (1) A birth parent requests representation;

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

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

85           12. The court shall receive and acknowledge a written consent to adoption properly  
86 executed by a birth parent under this section when such consent is in the best interests of the  
87 child.

✓