

FIRST REGULAR SESSION

HOUSE BILL NO. 37

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALKER.

0386H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 453.005, RSMo, and to enact in lieu thereof two new sections relating to rights of persons with parental relationships.

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

Section A. Section 453.005, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.398 and 453.005, to read as follows:

452.398. 1. It is the goal of this section to protect the psychological, emotional, and physical well-being of Missouri children by ensuring continuing interaction between a minor child and those persons with whom the minor child shares a substantial bond regardless of such persons' biological connection to the minor child. Nothing in this section shall be construed or is intended to affect the procedure for termination of parental rights under chapter 211. Nothing in this section shall be construed or is intended to revive the rights of a natural parent whose rights have previously been terminated under chapter 211.

2. As used in this section, the following terms shall mean:

(1) "Detrimental impact to the minor child", includes, but is not limited to, circumstances that may cause psychological, emotional, or physical harm to a minor child;

(2) "Natural parent", a biological or legal parent whose rights have not been terminated;

(3) "Ongoing relationship", a parent/child relationship with substantial continuity that has existed or did exist for at least one year;

(4) "Parent/child relationship", a relationship that exists or did exist between a minor child and a person other than a natural parent in which the person claiming such relationship has:

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.

18 (a) Performed the duties of a parent and provided for the minor child's basic
19 physical needs for food, clothing, shelter, and incidental necessities;

20 (b) Provided the minor child with necessary care, education, structure, and
21 discipline; and

22 (c) Developed and sustained a relationship with the minor child through
23 interaction, companionship, interplay, and mutuality that fulfilled the minor child's
24 psychological and emotional needs.

25 3. Any person who has a parent/child relationship with a minor child and who is
26 not the minor child's natural parent may petition a court of competent jurisdiction under
27 section 452.740 either by independent petition or by intervention in a pending action
28 including, but not limited to, an action pending in the juvenile division of a circuit court
29 to enter a judgment establishing custody and visitation rights to sustain and protect an
30 ongoing relationship with the minor child. An action under this section may be filed only
31 if:

32 (1) At least one of the natural parents is deceased;

33 (2) At least one of the natural parents is unknown;

34 (3) The whereabouts of at least one of the natural parents is unknown and
35 unascertainable for a period of one year;

36 (4) The parental rights of at least one biological parent have been terminated; or

37 (5) The remaining parent has not had an ongoing parent/child relationship with the
38 minor child in question for a period of one year prior to the filing of a petition under this
39 section.

40 4. To qualify under this section, the petitioner or intervenor:

41 (1) Is or was married to the minor child's natural parent pursuant to the laws and
42 constitution of the state of Missouri;

43 (2) Is or was named on the birth certificate of the minor child at some point during
44 the minor child's life and the parental rights have not previously been terminated under
45 sections 211.442 to 211.490; or

46 (3) Materially relied upon a natural parent's representation that the petitioner or
47 intervenor was or could be the minor child's biological parent.

48 5. The petitioner or intervenor shall establish by a preponderance of the evidence
49 that an ongoing parent/child relationship exists or did exist. In determining whether such
50 a relationship exists or did exist, the court shall consider all relevant factors including:

51 (1) The age of the minor child;

52 (2) The minor child's mental and emotional maturity;

53 **(3) Whether the minor child holds or did in the past hold a belief that the petitioner**
54 **or intervenor is his or her parent;**

55 **(4) The duration and extent of the minor child's interaction with the petitioner or**
56 **intervenor prior to the filing of the petitioner's or intervenor's action;**

57 **(5) Whether a natural parent fostered, condoned, or promoted the relationship**
58 **between the minor child and the petitioner or intervenor;**

59 **(6) The extent to which the petitioner or intervenor has provided for the minor**
60 **child's support, health, education, and welfare;**

61 **(7) The extent to which the petitioner or intervenor has performed the role of**
62 **parent;**

63 **(8) The extent to which the petitioner or intervenor has fulfilled the minor child's**
64 **psychological needs for a parent; and**

65 **(9) Whether the petitioner or intervenor, the natural parent, and the minor child**
66 **interacted with their community and third parties as a family.**

67 **6. In any proceeding initiated under this section, there is a rebuttable presumption**
68 **that the natural parent acts in the minor child's best interests. In determining whether the**
69 **presumption has been rebutted and whether to award custody or visitation rights over the**
70 **objection of a natural parent, the court shall consider any psychological injury to the child**
71 **resulting from a discontinuation of the relationship between the child and petitioner or**
72 **intervenor and may consider factors including, but not limited to:**

73 **(1) Whether the petitioner or intervenor is or has been a primary caretaker of the**
74 **minor child;**

75 **(2) Whether the natural parent has fostered, condoned, or promoted the**
76 **relationship between the minor child and the petitioner or intervenor;**

77 **(3) The duration and extent of the minor child's interaction with the petitioner or**
78 **intervenor prior to the filing of the petitioner's or intervenor's action;**

79 **(4) The extent to which the petitioner or intervenor has provided for the minor**
80 **child's support, health, education, and welfare;**

81 **(5) The extent to which the petitioner or intervenor has performed the role of**
82 **parent;**

83 **(6) The extent to which the petitioner or intervenor has fulfilled the minor child's**
84 **psychological needs for a parent;**

85 **(7) Whether the natural parent has unreasonably denied or limited contact between**
86 **the minor child and the petitioner or intervenor;**

87 **(8) Whether the natural parent is unwilling or unable to adequately care for the**
88 **minor child; and**

89 **(9) The character, background, and parenting abilities of the parties.**

90 **7. If the court determines that a parent/child relationship exists and the parental**
91 **presumption in subsection 6 of this section has been rebutted by a preponderance of the**
92 **evidence, the court may grant visitation rights to the petitioner or intervenor in order to**
93 **maintain a meaningful and continuing relationship with the minor child if to do so is in the**
94 **best interests of the child. The court may determine temporary custody or temporary**
95 **visitation during the pendency of any proceeding pending entry of a final order.**

96 **8. If the court determines that a parent/child relationship exists or did exist and the**
97 **parental presumption in subsection 6 of this section has been rebutted by clear and**
98 **convincing evidence, the court may grant custody or visitation rights to the petitioner or**
99 **intervenor in order to maintain a meaningful and continuing relationship with the minor**
100 **child if to do so is in the best interests of the child and the court finds that:**

101 **(1) The natural parent is unfit, unsuitable, or unable to be a custodian;**

102 **(2) The welfare of the child requires the granting of such rights; or**

103 **(3) The natural parent is listed in the central registry, as defined in section 210.110.**

104

105 **The court may order temporary visitation or contact rights under this subsection pending**
106 **a final order.**

107 **9. If the court determines that custody or visitation between the minor child and**
108 **the petitioner or intervenor is appropriate, the court may establish a parenting plan in**
109 **accordance with subsection 8 of section 452.310 after consideration of the provisions of**
110 **section 452.375, including an obligation of support under section 452.340.**

111 **10. The presumption described in subsection 6 of this section shall not exist in any**
112 **action for modification of a judgment granted under this section.**

113 **11. The custody and visitation provisions of this section shall apply only to periods**
114 **of visitation or custody accruing subsequent to the filing of a petition under this section.**
115 **This subsection shall not, however, limit the court's ability to consider evidence of past**
116 **circumstances of the parties and the child or to find that a parent/child relationship exists**
117 **or existed prior to August 28, 2015.**

118 **12. Notice of any action under this section shall be given in a manner prescribed**
119 **by law to the natural parent or parents, to any person who has custody of the minor child**
120 **in question, and to any person the petitioner or intervenor knows would qualify under**
121 **subsection 4 of this section.**

122 **13. If a military parent is required to be separated from a child due to deployment,**
123 **a court shall not enter a final order under this section until ninety days after the**
124 **deployment ends. Deployment or the potential for future deployment of a military parent**

125 shall not constitute grounds sufficient to support a custody or visitation order under this
126 section.

127 **14. If a parent is required to be separated from a child due to employment and the**
128 **parent supports the child on an ongoing basis, the separation shall not constitute grounds**
129 **sufficient to support a custody or visitation order under this section.**

453.005. 1. The provisions of sections 453.005 to 453.400 shall be construed so as to
2 promote the best interests and welfare of the child in recognition of the entitlement of the child
3 to a permanent and stable home.

4 2. The children's division and all persons involved in the adoptive placement of children
5 as provided in subdivisions (1), (2) and (4) of section 453.014 shall provide for the diligent
6 recruitment of potential adoptive homes that reflect the ethnic and racial diversity of children in
7 the state for whom adoptive homes are needed.

8 **3. The race or ethnicity of the adoptive child, the child's biological parents, or the**
9 **prospective parents shall not be a consideration when determining the interests of the**
10 **child, the welfare of the child, the suitability and assessment of prospective adoptive**
11 **parents, or the home of the prospective adoptive parents in adoptive placements. For any**
12 **Native American child placed in protective custody, the division shall comply with the**
13 **placement requirements set forth in 25 U.S.C. Section 1915.** Placement of a child in an
14 adoptive home may not be delayed or denied on the basis of race, color or national origin.

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