

FIRST REGULAR SESSION

SENATE BILL NO. 425

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

Read 1st time February 10, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1925S.02I

AN ACT

To repeal sections 211.183, 211.442, 211.444, and 453.040, RSMo, and to enact in lieu thereof five new sections relating to parental rights and adoption.

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

Section A. Sections 211.183, 211.442, 211.444, and 453.040, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 211.183, 211.442, 211.444, 453.040, and 453.045, to read as follows:

211.183. 1. In juvenile court proceedings regarding the removal of a child
2 from his or her home, the court's order shall include a determination of whether
3 the children's division has made reasonable efforts to prevent or eliminate the
4 need for removal of the child and, after removal, to make it possible for the child
5 to return home. If the first contact with the family occurred during an emergency
6 in which the child could not safely remain at home even with reasonable in-home
7 services, the division shall be deemed to have made reasonable efforts to prevent
8 or eliminate the need for removal.

9 2. "Reasonable efforts" means the exercise of reasonable diligence and care
10 by the division to utilize all available services related to meeting the needs of the
11 juvenile and the family. In determining reasonable efforts to be made and in
12 making such reasonable efforts, the child's present and ongoing health and safety
13 shall be the paramount consideration.

14 3. In support of its determination of whether reasonable efforts have been
15 made, the court shall enter findings, including a brief description of what
16 preventive or reunification efforts were made and why further efforts could or
17 could not have prevented or shortened the separation of the family. The division
18 shall have the burden of demonstrating reasonable efforts.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 4. The juvenile court may authorize the removal of the child even if the
20 preventive and reunification efforts of the division have not been reasonable, but
21 further efforts could not permit the child to remain at home.

22 5. Before a child may be removed from the parent, guardian, or custodian
23 of the child by order of a juvenile court, excluding commitments to the division
24 of youth services, the court shall in its orders:

25 (1) State whether removal of the child is necessary to protect the child
26 and the reasons therefor;

27 (2) Describe the services available to the family before removal of the
28 child, including in-home services;

29 (3) Describe the efforts made to provide those services relevant to the
30 needs of the family before the removal of the child;

31 (4) State why efforts made to provide family services described did not
32 prevent removal of the child; and

33 (5) State whether efforts made to prevent removal of the child were
34 reasonable, based upon the needs of the family and child.

35 6. If continuation of reasonable efforts, as described in this section, is
36 determined by the division to be inconsistent with establishing a permanent
37 placement for the child, the division shall take such steps as are deemed
38 necessary by the division, including seeking modification of any court order to
39 modify the permanency plan for the child.

40 7. The division shall not be required to make reasonable efforts, as
41 defined in this section, but has the discretion to make reasonable efforts if a court
42 of competent jurisdiction has determined that:

43 (1) The parent has subjected the child to a severe act or recurrent acts of
44 physical, emotional or sexual abuse toward the child, including an act of incest;
45 or

46 (2) The parent has:

47 (a) Committed murder of another child of the parent;

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

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

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

53 (3) **Aggravating factors that in the totality of circumstances**
54 **affect the fitness of the parent, including, but not limited to, alcohol or**

55 **controlled substances dependency of the parent which prevents him or**
56 **her from consistently providing the necessary care, custody, and**
57 **control of the child and which in the totality of the circumstances**
58 **appear to be not treatable such as to enable the parent to consistently**
59 **provide such care, custody, and control. The court may consider, but**
60 **is not limited to, the following factors under this subdivision:**

- 61 **(a) Previous history of child abandonment;**
62 **(b) Previous history of child maltreatment;**
63 **(c) Placement of the parent's other child or children in foster**
64 **care or out of home placement;**
65 **(d) Prior failed efforts at reunification with the child at issue or**
66 **another of the parent's child or children;**
67 **(e) History of giving birth to a newborn with fetal alcohol**
68 **syndrome or a controlled substance exposed newborn;**
69 **(f) History of a parent's child or children testing positive for**
70 **alcohol or a controlled substance at birth or anytime afterwards;**
71 **(g) Diminished motivation to parent the child at issue or another**
72 **child or children of the parent;**
73 **(h) Past or current failed efforts at alcohol or controlled**
74 **substance rehabilitation or refusal to enter an alcohol or controlled**
75 **substance abuse rehabilitation facility; or**
76 **(i) Extended period of alcohol or controlled substance abuse; or**
77 **(4) The parent's parental rights to a sibling have been involuntarily**
78 **terminated.**

79 8. If the court determines that reasonable efforts, as described in this
80 section, are not required to be made by the division, the court shall hold a
81 permanency hearing within thirty days after the court has made such
82 determination. The division shall complete whatever steps are necessary to
83 finalize the permanent placement of the child.

84 9. The division may concurrently engage in reasonable efforts, as
85 described in this section, while engaging in such other measures as are deemed
86 appropriate by the division to establish a permanent placement for the child.

211.442. As used in sections 211.442 to 211.487, unless the context clearly
2 indicates otherwise, the following terms mean:

- 3 (1) "Child", an individual under eighteen years of age;
4 (2) "Minor", any person who has not attained the age of eighteen years;

5 (3) "Parent"[, a biological parent or parents of a child, as well as, the
6 husband of a natural mother at the time the child was conceived, or a parent or
7 parents of a child by adoption, including both the mother and the putative father
8 of a child. The putative father of a child shall have no legal relationship unless
9 he, prior to the entry of a decree under sections 211.442 to 211.487, has
10 acknowledged the child as his own by affirmatively asserting his paternity]:

11 (a) **A biological parent or parents who have a parent and child**
12 **relationship as defined under subdivision (4) of section 210.817 and**
13 **section 210.819;**

14 (b) **The presumed father of a child under subdivisions (1), (2) and**
15 **(3) of section 210.822;**

16 (c) **The acknowledged father under section 210.823;**

17 (d) **The adjudicated parent under sections 210.817 to 210.853;**

18 (e) **A parent or parents of a child by adoption; or**

19 (f) **The putative father of a child who has, before the birth or**
20 **within fifteen days of the birth of the child:**

21 a. **Established a relationship with the child under section**
22 **453.045; and**

23 b. **Filed a parentage action under sections 210.817 to 210.853 and**
24 **properly served notice upon the mother.**

211.444. 1. The juvenile court may, upon petition of the juvenile officer,
2 **the court appointed guardian ad litem**, or a child-placing agency licensed
3 under sections 210.481 to 210.536 in conjunction with a placement with such
4 agency under subsection 6 of section 453.010, or the court before which a petition
5 for adoption has been filed pursuant to the provisions of chapter 453, terminate
6 the rights of a parent [to] **or receive the consent to adoption or waiver of**
7 **consent to adoption executed by a parent of a child, including a child**
8 **who is a ward of the court**, if the court finds that such termination, **consent**
9 **to adoption, or waiver of consent to adoption** is in the best interests of the
10 child and the parent has, **in a properly executed writing**, consented [in
11 writing] to the termination of his or her parental rights, **consented to a**
12 **specific adoption, or waived consent to adoption in writing. The court**
13 **shall take under consideration a consent to adoption or waiver of**
14 **consent to adoption by a parent of a named father when determining**
15 **the best interests of the child.**

16 2. The written consent required by subsection 1 of this section may be

17 executed before or after the institution of the proceedings and shall be
18 acknowledged before a notary public. In lieu of such acknowledgment, the
19 signature of the person giving the written consent shall be witnessed by at least
20 two adult persons who are present at the execution whose signatures and
21 addresses shall be plainly written thereon and who determine and certify that the
22 consent is knowingly and freely given. The two adult witnesses shall not be the
23 prospective parents. The notary public or witnesses shall verify the identity of
24 the party signing the consent.

25 3. The written consent required by subsection 1 of this section shall be
26 valid and effective only after the child is at least forty-eight hours old and if it
27 complies with the other requirements of section 453.030.

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
3 terminated pursuant to law, including section 211.444 or section 211.447 or other
4 similar laws in other states;

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

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

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

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

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

22 (7) A parent who has for a period of at least six months, for a child one
23 year of age or older, or at least sixty days, for a child under one year of age,
24 immediately prior to the filing of the petition for adoption, willfully abandoned
25 the child or, for a period of at least six months immediately prior to the filing of

26 the petition for adoption, willfully, substantially and continuously neglected to
27 provide him with necessary care and protection;

28 **(8) A man who is on notice that he may be the biological father**
29 **of a child under section 453.061 but who has not developed a consistent**
30 **and substantial relationship with his child under section 453.045 and**
31 **whose consent is not required under section 453.030 or not required or**
32 **is waived under subsection 7 of section 192.016;**

33 **(9) A parent whose rights to the child may be terminated for any of the**
34 **grounds set forth in section 211.447 and whose rights have been terminated after**
35 **hearing and proof of such grounds as required by sections 211.442 to**
36 **211.487. Such petition for termination may be filed as a count in an adoption**
37 **petition.**

453.045. 1. A man whose consent to adoption is waived or not
2 **required under sections 192.016, 453.030, or 453.040 nonetheless**
3 **preserves his rights to intervene in an action for termination of**
4 **parental rights or in an action for adoption or to file a paternity action**
5 **for a child after a petition for either adoption or termination of**
6 **parental rights has been filed with the court, where he can prove that**
7 **he has previously developed a consistent and substantial relationship**
8 **with the child commensurate with his means and abilities, including**
9 **but not limited to, by providing his share of consistent prenatal**
10 **financial support and consistent prenatal and natal medical care for**
11 **the mother and baby, consistent child support payments commensurate**
12 **with his ability to pay, consistent contact and visitation with the child,**
13 **and assistance with educational and medical care of the child, unless**
14 **he can prove that he was actively thwarted from doing so by the**
15 **mother or other actual or legal custodian.**

16 **2. Failure to develop such relationship pursuant to subsection 1**
17 **of this section waives such man's rights to intervene in an action for**
18 **termination of parental rights or in an action for adoption or to file a**
19 **paternity action for a child after a petition for either adoption or**
20 **termination of parental rights has been filed with the court.**

✓