

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1492
97TH GENERAL ASSEMBLY

5360H.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.183 and 211.447, RSMo, and to enact in lieu thereof two new sections relating to termination of parental rights.

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

Section A. Sections 211.183 and 211.447, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 211.183 and 211.447, to read as follows:

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

41 (2) The parent has:

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

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

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

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

48 (3) **Aggravating factors that in the totality of the circumstances affect the fitness**
49 **of the parent, including, but not limited to, alcohol, controlled substances, or prescription**
50 **drug dependency of the parent, all of which prevents him or her from consistently**
51 **providing the necessary care, custody, and control of the child and which in the totality of**
52 **the circumstances appear to be not treatable such as to enable the parent to consistently**
53 **provide such care, custody, and control. The court may consider, but is not limited to, the**
54 **following factors under this subdivision:**

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

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

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

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 shall
3 make a preliminary inquiry and if it does not appear to the juvenile officer that a petition should
4 be filed, such officer shall so notify the informant in writing within thirty days of the referral.
5 Such notification shall include the reasons that the petition will not be filed. Thereupon, the
6 informant may bring the matter directly to the attention of the judge of the juvenile court by
7 presenting the information in writing, and if it appears to the judge that the information could
8 justify the filing of a petition, the judge may order the juvenile officer to take further action,
9 including making a further preliminary inquiry or filing a petition.

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

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

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

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

22 (b) The parent has, without good cause, left the child without any provision for parental
23 support and without making arrangements to visit or communicate with the child, although able
24 to do so; 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.

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

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

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

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

46 (3) The family of the child has not been provided such services as provided for in section
47 211.183.

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

51 (1) The child has been abandoned. For purposes of this subdivision a "child" means any
52 child over one year of age at the time of filing of the petition. The court shall find that the child
53 has been abandoned if, for a period of six months or longer:

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

57 (b) The parent has, without good cause, left the child without any provision for parental
58 support and without making arrangements to visit or communicate with the child, although able
59 to do so;

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

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

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

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

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

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

79 (3) The child has been under the jurisdiction of the juvenile court for a period of one
80 year, and the court finds that the conditions which led to the assumption of jurisdiction still
81 persist, or conditions of a potentially harmful nature continue to exist, that there is little
82 likelihood that those conditions will be remedied at an early date so that the child can be returned
83 to the parent in the near future, or the continuation of the parent-child relationship greatly

84 diminishes the child's prospects for early integration into a stable and permanent home. In
85 determining whether to terminate parental rights under this subdivision, the court shall consider
86 and make findings on the following:

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

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

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

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

98 (4) The parent has been found guilty or pled guilty to a felony violation of chapter 566
99 when the child or any child in the family was a victim, or a violation of section 568.020 when
100 the child or any child in the family was a victim. As used in this subdivision, a "child" means
101 any person who was under eighteen years of age at the time of the crime and who resided with
102 such parent or was related within the third degree of consanguinity or affinity to such parent; or

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

107 (6) [The parent is unfit to be a party to the parent and child relationship because of a
108 consistent pattern of committing a specific abuse, including but not limited to abuses as defined
109 in section 455.010, child abuse or drug abuse before the child or of specific conditions directly
110 relating to the parent and child relationship either of which are determined by the court to be of
111 a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care
112 appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed
113 that a parent is unfit to be a party to the parent-child relationship upon a showing that within a
114 three-year period immediately prior to the termination adjudication, the parent's parental rights
115 to one or more other children were involuntarily terminated pursuant to subsection 2 or 4 of this
116 section or subdivisions (1), (2), (3) or (4) of this subsection or similar laws of other states.] **(a)**
117 **The parent is unfit to be a party to the parent and child relationship because of a consistent**
118 **pattern of committing a specific abuse, including, but not limited to, specific conditions**
119 **directly relating to the parent and child relationship which are determined by the court to**

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

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

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

129 b. While a child is in utero or within eight hours after a child's birth, the child's
130 birth mother has tested positive for alcohol, cocaine, heroin, or methamphetamine, and the
131 mother of the child at issue is the biological mother of at least one other child who was
132 adjudicated an abused or neglected minor or has previously failed to complete
133 recommended treatment services by the children's division through a family centered
134 services case;

135 c. At the time of the child's birth or within eight hours after a child's birth, the
136 child tested positive for alcohol, cocaine, heroin, or methamphetamine, and the mother of
137 the child at issue is the biological mother of at least one other child who was adjudicated
138 an abused or neglected minor or the mother has previously failed to complete treatment
139 services by the children's division through a family centered services case; or

140 d. Within a three-year period immediately prior to 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
143 the biological parent of at least one other child who was adjudicated an abused or
144 neglected minor or has previously failed to complete treatment services by the children's
145 division through a family centered services case.

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

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

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

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

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

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

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

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

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

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

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

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

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