

SECOND REGULAR SESSION

# HOUSE BILL NO. 1399

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DEGROOT.

4904H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 211.447, RSMo, and to enact in lieu thereof one new section relating to the termination of parental rights of a convicted rapist.

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

Section A. Section 211.447, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 211.447, to read as follows:

211.447. 1. Any information that could justify the filing of a petition to terminate parental rights may be referred to the juvenile officer by any person. The juvenile officer shall make a preliminary inquiry and if it appears that the information could justify the filing of a petition, the juvenile officer may take further action, including filing a petition. If it does not appear to the juvenile officer that a petition should be filed, such officer shall so notify the informant in writing within thirty days of the referral. Such notification shall include the reasons that the petition will not be filed.

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

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

(2) A court of competent jurisdiction has determined the child to be an abandoned infant. For purposes of this subdivision, an "infant" means any child one year of age or under at the time of filing of the petition. The court may find that an infant 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 come  
19 forward to claim the child; or

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

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

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

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

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

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

29 (d) Committed a felony assault that resulted in serious bodily injury to the child or to  
30 another child of the parent.

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

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

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

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

44 (3) The family of the child has not been provided such services as provided for in section  
45 211.183.

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

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

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

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

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

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

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

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

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

74

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

77 (3) The child has been under the jurisdiction of the juvenile court for a period of one  
78 year, and the court finds that the conditions which led to the assumption of jurisdiction still  
79 persist, or conditions of a potentially harmful nature continue to exist, that there is little  
80 likelihood that those conditions will be remedied at an early date so that the child can be returned  
81 to the parent in the near future, or the continuation of the parent-child relationship greatly  
82 diminishes the child's prospects for early integration into a stable and permanent home. In  
83 determining whether to terminate parental rights under this subdivision, the court shall consider  
84 and make findings on the following:

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

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

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

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

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

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

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

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

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

116 b. If the parent is the birth mother and within eight hours after the child's birth, the  
117 child's birth mother tested positive and over .08 blood alcohol content pursuant to testing under  
118 section 577.020 for alcohol, or tested positive for cocaine, heroin, methamphetamine, a  
119 controlled substance as defined in section 195.010, or a prescription drug as defined in section  
120 196.973, excepting those controlled substances or prescription drugs present in the mother's  
121 body as a result of medical treatment administered to the mother, and the birth mother is the  
122 biological mother of at least one other child who was adjudicated an abused or neglected minor

123 by the mother or the mother has previously failed to complete recommended treatment services  
124 by the children's division through a family-centered services case;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 **11. A court of competent jurisdiction may terminate the parental rights of a**  
173 **biological father of a child if he is an alleged perpetrator of forcible rape under section**  
174 **566.030 as it existed prior to August 28, 2013, or rape in the first degree under section**  
175 **566.030 that resulted in the conception and birth of the child. The biological mother who**  
176 **is the victim of the forcible rape or rape in the first degree or, if she is a minor, someone**  
177 **on her behalf may file a petition to terminate the parental rights of the biological father.**  
178 **The court may terminate the parental rights of the biological father if the court finds that**  
179 **by:**

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

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

184 **(3) The preponderance of the evidence the termination of the parental rights of the**  
185 **biological father is in the best interests of the child.**

186 **12. In any action to terminate the parental rights of the biological father under**  
187 **subsection 11 of this section or subdivision (5) of subsection 5 of this section, a court of**  
188 **competent jurisdiction, after consultation with the biological mother, may order that the**  
189 **mother and the child conceived and born as a result of forcible rape or rape in the first**  
190 **degree are entitled to obtain from the biological father, without him being entitled to or**  
191 **granted any custody, guardianship, visitation privileges, or other parent-child relationship:**

- 192           **(1) Payment for the reasonable expenses of the mother or the child, or both, related**
- 193 **to pregnancy, labor, delivery, postpartum care, newborn care, or early childhood care;**
- 194           **(2) Child support under this chapter or chapter 210, 452, or 454;**
- 195           **(3) All rights of the child to inherit under the probate code, as defined in section**
- 196 **472.010; provided that, for purposes of intestate succession, the biological father or his**
- 197 **kindred shall have no right to inherit from or through the child;**
- 198           **(4) The designation of the child as the beneficiary of a life or accidental death**
- 199 **insurance policy, annuity, contract, plan, or other product sold or issued by a life insurance**
- 200 **company; or**
- 201           **(5) Any other payments, support, beneficiary designations, or financial benefits that**
- 202 **are in the best interests of the child or for the reasonable expenses of the mother, or both.**

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