

SECOND REGULAR SESSION

HOUSE BILL NO. 1491

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY (127).

5204H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Section 211.447, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 211.446 and 211.447, to read as follows:

211.446. 1. In entering an order of adjudication, disposition, or judgment on a petition under subdivision (1) of subsection 1 of section 211.031 or a motion to modify any judgment under subdivision (1) of subsection 1 of section 211.031, the court shall consider, and in every case enter written specific findings of fact and conclusions of law on, whether the child is an abandoned infant as defined in section 211.447 or whether the child's parent:

(1) Negligently, recklessly, knowingly, or intentionally engaged in conduct that caused serious bodily injury to the child;

(2) Sexually abused the child;

(3) Sexually abused another child;

(4) Committed murder of another child of the parent;

(5) Committed voluntary manslaughter of another child of the parent;

(6) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;

(7) Engaged in conduct that resulted in serious bodily injury or the death of another child of the parent; or

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 **(8) Committed a felony assault that resulted in serious bodily injury to the child or**
18 **to another child of the parent.**

19 **2. The findings of fact shall be made by clear, cogent, and convincing evidence. A**
20 **certified copy of any final order and judgment containing the findings in subsection 1 of**
21 **this section shall be admitted into evidence in any petition for termination of parental**
22 **rights under section 211.444 or 211.447 or in any petition for adoption under chapter 453.**
23 **Any final judgment required by this section shall conclusively establish the findings of fact**
24 **and conclusions of law contained therein for purposes of any subsequent proceeding for**
25 **the termination of parental rights of the parent of the child.**

26 **3. For the purposes of this chapter, the following terms mean:**

27 **(1) “Severe physical injury”, bodily injury to a child that involves substantial risk**
28 **of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss**
29 **or impairment of the function of a bodily member, organ, or mental faculty. “Severe**
30 **physical injury” shall also include injuries that a licensed physician has determined to be**
31 **serious, critical, or life threatening;**

32 **(2) “Sexual abuse”, child molestation under sections 566.067 to 566.069 or sexual**
33 **abuse under sections 566.100 and 566.101.**

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 appears that the information could justify the filing of a
4 petition, the juvenile officer may take further action, including filing a petition. If it does not
5 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 reasons
7 that the petition will not be filed.

8 2. Except as provided [~~for~~] in subsection 4 of this section, a **juvenile officer or the**
9 **division, if the child is in the custody of or under supervision of the division, shall file a**
10 **petition to terminate the parental rights of the child’s parent or parents [~~shall be filed by the~~**
11 **~~juvenile officer or the division,~~] or, if such a petition has been filed by another party **and the****
12 **child is under the custody or supervision of the division, the juvenile officer or the division**
13 **shall seek 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; [Ø]

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; [Ø]

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

27 (a) Committed murder of another child of the parent; [Ø]

28 (b) Committed voluntary manslaughter of another child of the parent; [Ø]

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) A court has entered a final judgment containing one or more of the required**
34 **findings in section 211.446.**

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

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

47 (1) The child is being cared for by a relative; [Ø]

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

51 (3) The family of the child has not been provided such services as provided for in section
52 211.183.

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

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

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

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

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

68 (a) A mental condition which is shown by competent evidence either to be permanent
69 or such that there is no reasonable likelihood that the condition can be reversed and which
70 renders the parent unable to knowingly provide the child the necessary care, custody and 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 the
73 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 child
75 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 being
77 committed toward the child or any child in the family; or

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

81

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

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

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

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

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

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

100 (d) Chemical dependency which prevents the parent from consistently providing the
101 necessary care, custody and control over the child and which cannot be treated so as to enable
102 the parent to consistently provide such care, custody and control; ~~[]~~

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

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

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

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

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

123 b. If the parent is the birth mother and within eight hours after the child's birth, the
124 child's birth mother tested positive and over .08 blood alcohol content pursuant to testing under

125 section 577.020 for alcohol, or tested positive for cocaine, heroin, methamphetamine, a
126 controlled substance as defined in section 195.010, or a prescription drug as defined in section
127 196.973, excepting those controlled substances or prescription drugs present in the mother's
128 body as a result of medical treatment administered to the mother, and the birth mother is the
129 biological mother of at least one other child who was adjudicated an abused or neglected minor
130 by the mother or the mother has previously failed to complete recommended treatment services
131 by the children's division through a family-centered services case;

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

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, distribution,
142 or manufacture of cocaine, heroin, or methamphetamine, and the parent is the biological parent
143 of at least one other child who was adjudicated an abused or neglected minor by such parent or
144 such parent has previously failed to complete recommended treatment services by the children's
145 division through a family-centered services case; or

146 **(7) A court has entered a final judgment by clear and convincing evidence**
147 **containing findings that the child's parent:**

148 **(a) Negligently, recklessly, knowingly, or intentionally engaged in conduct that**
149 **caused serious bodily injury to the child;**

150 **(b) Sexually abused the child;**

151 **(c) Sexually abused another child;**

152 **(d) Committed murder of another child of the parent;**

153 **(e) Committed voluntary manslaughter of another child of the parent;**

154 **(f) Aided or abetted, attempted, conspired, or solicited to commit murder or**
155 **voluntary manslaughter of another child of the parent;**

156 **(g) Engaged in conduct that resulted in serious bodily injury or the death of**
157 **another child of the parent; or**

158 **(h) Committed a felony assault that resulted in serious bodily injury to the child or**
159 **to another child of the parent.**

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

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

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

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

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

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

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

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

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

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

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

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

193 **11. (1) In cases where a child is in the custody, care, or supervision of the division**
194 **and the court has entered a final judgment finding that one or more of the conditions**
195 **specified in section 211.446 or subsection 2 of this section exist, the fact that an adoptive**

196 resource for the child has not been identified shall not be a relevant consideration and shall
197 not constitute a basis for determining whether grounds exist for termination of parental
198 rights or whether it is in the best interests of the child to terminate the parental rights of
199 the parent to the child.

200 (2) In cases where a child is in the custody, care, or supervision of the division, the
201 division shall exercise active and diligent efforts to identify and place a child whose parents
202 have had their parental rights terminated with an adoptive family or in a guardianship,
203 or to otherwise achieve the permanency goal for the child.

204 (3) The division shall file a report with the court every six months detailing the
205 division's active and diligent efforts to identify and place the child with an adoptive family,
206 guardianship, or otherwise to achieve the permanency goal for the child until permanency
207 has been achieved. At every post-permanency review hearing after the entry of a judgment
208 terminating parental rights, the court shall review all such reports and may require the
209 division and the parties to adduce evidence detailing the active and diligent efforts to
210 achieve permanency for the child until permanency has been achieved.

211 12. The division or the juvenile officer, the parent, and the guardian ad litem shall
212 each have the right to a change of judge from the judge or commissioner who entered the
213 judgment and order on adjudication and disposition on the petition for termination of
214 parental rights.

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