

SECOND REGULAR SESSION

SENATE BILL NO. 652

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Pre-filed December 1, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

3533S.011

AN ACT

To repeal sections 211.447, 211.462, and 211.477, RSMo, and to enact in lieu thereof five new sections relating to jury trials in termination of parental rights proceedings.

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

Section A. Sections 211.447, 211.462, and 211.477, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 211.445,
3 211.447, 211.462, 211.477, and 211.478, to read as follows:

**211.445. The juvenile court shall act as trier of all issues in
2 termination of parental rights actions under sections 211.442 to 211.487,
3 except that as of January 1, 2011, a parent may request by written
4 demand to the court a trial of the issues of fact by a jury. Such request
5 must be filed with the court no later than forty-five days following
6 service of the summons on the parent or guardian whose parental
7 rights are the subject of the proceeding. Failure to file such request
8 within the forty-five-day period shall constitute a waiver of the right
9 to a trial by jury under this section, and any subsequent request in the
10 same proceeding shall be denied by the court unless the request is
11 joined in by all parties to the proceeding. Upon the request of any
12 party, the court in its discretion may take such steps in the jury
13 proceeding to preserve the privacy of both the child and the parent or
14 guardian as it finds to be consistent with the rights of all parties.**

211.447. 1. Any information that could justify the filing of a petition to
2 terminate parental rights may be referred to the juvenile officer by any
3 person. The juvenile officer shall make a preliminary inquiry and if it does not
4 appear to the juvenile officer that a petition should be filed, such officer shall so

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

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

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

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

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

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

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

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

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

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

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

37 3. A termination of parental rights petition shall be filed by the juvenile
38 officer or the division, or if such a petition has been filed by another party, the
39 juvenile officer or the division shall seek to be joined as a party to the petition,
40 within sixty days of the judicial determinations required in subsection 2 of this

41 section, except as provided in subsection 4 of this section. Failure to comply with
42 this requirement shall not deprive the court of jurisdiction to adjudicate a
43 petition for termination of parental rights which is filed outside of sixty days.

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

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

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

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

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

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

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

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

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

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

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

77 and control;

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

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

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

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

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

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

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

110 (4) The parent has been found guilty or pled guilty to a felony violation
111 of chapter 566, RSMo, when the child or any child in the family was a victim, or
112 a violation of section 568.020, RSMo, when the child or any child in the family

113 was a victim. As used in this subdivision, a "child" means any person who was
114 under eighteen years of age at the time of the crime and who resided with such
115 parent or was related within the third degree of consanguinity or affinity to such
116 parent; or

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

121 (6) The parent is unfit to be a party to the parent and child relationship
122 because of a consistent pattern of committing a specific abuse, including but not
123 limited to, abuses as defined in section 455.010, RSMo, child abuse or drug abuse
124 before the child or of specific conditions directly relating to the parent and child
125 relationship either of which are determined by the court to be of a duration or
126 nature that renders the parent unable, for the reasonably foreseeable future, to
127 care appropriately for the ongoing physical, mental or emotional needs of the
128 child. It is presumed that a parent is unfit to be a party to the parent-child
129 relationship upon a showing that within a three-year period immediately prior
130 to the termination adjudication, the parent's parental rights to one or more other
131 children were involuntarily terminated pursuant to subsection 2 or 4 of this
132 section or subdivisions (1), (2), (3) or (4) of subsection 5 of this section or similar
133 laws of other states.

134 6. The juvenile court, **as trier of fact or upon a finding by a jury**,
135 may terminate the rights of a parent to a child upon a petition filed by the
136 juvenile officer or the division, or in adoption cases, by a prospective parent, if the
137 court **as trier of fact or a jury** finds that the termination is in the best interest
138 of the child and when it appears by clear, cogent and convincing evidence that
139 grounds exist for termination pursuant to subsection 2, 4 or 5 of this section.

140 7. When considering whether to terminate the parent-child relationship
141 pursuant to subsection 2 or 4 of this section or subdivision (1), (2), (3) or (4) of
142 subsection 5 of this section, the court **as trier of fact or a jury** shall evaluate
143 and make findings on the following factors, when appropriate and applicable to
144 the case:

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

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

148 (3) The extent of payment by the parent for the cost of care and

149 maintenance of the child when financially able to do so including the time that
150 the child is in the custody of the division or other child-placing agency;

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

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

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

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

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

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

211.462. 1. In all actions to terminate parental rights, if not previously
2 appointed pursuant to section 210.160, RSMo, a guardian ad litem shall be
3 appointed for the child as soon as practicable after the filing of the petition.

4 2. The parent or guardian of the person of the child shall be notified **of**
5 **the right to have a trial of the issues heard by a jury and** of the right to
6 have counsel, and if they request counsel and are financially unable to employ
7 counsel, counsel shall be appointed by the court. Notice of this provision shall be
8 contained in the summons. When the parent is a minor or incompetent the court
9 shall appoint a guardian ad litem to represent such parent.

10 3. The guardian ad litem shall, during all stages of the proceedings:

11 (1) Be the legal representative of the child, and may examine,
12 cross-examine, subpoena witnesses and offer testimony. The guardian ad litem
13 may also initiate an appeal of any disposition that he determines to be adverse
14 to the best interests of the child;

15 (2) Be an advocate for the child during the dispositional hearing and aid
16 in securing a permanent placement plan for the child. To ascertain the child's
17 wishes, feelings, attachments, and attitudes, he shall conduct all necessary
18 interviews with persons, other than the parent, having contact with or knowledge
19 of the child and, if appropriate, with the child;

20 (3) Protect the rights, interest and welfare of a minor or incompetent
21 parent by exercising the powers and duties enumerated in subdivisions (1) and
22 (2) of this subsection.

23 4. Court costs shall be paid by the county in which the proceeding is
24 instituted, except that the court may require the agency or person having or
25 receiving legal or actual custody to pay the costs.

211.477. 1. If, after the dispositional hearing, the court **as trier of fact**
2 **or a jury** finds that one or more of the grounds set out in section 211.447 exists
3 or that the parent has consented to the termination pursuant to section 211.444
4 and that it is in the best interests of the child, the court **as trier of fact or**
5 **upon a finding by a jury** may terminate the rights of the parent in and to the
6 child. After ordering termination and after consideration of the social study and
7 report, the court shall transfer legal custody to:

8 (1) The division of family services;

9 (2) A private child-placing agency;

10 (3) A foster parent, relative or other person participating in the
11 proceedings pursuant to section 211.464; or

12 (4) Any other person or agency the court deems suitable to care for the
13 child.

14 2. If only one parent consents or if the conditions specified in section
15 211.447 are found to exist as to only one parent, the rights of only that parent
16 with reference to the child may be terminated and the rights of the other parent
17 shall not be affected.

18 3. The court may order termination whether or not the child is in adoptive
19 placement or an adoptive placement is available for the child.

20 4. If, after the dispositional hearing, the court **as trier of fact or a jury**
21 finds that one or more of the grounds set out in section 211.447 exists, but that
22 termination is not in the best interests of the child because the court **as trier of**
23 **fact or a jury** finds that the child would benefit from the continued parent-child
24 relationship or because the child is fourteen or more years of age and objects to
25 the termination, the court may:

26 (1) Dismiss the petition and order that the child be returned to the
27 custody of the parent;

28 (2) Retain jurisdiction of the case and order that the child be placed in the
29 legal custody of the parent, the division, a private child-caring or placing agency,
30 a foster parent, relative or other suitable person who is able to provide long-term
31 care for the child. Any order of the court, **as trier of fact or upon**
32 **recommendation of a jury**, under this subdivision shall designate the period
33 of time it shall remain in effect, with mandatory review by the court no later than
34 six months thereafter. The court, **as trier of fact or upon recommendation**
35 **of a jury**, shall also specify what residual rights and responsibilities remain with
36 the parent. Any individual granted legal custody shall exercise the rights and
37 responsibilities personally unless otherwise authorized by the court; or

38 (3) Appoint a guardian under the provisions of chapter 475, RSMo.

39 5. Orders of the court issued pursuant to sections 211.442 to 211.487 shall
40 recite the jurisdictional facts, factual findings on the existence of grounds for
41 termination and that the best interests of the child are served by the disposition
42 stated in the order.

43 6. The granting or denial of a petition for termination of parental rights
44 shall be deemed a final judgment for purposes of appeal.

211.478. 1. Anything in this chapter to the contrary
2 **notwithstanding, where a termination of parental rights case is heard**
3 **by a jury:**

4 (1) **The jury findings shall have the same legal effect as in other**
5 **civil proceedings; and**

6 (2) **Determinations of relevance of evidence shall be made on the**
7 **same basis as in any other civil case.**

8 2. **By November 1, 2010, the Missouri supreme court shall develop**
9 **appropriate jury instructions for termination of parental rights cases**
10 **heard by a jury. At least one of the instructions shall direct the jury to**
11 **find whether the termination of parental rights will or will not be in**
12 **the best interests of the child.**

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