

FIRST REGULAR SESSION

SENATE BILL NO. 134

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time January 18, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0939S.011

AN ACT

To repeal section 211.447, RSMo, and to enact in lieu thereof one new section relating to parental rights of individuals with disabilities.

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Section A. Section 211.447, RSMo, is repealed and one new section
2 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
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 **Nothing in this subdivision shall be construed to permit discrimination**
88 **on the basis of disability;**

89 (3) The child has been under the jurisdiction of the juvenile court for a
90 period of one year, and the court finds that the conditions which led to the
91 assumption of jurisdiction still persist, or conditions of a potentially harmful
92 nature continue to exist, that there is little likelihood that those conditions will

93 be remedied at an early date so that the child can be returned to the parent in
94 the near future, or the continuation of the parent-child relationship greatly
95 diminishes the child's prospects for early integration into a stable and permanent
96 home. In determining whether to terminate parental rights under this
97 subdivision, the court shall consider and make findings on the following:

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

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

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

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

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

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

123 (6) The parent is unfit to be a party to the parent and child relationship
124 because of a consistent pattern of committing a specific abuse, including but not
125 limited to, abuses as defined in section 455.010, child abuse or drug abuse before
126 the child or of specific conditions directly relating to the parent and child
127 relationship either of which are determined by the court to be of a duration or
128 nature that renders the parent unable, for the reasonably foreseeable future, to

129 care appropriately for the ongoing physical, mental or emotional needs of the
130 child. It is presumed that a parent is unfit to be a party to the parent-child
131 relationship upon a showing that within a three-year period immediately prior
132 to the termination adjudication, the parent's parental rights to one or more other
133 children were involuntarily terminated pursuant to subsection 2 or 4 of this
134 section or subdivisions (1), (2), (3) or (4) of subsection 5 of this section or similar
135 laws of other states.

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

141 7. When considering whether to terminate the parent-child relationship
142 pursuant to subsection 2 or 4 of this section or subdivision (1), (2), (3) or (4) of
143 subsection 5 of this section, the court shall evaluate and make findings on the
144 following factors, when appropriate and applicable to 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 may attach little or no weight to infrequent visitations,
163 communications, or contributions. It is irrelevant in a termination proceeding
164 that the maintenance of the parent-child relationship may serve as an

165 inducement for the parent's rehabilitation.

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

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

175 **11. In cases involving a parent with a disability, determinations**
176 **made under this section shall consider the availability and use of**
177 **accommodations for the disability, including assistive technology and**
178 **support services.**

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