

SECOND REGULAR SESSION

SENATE BILL NO. 771

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SIMS, HOUSE AND BENTLEY.

Read 1st time January 20, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3076.011

AN ACT

To repeal sections 210.720 and 211.183, RSMo 1994, and sections 211.171, 211.447 and 453.010, RSMo Supp. 1997, relating to permanency for children in alternative care, and to enact in lieu thereof five new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 210.720 and 211.183, RSMo 1994, and sections 211.171, 211.447 and 453.010, RSMo Supp. 1997, are repealed and five new sections enacted in lieu thereof, to be known as sections 210.720, 211.171, 211.183, 211.447 and 453.010, to read as follows:

210.720. 1. In the case of a child who has been placed in the custody of **[an] the division of family services in accordance with section 207.010 or another** authorized agency by a court or who has been placed in foster care by a court, every six months after the placement, the foster family, group home, agency, or child care institution with which the child is placed shall file with the court a written report on the status of the child~~], and]~~. The court shall review the report and shall hold a **[dispositional] permanency** hearing within ~~[eighteen]~~ **twelve** months of initial placement and annually thereafter. The **[dispositional] permanency** hearing shall be for the purpose of determining in accordance with the best interests of the child **a permanent plan for the placement of the child, including** whether or not the child should be continued in foster care or whether the child should be returned to a parent, guardian or relative, or whether or not proceedings should be instituted **by either the juvenile officer or the division** to terminate parental rights and legally free such child for adoption.

2. In such **[dispositional] permanency** hearings the court shall consider all relevant factors including:

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- (1) The interaction and interrelationship of the child with his foster parents, his parents, his siblings, and any other person who may significantly affect the child's best interests;
- (2) The child's adjustment to his foster home, school and community;
- (3) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved;
- (4) The needs of the child for a continuing relationship with his parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child.

3. The judge shall make written findings of fact and conclusions of law in any [final disposition] **order pertaining to the placement of the child.**

211.171. 1. The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers desirable. He may take testimony and inquire into the habits, surroundings, conditions and tendencies of the child to enable the court to render such order or judgment as will best promote the welfare of the child and carry out the objectives of this chapter.

2. The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time.

3. **The current foster parents of a child, or any preadoptive parent or relative currently providing care for the child shall be provided with notice of, and an opportunity to be heard in any permanency or other review hearing to be held with respect to the child. This subsection shall not be construed to establish that any such foster parent, preadoptive parent, or relative providing care for a child shall have the right to be made a party to the case solely on the basis of such notice and opportunity to be heard.**

4. All cases of children shall be heard separately from the trial of cases against adults.

[4.] 5. Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or if requested by any party interested in the proceeding.

[5.] 6. The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court [except in cases where the child is accused of conduct which, if committed by an adult, would be considered a class A or B felony; or for conduct which would be considered a class C felony, if the child has previously been formally adjudicated for the commission of two or more unrelated acts which would have been class A, B or C felonies, if committed by an adult].

[6.] 7. The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court.

[7.] 8. The court shall allow the victim of any offense to submit a written statement to the court. The court shall allow the victim to appear before the court personally or by counsel for the

purpose of making a statement, unless the court finds that the presence of the victim would not serve justice. The statement shall relate solely to the facts of the case and any personal injuries or financial loss incurred by the victim. A member of the immediate family of the victim may appear personally or by counsel to make a statement if the victim has died or is otherwise unable to appear as a result of the offense committed by the child.

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

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

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

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

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

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

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

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

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

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

6. If continuation of reasonable efforts as described in this section is determined

by the division to be inconsistent with establishing a permanent placement for the child, the division shall take such steps as are deemed necessary by the division, including seeking modification of any court order, to modify the permanency plan for the child.

7. The division shall not be required to make reasonable efforts as defined in this section if:

(1) The parent has committed a severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family, including an act of incest, or such acts were committed by another under circumstances where the parent knew or should have known that such acts were being committed; or

(2) The parent has repeatedly or continuously failed, although physically or financially able to do so, to provide the child with adequate food, clothing, shelter or education as defined by law or other care and control necessary for his physical, mental or emotional health and development;

(3) The parent has:

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

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

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

(4) The parent's parental rights to a sibling have been involuntarily terminated.

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

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

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 may file a petition to terminate parental rights.] 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. Thereupon, the informant may bring the matter directly to the attention of the judge of the juvenile court by presenting the information in writing, and if it appears to the judge that the information could justify the filing of a petition, the judge may order the juvenile officer to take further action, including making a further preliminary inquiry or filing a petition.

2. The juvenile court may terminate the rights of a parent to a child upon a petition filed

by the juvenile officer, **the division** or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interests of the child and when it appears by clear, cogent and convincing evidence that one or more of the following grounds for termination exist:

(1) The child has been abandoned. The court shall find that the child has been abandoned if, for a period of six months or longer for a child over one year of age or a period of sixty days or longer for a child under one year of age at the time of the filing of the petition:

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

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

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

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

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

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

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

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

(a) The terms of a social service plan entered into by the parent and the division and the

extent to which the parties have made progress in complying with those terms;

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

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

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

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

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

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

3. The juvenile officer or the division is not required to file a petition to terminate the parental rights of the child's parents pursuant to subsection 2 of this section if:

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

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

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

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

- (1) The emotional ties to the birth parent;
- (2) The extent to which the parent has maintained regular visitation or other contact with the child;
- (3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;
- (4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;
- (5) The parent's disinterest in or lack of commitment to the child;
- (6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;
- (7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

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

[5.] 6. In actions for adoption under chapter 453, RSMo, the court may hear and determine the issues raised in a petition for adoption containing a prayer for termination of parental rights filed with the same effect as a petition permitted under subsection 2 of this section.

453.010. 1. Unless the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to the provisions of chapter 211, RSMo, any person desiring to adopt another person as his child shall petition the juvenile division of the circuit court of the county in which:

- (1) The person seeking to adopt resides;
- (2) The child sought to be adopted was born;
- (3) The child is located at the time of the filing of the petition; or
- (4) Either birth person resides.

2. If the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to the provision of chapter 211, RSMo, any person desiring to adopt such person as his child shall petition the juvenile division of the circuit court which has jurisdiction over the child for permission to adopt such person as his child. Upon receipt of a

motion from the petitioner and consent of the receiving court, the juvenile division of the circuit court which has jurisdiction over the child may transfer jurisdiction to the juvenile division of a circuit court within any of the alternative venues set forth in subsection 1 of this section.

3. If the petitioner has a spouse living and competent to join in the petition, such spouse may join therein, and in such case the adoption shall be by them jointly. If such a spouse does not join the petition the court in its discretion may, after a hearing, order such joinder, and if such order is not complied with may dismiss the petition.

4. Upon receipt of a properly filed petition, a court, as defined in section 453.010, shall hear said petition in a timely fashion. **A court or licensed child placing agency shall not deny or delay the placement of a child for adoption when an approved family is available, regardless of the approved family's residence or domicile.**

Section B. Because there is a serious and immediate need to promote and obtain permanency for children in alternative care, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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Bill

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