

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 674

89TH GENERAL ASSEMBLY

1998

L2950.04T

AN ACT

To repeal sections 210.720, 211.183, 376.816 and 453.160, RSMo 1994, and sections 192.016, 211.171, 211.444, 211.447, 211.464, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.075, 453.077, 453.080, 453.112 and 453.170, RSMo Supp. 1997, and to enact in lieu thereof twenty new sections for the purpose of complying with the federal mandates and providing permanency for children in alternative care, with an emergency clause for certain sections.

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

Section A. Sections 376.816 and 453.160, RSMo 1994, and sections 192.016, 211.444, 211.464, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.075, 453.077, 453.080, 453.112 and 453.170, RSMo Supp. 1997, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 192.016, 211.444, 211.464, 376.816, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.075, 453.077, 453.080, 453.160 and 453.170, to read as follows:

192.016. 1. The department of health shall establish a putative father registry which shall record the names and addresses of:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock;

(2) Any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed

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

with the registry by such person or any other person.

2. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall file the acknowledgment affidavit form developed by the state registrar which shall include the minimum requirements prescribed by the secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. section 652(2)(7).

3. A person filing a notice of intent to claim paternity of a child shall notify the registry of any change of address.

4. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

5. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

6. The department shall, upon request **and within two business days of such request**, provide the names and addresses of persons listed with the registry to any court or authorized agency, or entity or person named in section 453.014, RSMo, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

7. The department of health shall:

(1) Prepare forms for registration of paternity and an application for search of the putative father registry;

(2) Produce and distribute a pamphlet or publication informing the public about the putative father registry, including the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment and failure to acknowledge paternity pursuant to section 453.010, RSMo, and the address of the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the department of health. The department shall also provide such pamphlets or publications to the department of social services, hospitals, libraries, medical clinics, schools, universities, and other providers of child related services upon request;

(3) Provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the putative father registry and its services.

211.444. 1. The juvenile court may, upon petition of the juvenile officer, or the court before which a petition for adoption has been filed **[under] pursuant to** the provisions of chapter 453, RSMo, terminate the rights of a parent to a child if the court finds that such termination is in the best interests of the child and the parent has consented in writing to the termination of his **or her** parental rights.

2. The written consent required by subsection 1 of this section may be executed before or after the institution of the proceedings and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving the written consent shall be witnessed by at least two adult persons who are present at the execution whose signatures and addresses shall be plainly written thereon and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective parents. The notary public or witnesses shall verify the identity of the party signing the consent.

3. The written consent required by subsection 1 of this section shall be valid and effective only after the child is at least forty-eight hours old and if it complies with the other requirements of section 453.030, RSMo.

211.464. 1. Where a child has been placed with a foster parent, with relatives or with other persons who are able and willing to permanently integrate the child into the family by adoption, [if the court finds that it is in the best interests of the child,] the court [may] **shall** provide the opportunity for such foster parent, relative or other person to present evidence for the consideration of the court.

2. Current foster parents or other legal custodians who are not seeking to adopt the child shall be given an opportunity to testify at all hearings regarding the child. Upon the filing of a petition concerning a minor child who is in the care of foster parents or other legal custodians, the court shall give notice to such foster parents or legal custodians of the filing, any future hearings held on such petition and their opportunity to testify at any subsequent hearings held in relation to such petition, unless such notice and opportunity is waived by such foster or custodial parent.

376.816. 1. No individual or group insurance policy providing coverage on an expense-incurred basis, no individual or group service or indemnity contract issued by a not for profit health services corporation, **no health maintenance organization** nor any self-insured group health benefit plan of any type or description shall be offered, issued or renewed in this state on or after July 10, 1991, unless the policy, plan or contract covers adopted children of the insured, subscriber or enrollee on the same basis as other dependents.

2. The coverage required by **subsection 1** of this section is effective:

(1) From the date of birth if a petition for adoption is filed within thirty days of the birth of such child; or

(2) From the date of placement for the purpose of adoption [and continues] if a petition for adoption is filed within thirty days of placement of such child.

Such coverage shall continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage shall include the necessary care and treatment of medical conditions existing prior to the date of placement.

3. As used in this section, "placement" means in the physical custody of the adoptive

parent.

452.402. 1. The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when such rights have been denied to them;

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation rights; [or]

(3) A grandparent is unreasonably denied visitation with the child for a period exceeding ninety days[.]; **or**

(4) The child is adopted by a stepparent, another grandparent or other blood relative.

2. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair [his] **the child's** emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to seek or maintain visitation rights [under] **pursuant to** this section may terminate upon the adoption of the child [except where the child is adopted by a stepparent, another grandparent or other blood relative].

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

453.025. 1. The court shall, in all cases where the person sought to be adopted is under eighteen years of age, appoint a guardian ad litem, if not previously appointed pursuant to section 210.160, RSMo, to represent the person sought to be adopted.

2. When the parent is a minor or incompetent, the court shall appoint a guardian ad litem to represent such parent.

3. The guardian ad litem shall:

(1) Be the legal advocate for the best interest of the party he is appointed to represent with the power and authority to cross-examine, subpoena witnesses, and offer testimony;

(2) Initiate an appeal of any disposition that he determines to be adverse to the interests of the party he represents; and

(3) Ascertain the child's wishes, feelings and attitudes regarding the adoption by interviewing persons with knowledge of the child, and if appropriate, to meet with the child.

[4. Where an adoption petition is filed by an adoptive parent which alleges grounds as provided in section 211.447, RSMo, as permitted under section 453.040, any birth parent who cannot afford an attorney may provide the court with proof of income and request an attorney be appointed by the court. The court may order the costs of the attorney fees incurred pursuant to this subsection to be paid by the prospective adoptive parent.]

453.030. 1. In all cases the approval of the court of the adoption shall be required and such approval shall be given or withheld as the welfare of the person sought to be adopted may, in the opinion of the court, demand.

2. The written consent of the person to be adopted shall be required in all cases where the person sought to be adopted is fourteen years of age or older, except where the court finds that such child has not sufficient mental capacity to give the same.

3. With the exceptions specifically enumerated in section 453.040, when the person sought to be adopted is under the age of eighteen years, the written consent of the following persons shall be required and filed in and made a part of the files and record of the proceeding:

(1) The mother of the child; **and**

(2) **[A] Any** man who:

(a) Is presumed to be the father pursuant to the subdivisions (1), (2), (3) or (5) of subsection 1 of section 210.822, RSMo; **or**

(b) **Has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen days after the birth of the child; or**

(c) Filed with the putative father registry pursuant to section 192.016, RSMo, a notice of intent to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after the child's birth[;], **and**

[(c)] has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen days after the birth of the child; or

(3) The child's current adoptive parents or other legally recognized mother and father.

Upon request by the petitioner and within one business day of such request, the clerk of the local court shall verify whether such written consents have been filed with the court.

4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section

may be executed before or after the commencement of the adoption proceedings, and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons whose signatures and addresses shall be plainly written thereon. The two adult witnesses shall not be the prospective adoptive parents **or any attorney representing a party to the adoption proceeding**. The notary public or witnesses shall verify the identity of the party signing the consent.

5. The written consent required in subdivision (1) of subsection 3 of this section by the birth parent shall not be executed anytime before the child is forty-eight hours old. Such written consent shall be executed in front of a judge or a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons who are present at the execution whose signatures and addresses shall be plainly written thereon and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive parents **or any attorney representing a party to the adoption proceeding**. The notary public or witnesses shall verify the identity of the party signing the consent.

6. The written [consent shall be presented to the court for review and approval as soon as practicable.] **consents shall be reviewed and, if found to be in compliance with this section, approved by the court within three business days of such consents being presented to the court. Upon review, in lieu of approving the consent within three business days, the court may set a date for a prompt evidentiary hearing upon notice to the parties. Failure to review and approve the written consent within three business days shall not void the consent, but a party may seek a writ of mandamus from the appropriate court, unless an evidentiary hearing has been set by the court pursuant to this subsection.**

7. The written consent required in subsection 3 of this section may be withdrawn anytime until it has been reviewed and accepted by a judge.

8. [The] **A** consent form shall be developed through rules and regulations promulgated by the department of social services. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536, RSMo. If a written consent is obtained after August 28, 1997, but prior to the development of a consent form by the department and the written consent complies with the provisions of subsection 9 of this section, such written consent shall be deemed valid.**

9. However, the consent form must specify that:

(1) The birth parent understands the importance of identifying all possible fathers of the child and shall provide the names of all such persons unless the mother has good cause as to why

she should not name such persons. The court shall determine if good cause is justifiable. By signing the consent, the birth parent acknowledges that those having an interest in the child have been supplied with all available information to assist in locating all possible fathers; and

(2) The birth parent understands that if he denies paternity, but consents to the adoption, he waives any future interest in the child.

10. The written consent to adoption required by subsection 3 and executed through procedures set forth in subsection 5 of this section shall be valid and effective even though the parent consenting was under eighteen years of age, if such parent was represented by a guardian ad litem, at the time of the execution thereof.

11. Where the person sought to be adopted is eighteen years of age or older, his written consent alone to his adoption shall be sufficient.

12. **A birth parent, including a birth parent less than eighteen years of age, shall have the right to legal representation and payment of any reasonable legal fees incurred throughout the adoption process. In addition,** the court may appoint an attorney to represent a birth parent if:

(1) [The] **A** birth parent requests representation; [and]

(2) The court finds that hiring an attorney to represent such birth parent would cause [an undue] **a** financial hardship for the birth parent; **and**

(3) The birth parent is not already represented by counsel.

13. **Except in cases where the court determines that the adoptive parents are unable to pay reasonable attorney fees and appoints pro bono counsel for the birth parents,** the court [may] **shall** order the costs of the attorney fees incurred pursuant to [the provisions of] subsection 12 of this section to be paid by the prospective adoptive parents or the child placing agency.

453.040. The consent to the adoption of a child is not required of:

(1) A parent whose rights with reference to the child have been terminated pursuant to law, **including section 211.444, RSMo, or section 211.447, RSMo, or other similar laws in other states;**

(2) A parent of a child who has [waived the necessity of his or her consent] **legally consented** to a future adoption of the child;

(3) A parent whose identity is unknown and cannot be ascertained at the time of the filing of the petition;

(4) A man who has not been established to be the father and who is not presumed by law to be the father, and who, after the conception of the child, executes a verified statement denying paternity and disclaiming any interest in the child and acknowledging that this statement is irrevocable when executed and follows the consent as set forth in section 453.030;

(5) A parent or other person who has not executed a consent and who, after proper service

of process, fails to file an answer or make an appearance in a proceeding for adoption or for termination of parental rights at the time such cause is heard;

(6) A parent who has 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;

(7) A parent who has for a period of at least six months, for a child one year of age or older, or at least sixty days, for a child under one year of age, immediately prior to the filing of the petition for adoption, willfully abandoned the child or, for a period of at least six months immediately prior to the filing of the petition for adoption, willfully, substantially and continuously neglected to provide him with necessary care and protection;

(8) A parent whose rights to the child may be terminated for any of the grounds set forth in section 211.447, RSMo, and whose rights have been terminated after hearing and proof of such grounds as required by sections 211.442 to 211.487, RSMo. Such petition for termination may be filed as a count in an adoption petition.

453.060. 1. A writ of summons and a copy of the petition shall be served on:

(1) Any person, agency, organization or institution whose consent to the adoption is required by law unless such consent is filed in court;

(2) Any person whose consent to the adoption, according to the allegation of the petition for adoption, is not required for the reasons set forth in subdivision [(5),] (6) or (7) of section 453.040;

(3) Any person, agency, organization or institution, within or without the state, having custody of the child sought to be adopted under a decree of a court of competent jurisdiction even though its consent to the adoption is not required by law;

(4) The legally appointed guardian of the child;

(5) Any person adjudicated by a court of this state or another state, a territory of the United States or another country to be the father of the child;

(6) Any person who has timely filed a notice of intent to claim paternity of the child pursuant to section 192.016, RSMo, or an acknowledgment of paternity pursuant to section 193.087, RSMo.

2. Except as provided in this section and section 453.014, it is not necessary to serve any person, agency, organization or institution whose consent is not required [under] **pursuant to** the provisions of sections 453.030 to 453.050.

3. If service of summons cannot be made in the manner prescribed in section 506.150, RSMo, then the service shall be made by mail or publication as provided in section 506.160, RSMo.

4. Upon service, whether personal or constructive, the court may act upon the petition without the consent of any party, except that of a parent whose consent is required by sections

453.030 to 453.050, and the judgment is binding on all parties so served. Any such party has the right to appeal from the judgment in the manner and form provided by the civil code of Missouri.

5. In all cases where the putative father is unknown, service shall be made by publication on "John Doe" as provided in section 506.160, RSMo.

6. Upon request, the court may order that the writ of summons and copy of the petition required by this section may be served without the names and addresses of the petitioners when the court deems it to be in the best interests of the child.

453.070. 1. Except as provided in subsection [6] 5 of this section, no decree for the adoption of a child under eighteen years of age shall be entered for the petitioner or petitioners in such adoption as ordered by the juvenile court having jurisdiction, until a full investigation, which includes an assessment of the adoptive parents, an appropriate post-placement assessment and a summary of written reports as provided for in section 453.026, and any other pertinent information relevant to whether the child is suitable for adoption by the petitioner and whether the petitioner is suitable as a parent for the child, has been made. The report shall also include a statement to the effect that the child has been considered as a potential subsidy recipient.

2. Such investigation shall be made, as directed by the court having jurisdiction, either by the division of family services of the state department of social services, a juvenile court officer, a licensed child placement agency, a social worker licensed pursuant to chapter 337, RSMo, or other suitable person appointed by the court. The results of such investigation shall be embodied in a written report that shall be submitted to the court within ninety days of the request for the investigation.

3. The department of social services, division of family services shall develop rules and regulations regarding the content of the assessment of the petitioner or petitioners. The content of the assessment shall include but not be limited to, a report on the condition of the petitioner's home and information on the petitioner's education, financial, marital, medical and psychological status and criminal background check. **If an assessment is conducted after August 28, 1997, but prior to the promulgation of rules and regulations by the department concerning the contents of such assessment, any discrepancy between the contents of the actual assessment and the contents of the assessment required by department rule shall not be used as the sole basis for invalidating an adoption.** No rule or portion of a rule promulgated [under] **pursuant to** the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

4. The assessment of petitioner or petitioners shall be submitted to the petitioner and to the court [at least ten days] prior to the scheduled hearing of the adoptive petition.

5. In cases where the adoption or custody involves a child under eighteen years of age that is the natural child of one of the petitioners and where all of the parents required by this chapter to give consent to the adoption or transfer of custody have given such consent, the juvenile court

may waive the investigation and report and enter the decree for the adoption or order the transfer of custody without such investigation and report.

6. In the case of an investigation and report made by the division of family services by order of the court, the court may order the payment of a reasonable fee by the petitioner to cover the costs of the investigation and report.

7. Any adult person or persons over the age of eighteen, who, as foster parent or parents, have cared for a foster child continuously for a period of twelve months or more and bonding has occurred as evidenced by the positive emotional and physical interaction between the foster parent and child, may apply to such authorized agency for the placement of such child with them for the purpose of adoption if the child is eligible for adoption. The agency and court shall give preference and first consideration for adoptive placements to foster parents. However, the final determination of the propriety of the adoption of such foster child shall be within the sole discretion of the court.

453.075. 1. The court shall require the petitioner in any proceeding for adoption to file at the time of filing the petition for permission to adopt, a signed and verified full accounting of any money, anything of value or other consideration paid or transferred by or on behalf of the petitioner in connection with the placement or adoption. The accounting shall show all payments or transfers made or to be made or consideration given or promised by or on behalf of the petitioner in connection with the placement or adoption, including:

(1) Hospital, medical and physician expenses incurred by the mother or a child in connection with the birth and any illness of the newborn child;

(2) Counseling services for a parent or child for a reasonable time before and after the child's placement for adoption;

(3) Expenses incurred in obtaining a preplacement assessment and an assessment during the proceeding for adoption;

(4) Reasonable legal expenses **of the birth parents and adoptive parents**, court costs and travel or other administrative expenses connected with an adoption; [and]

(5) **Reasonable living expenses, including but not limited to food, shelter, utilities, transportation or clothing expenses of the birth parents and child which are within the norms of the community in which the birth mother resides; and**

(6) Any other services **or items** the court finds [is] **are** reasonably necessary.

2. The court may decline to issue a decree of adoption and, in the event one of the petitioners is not a biological or adoptive parent of the child, may order the transfer of lawful custody from the petitioners to a licensed child placement agency if, after a hearing, it determines:

(1) That any of the payments, transfers or consideration were unreasonable; or

(2) That any of the payments, transfers or consideration were other than those permitted under section 568.175, RSMo; or

(3) That the petitioner has failed to report all of the payments, transfers or consideration given by or on behalf of the petitioner in connection with the placement or adoption.

453.077. 1. When a child has been placed with the petitioner for the required six month placement period, the person conducting the **preplacement** assessment of the adoption **or other persons authorized to conduct assessments pursuant to section 453.070** shall provide the court with a post-placement assessment. The specific content of which shall be determined by rule by the department of social services, division of family services. The post-placement assessment shall include an update of the preplacement assessment which was submitted to the court pursuant to section 453.070, and a report on the emotional, physical and psychological status of the child. **If an assessment is conducted after August 28, 1997, but prior to the promulgation of rules and regulations by the department concerning the contents of such assessment, any discrepancy between the contents of the actual assessment and the contents of the assessment required by department rule shall not be used as the sole basis for invalidating an adoption.**

2. No rule or portion of a rule promulgated [under] **pursuant to** the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

453.080. 1. The court shall conduct a hearing to determine whether the adoption shall be finalized. During such hearing, the court shall ascertain whether:

(1) [The allegations of the petition are true;

(2)] The person sought to be adopted, if a child, has been in the lawful and actual custody of the petitioner for a period of at least six months prior to entry of the adoption decree. Lawful and actual custody shall include a transfer of custody pursuant to the laws of this state, another state, a territory of the United States, or another [county] **country**;

[(3)] (2) The court has received and reviewed a post-placement assessment on the monthly contacts with the adoptive family **pursuant to section 453.077, except for good cause shown in the case of a child adopted from a foreign country**;

[(4)] (3) The court has received and reviewed an updated financial affidavit;

[(5)] (4) The court has received the recommendations of the guardian ad litem and has received and reviewed the recommendations of the person placing the child, the person making the assessment and the person making the post-placement assessment;

[(6)] (5) There is compliance with the uniform child custody jurisdiction act, sections 452.440 to 452.550, RSMo;

[(7)] (6) There is compliance with the Indian Child Welfare Act, if applicable;

[(8)] (7) There is compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo; and

[(9)] (8) It is fit and proper that such adoption should be made.

2. If a petition for adoption has been filed pursuant to section 453.010 and a transfer of custody has occurred pursuant to section 453.110, the court may authorize the filing for finalization in another state if the adoptive parents are domiciled in that state.

3. If the court determines the adoption should be finalized, a decree shall be issued setting forth the facts and ordering that from the date of the decree the adoptee shall be for all legal intents and purposes the child of the petitioner or petitioners. The court may decree that the name of the person sought to be adopted be changed, according to the prayer of the petition.

4. [The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.] Before the completion of an adoption, the exchange of information among the parties shall be at the discretion of the parties. Upon completion of an adoption, further contact among the parties shall be at the discretion of the adoptive parents. **The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.**

[453.112. 1. Upon receipt of information indicating a violation of the provisions of sections 453.005 to 453.170 or section 210.620, RSMo, may be occurring, the court may order the department of social services, division of family services to investigate the allegations.

2. When a court order for investigation and report is issued, the investigation shall be initiated by the division of family services within forty-eight hours of the filing of the court order requesting the investigation and shall be completed within thirty days.

3. Any person having custody in violation of this section shall be guilty of a class D felony.

4. The court shall order the person having custody in violation of the provisions of this section to pay the costs of the investigation and report.]

453.160. **1.** After the expiration of one year from the date this chapter shall become effective, the validity of any decree of adoption [under] **pursuant to** any prior law shall not be subject to attack in any proceedings, collateral or direct, by reason of any irregularity in proceedings had pursuant to such prior law.

2. Any consent required for an adoption may only be revoked within one year of the date of such consent for fraud or duress.

453.170. 1. When an adoption occurs pursuant to the laws of other states of the United States, Missouri shall, from the date of adoption hold the adopted person to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful

wedlock, and such adoption shall have the same force and effect as adoption [under] **pursuant to** the provisions of this chapter, including all inheritance rights.

2. When an adoption occurs in a foreign country and is recognized as a valid adoption by the United States Department of Justice and the United States Department of Immigration and [Natural] **Naturalization** Services, this state shall recognize the adoption. The department of health, upon receipt of proof of adoption as required in subsection 7 of section 193.125, RSMo, shall issue a birth certificate for the adopted child upon request on forms prescribed and furnished by the state registrar pursuant to section 193.125, RSMo.

3. The adoptive parent or parents may petition the court pursuant to this section to request a change of name. The petition shall include a certified copy of the decree of adoption issued by the foreign country and documentation from the United States Department of Justice and the United States Department of Immigration and [Natural] **Naturalization** Services which shows the child lawfully entered the United States. The court shall recognize and give effect to the decree of the foreign country and grant a decree of recognition of the adoption and shall change the name of the adopted child to the name given by the adoptive parent, if such a request has been made.

Section B. 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 subdivision (17) of subsection 1 of section 207.020, RSMo, 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 **at least** 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:

(1) The interaction and interrelationship of the child with [his] **the child's** 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 **or her** foster home, school and community;

(3) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved; **and**

(4) The needs of the child for a continuing relationship with [his] **the child's** 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 **or she** considers desirable. [He] **The judge** may take testimony and inquire into the habits, surroundings, conditions and tendencies of the child **and the family** 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 require that any such foster parent, preadoptive parent or relative providing care for a child 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 **or her** home, the [order of disposition] **court's order** 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, but has the discretion to make reasonable efforts if a court of competent jurisdiction has determined that:

(1) The parent has subjected the child to a severe act or recurrent acts of physical, emotional or sexual abuse toward the child, including an act of incest; or

(2) The parent has:

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

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

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

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

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

8. If the court determines that reasonable efforts, as described 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.

9. The division may concurrently engage in reasonable efforts, as described 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, 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:] **Except as provided for in subsection 3 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:

(a) The parent has left the child under 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; or

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

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

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

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

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

3. If grounds exist for termination of parental rights pursuant to subsection 2 of this section, the juvenile officer or the division may, but is not required to, file a petition to terminate the parental rights of the child's parent or parents 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 interest 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. The juvenile officer or the division may file a petition to terminate the parental rights of the child's parent when it appears that one or more of the following grounds for termination exist:

(1) The child has been abandoned. For purposes of this subdivision a "child" means any child over one year of age at the time of filing of the petition. 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] **pursuant to** 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] **pursuant to subsection 2 or 3 of this section or subdivisions (1), (2), (3) or (4) of subsection 4** of this section or similar laws of other states.

5. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interest of the child and when it appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to subsection 2, 3 or 4 of this section.

[3.] **6.** When considering whether to terminate the parent-child relationship pursuant to [subdivision (1), (2), (3), (4) or (5) of subsection 2] **subsection 2 or 3 of this section or subdivision (1), (2), (3) or (4) of subsection 4** 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.] **7.** 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.] **8.** In actions for adoption [under] **pursuant to** 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] **pursuant to subsection 2, 3 or 4** 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 **or her** 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. A petition to adopt shall not be dismissed or denied on the grounds that the petitioner is not domiciled or does not reside in any of the venues set forth in subdivision (2), (3) or (4) of subsection 1 of this section.

3. 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 **or her** child shall petition the juvenile division of the circuit court which has jurisdiction over the child for permission to adopt such person as his **or her** 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.] **4.** 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.] 5. Upon receipt of a properly filed petition, a court, as defined in section 453.010, shall hear [said] **such** petition in a timely fashion. **A court or any 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 C. Because immediate action is necessary to comply with changes in the federal law section B of 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 section A of this act shall be in full force and effect on July 1, 1998, or upon its passage and approval, whichever later occurs.

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Bill

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