

FIRST REGULAR SESSION

HOUSE BILL NO. 107

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BERRY.

0282H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 453.030, 453.050, 453.077, and 453.080, RSMo, and to enact in lieu thereof four new sections relating to adoption.

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

Section A. Sections 453.030, 453.050, 453.077, and 453.080, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 453.030, 453.050, 453.077,
3 and 453.080, to read as follows:

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

4 2. The written consent of the person to be adopted shall be required in all cases where
5 the person sought to be adopted is fourteen years of age or older, except where the court finds
6 that such child has not sufficient mental capacity to give the same. In a case involving a child
7 under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings
8 about his or her adoption by conducting an interview or interviews with the child, if appropriate
9 based on the child's age and maturity level, which shall be considered by the court as a factor in
10 determining if the adoption is in the child's best interests.

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

14 (1) The mother of the child; and

15 (2) Only the man who:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (a) Is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection
17 1 of section 210.822; or

18 (b) Has filed an action to establish his paternity in a court of competent jurisdiction no
19 later than fifteen days after the birth of the child and has served a copy of the petition on the
20 mother in accordance with section 506.100; or

21 (c) Filed with the putative father registry pursuant to section 192.016 a notice of intent
22 to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after
23 the child's birth, and has filed an action to establish his paternity in a court of competent
24 jurisdiction no later than fifteen days after the birth of the child; or

25 (3) The child's current adoptive parents or other legally recognized mother and father.
26

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

29 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section
30 may be executed before or after the commencement of the adoption proceedings, and shall be
31 acknowledged before a notary public. In lieu of such acknowledgment, the signature of the
32 person giving such written consent **shall be made in the presence of his or her attorney and**
33 **shall be witnessed by [the signatures of at least two adult persons] a hospital social worker, the**
34 **guardian ad litem, or a child-placing agency social worker** whose signature[s] and
35 address[es] shall be plainly written thereon. [The two adult witnesses shall not be the prospective
36 adoptive parents or any attorney representing a party to the adoption proceeding.] The notary
37 public or witness[es] shall verify the identity of the party signing the consent.

38 5. The written consent required in subdivision (1) of subsection 3 of this section by the
39 birth parent shall not be executed anytime before the child is **twenty-four** [forty-eight] hours old.
40 Such written consent shall be executed in front of a judge or a notary public. In lieu of such
41 acknowledgment, the signature of the person giving such written consent **shall be made in the**
42 **presence of his or her attorney and** shall be witnessed by [the signatures of at least two adult
43 persons who are present at the execution] **a hospital social worker, the guardian ad litem, or**
44 **a child-placing agency social worker** whose signature[s] and address[es] shall be plainly
45 written thereon and who determine and certify that the consent is knowingly and freely given.
46 [The two adult witnesses shall not be the prospective adoptive parents or any attorney
47 representing a party to the adoption proceeding.] The notary public or witness[es] shall verify
48 the identity of the party signing the consent.

49 6. The written consents shall be reviewed and, if found to be in compliance with this
50 section, approved by the court within three business days of such consents being presented to the
51 court. Upon review, in lieu of approving the consent within three business days, the court may

52 set a date for a prompt evidentiary hearing upon notice to the parties. Failure to review and
53 approve the written consent within three business days shall not void the consent, but a party may
54 seek a writ of mandamus from the appropriate court, unless an evidentiary hearing has been set
55 by the court pursuant to this subsection.

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

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

64 9. However, the consent form must specify that:

65 (1) The birth parent understands the importance of identifying all possible fathers of the
66 child and may provide the names of all such persons; and

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

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

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

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

78 (1) A birth parent requests representation;

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

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

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

453.050. 1. The juvenile court may, upon application, permit a parent to waive the necessity of his consent to a future adoption of the child. However, that approval cannot be granted until the child is at least [two days] **one day** old.

2. The waiver of consent may be executed before or after the institution of the adoption proceedings, and shall be acknowledged before a notary public, or in lieu of such acknowledgment, the signature of the person giving such written consent **shall be made in the presence of his or her attorney and** shall be witnessed by the signature[s of at least two adult persons] **of a hospital social worker, the guardian ad litem, or a child-placing agency social worker** whose **signature and** address[es] shall be plainly written thereon.

3. A waiver of consent shall be valid and effective even though the parent waiving consent was under eighteen years of age at the time of the execution thereof.

453.077. 1. When a child has been placed with the petitioner for the required [six-month] **three-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 postplacement assessment. The specific content of which shall be determined by rule by the department of social services, division of family services. The postplacement 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 pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536.

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 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] **three** months prior to entry of the adoption decree; except that the [six-month] **three-month** period may be waived if the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to chapter 211 and the person desiring to adopt the child is the child's current foster parent. "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 country;

10 (2) The court has received and reviewed a postplacement assessment on the monthly
11 contacts with the adoptive family pursuant to section 453.077, except for good cause shown in
12 the case of a child adopted from a foreign country;

13 (3) The court has received and reviewed an updated financial affidavit;

14 (4) The court has received the recommendations of the guardian ad litem and has
15 received and reviewed the recommendations of the person placing the child, the person making
16 the assessment and the person making the postplacement assessment;

17 (5) There is compliance with the uniform child custody jurisdiction act, sections 452.440
18 to 452.550;

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

20 (7) There is compliance with the Interstate Compact on the Placement of Children
21 pursuant to section 210.620; and

22 (8) It is fit and proper that such adoption should be made.

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

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

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

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