

FIRST REGULAR SESSION

# HOUSE BILL NO. 606

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BARNES.

1552H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 211.447 and 452.374, RSMo, and to enact in lieu thereof two new sections relating to termination of parental rights for an act of rape.

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

Section A. Sections 211.447 and 452.374, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 211.447 and 452.374, to read as follows:

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 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. Except as provided for in subsection 4 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

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

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

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

25 (c) The parent has voluntarily relinquished a child under section 210.950; or

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

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

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

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

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

33 3. A termination of parental rights petition shall be filed by the juvenile officer or the  
34 division, or if such a petition has been filed by another party, the juvenile officer or the division  
35 shall seek to be joined as a party to the petition, within sixty days of the judicial determinations  
36 required in subsection 2 of this section, except as provided in subsection 4 of this section.  
37 Failure to comply with this requirement shall not deprive the court of jurisdiction to adjudicate  
38 a petition for termination of parental rights which is filed outside of sixty days.

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

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

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

46 (3) The family of the child has not been provided such services as provided for in section  
47 211.183.

48 **5. In addition to the right of the parent who is the victim of rape to file a petition**  
49 **under subdivision (5) of this subsection,** the juvenile officer or the division may file a petition  
50 to terminate the parental rights of the child's parent when it appears that one or more of the  
51 following grounds for termination exist:

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

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

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

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

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

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

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

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

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78 Nothing in this subdivision shall be construed to permit discrimination on the basis of disability  
79 or disease;

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

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

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

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

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

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

104 (5) The child was conceived and born as a result of an act of forcible rape [or] **prior to**  
105 **August 28, 2013, rape in the first degree, rape in the second degree, or sexual assault under**  
106 **section 566.040 prior to August 28, 2013, in which case the parent who is the victim of the**  
107 **rape may file a petition to terminate the parental rights of the alleged perpetrator.** When  
108 the biological father has pled guilty to, or is convicted of, the forcible rape [or] **prior to August**  
109 **28, 2013, rape in the first degree, rape in the second degree, or sexual assault under section**  
110 **566.040 prior to August 28, 2013,** of the birth mother, such a plea or conviction shall be  
111 conclusive evidence supporting the termination of the biological father's parental rights. **It shall**  
112 **be prima facie evidence that there is a reasonable probability that continuation of the**  
113 **parent-child relationship with the alleged perpetrator is not in the best interest of the child**  
114 **if the court finds by clear and convincing evidence that the alleged perpetrator committed**  
115 **an act of forcible rape prior to August 28, 2013, rape in the first degree, rape in the second**  
116 **degree, or sexual assault under section 566.040 prior to August 28, 2013, and the child was**  
117 **conceived as a result of such rape; or**

118 (6) (a) The parent is unfit to be a party to the parent and child relationship because of  
119 a consistent pattern of committing a specific abuse including, but not limited to, specific  
120 conditions directly relating to the parent and child relationship which are determined by the court  
121 to be of a duration or nature that renders the parent unable for the reasonably foreseeable future  
122 to care appropriately for the ongoing physical, mental, or emotional needs of the child.

123 (b) It is presumed that a parent is unfit to be a party to the parent and child relationship  
124 upon a showing that:

125 a. Within a three-year period immediately prior to the termination adjudication, the  
126 parent's parental rights to one or more other children were involuntarily terminated pursuant to  
127 subsection 2 or 4 of this section or subdivision (1), (2), (3), or (4) of this subsection or similar  
128 laws of other states;

129 b. If the parent is the birth mother and within eight hours after the child's birth, the child's  
130 birth mother tested positive and over .08 blood alcohol content pursuant to testing under section  
131 577.020 for alcohol, or tested positive for cocaine, heroin, methamphetamine, a controlled  
132 substance as defined in section 195.010, or a prescription drug as defined in section 196.973,  
133 excepting those controlled substances or prescription drugs present in the mother's body as a  
134 result of medical treatment administered to the mother, and the birth mother is the biological  
135 mother of at least one other child who was adjudicated an abused or neglected minor by the  
136 mother or the mother has previously failed to complete recommended treatment services by the  
137 children's division through a family-centered services case;

138 c. If the parent is the birth mother and at the time of the child's birth or within eight hours  
139 after a child's birth the child tested positive for alcohol, cocaine, heroin, methamphetamine, a  
140 controlled substance as defined in section 195.010, or a prescription drug as defined in section  
141 196.973, excepting those controlled substances or prescription drugs present in the mother's body  
142 as a result of medical treatment administered to the mother, and the birth mother is the biological  
143 mother of at least one other child who was adjudicated an abused or neglected minor by the  
144 mother or the mother has previously failed to complete recommended treatment services by the  
145 children's division through a family-centered services case; or

146 d. Within a three-year period immediately prior to the termination adjudication, the  
147 parent has pled guilty to or has been convicted of a felony involving the possession, distribution,  
148 or manufacture of cocaine, heroin, or methamphetamine, and the parent is the biological parent  
149 of at least one other child who was adjudicated an abused or neglected minor by such parent or  
150 such parent has previously failed to complete recommended treatment services by the children's  
151 division through a family-centered services case.

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

157 7. When considering whether to terminate the parent-child relationship pursuant to  
158 subsection 2 or 4 of this section or subdivision (1), (2), (3) or (4) of subsection 5 of this section,

159 the court shall evaluate and make findings on the following factors, when appropriate and  
160 applicable to the case:

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

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

164 (3) The extent of payment by the parent for the cost of care and maintenance of the child  
165 when financially able to do so including the time that the child is in the custody of the division  
166 or other child-placing agency;

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

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

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

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

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

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

181 10. The disability or disease of a parent shall not constitute a basis for a determination  
182 that a child is a child in need of care, for the removal of custody of a child from the parent, or for  
183 the termination of parental rights without a specific showing that there is a causal relation  
184 between the disability or disease and harm to the child.

452.374. 1. If criminal charges alleging an act of rape are brought against the putative  
2 father of a child conceived as the result of that act of rape, the court shall issue an automatic stay  
3 of any paternity proceeding involving both the child and the alleged putative father. The stay  
4 shall not be lifted until there is a final disposition of such criminal charges.

5 2. In any future custody proceeding, any denial of visitation under this section shall not  
6 be used against the mother of the child when considering the factor contained in subdivision (4)  
7 of subsection 2 of section 452.375.

8 **3. (1) In any proceeding involving custody, parenting time, or contact with a child**  
9 **conceived by rape, any person who is the perpetrator or alleged perpetrator of the rape**

10 shall be denied custody, parenting time, or contact with such child if the court finds by  
11 clear and convincing evidence that:

12 (a) Such person committed an act of forcible rape prior to August 28, 2013, rape  
13 in the first degree, rape in the second degree, or sexual assault under section 566.040 prior  
14 to August 28, 2013; and

15 (b) The child was conceived as the result of such act of rape.

16 (2) If such person has pled guilty to or is convicted of the forcible rape prior to  
17 August 28, 2013, rape in the first degree, rape in the second degree, or sexual assault under  
18 section 566.040 prior to August 28, 2013, of the other biological parent of the child, such  
19 a plea or conviction shall be conclusive evidence supporting such person's denial of  
20 custody, parenting time, or contact with the child.

21 (3) A finding by the court under subdivision (1) of this subsection is prima facie  
22 evidence that there is a reasonable probability that any custody, parenting time, or contact  
23 with the child is not in the best interests of the child.

24 (4) The court may order a party to such proceeding to pay the prevailing party a  
25 reasonable amount for:

26 (a) The cost of maintaining such court action;

27 (b) Attorney's fees, including amounts for legal services provided and costs  
28 incurred prior to the commencement of the proceedings and after entry of judgment.

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30 The court may order the amount under this subdivision to be paid directly to the attorney  
31 of the prevailing party, who may enforce the order in the attorney's name.

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