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Juvenile Law: A Year in Review

*Roya R. Hough**

I. INTRODUCTION

1997 brought significant legislative changes on behalf of the children of the State of Missouri. House Bill 343 made sweeping changes to Missouri Revised Statutes Chapter 453, concerning adoptions, and Missouri Revised Statutes Chapter 211, concerning termination of parental rights. On November 13, 1997, President Clinton signed House Resolution 867, which became the "Adoption and Safe Families Act of 1997," in an effort to provide permanent homes to children too long in foster care, as well as to ensure that their safety is the primary consideration when making decisions concerning their placement. This Article will discuss these changes, as well as several Missouri cases of interest.

II. HOUSE BILL 343

As a result of the efforts of representatives from a multitude of professional organizations interested in child welfare, House Bill 343, passed in 1997, attempts to standardize adoption procedure throughout the state by making changes to the putative father registry,¹ adoption procedure,² and the criminal code. In addition, Missouri Revised Statutes § 211.447, concerning terminations of parental rights, was amended to provide additional grounds to free children who cannot be reunited with their families for adoption.

A. Missouri Revised Statutes Chapter 453

The most significant changes House Bill 343 made are found in Missouri Revised Statutes Chapter 453, which deals with adoptions. The philosophy behind the "Multiethnic Placement Act" is now codified in Missouri Revised Statutes § 453.005, which provides that all persons making child placements shall recruit potential homes that are ethnically and culturally diverse.³ Consideration also must be given to a child's cultural, racial and ethnic background when determining whether a potential adoptive placement is appropriate and whether the adoptive family is capable of meeting the ethnic and cultural needs of the child. These issues must be considered on an

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1. MO. REV. STAT. § 192.016 (Supp. 1997).

2. MO. REV. STAT. § 453.005 (Supp. 1997).

3. MO. REV. STAT. § 453.005 (Supp. 1997).

individual basis and are to be included in the determination of whether a particular placement is in the child's best interest.⁴

Petitions for adoption now must be filed in the juvenile court where the petitioners reside, where the child was born, where the child is located, or where either birth parent resides.⁵ If, at the time of the filing of the petition, there is an action pending pursuant to Missouri Revised Statutes Chapter 211, the petition must be filed with that court; the cause may be transferred to another appropriate venue upon the motion of a party and the consent of the court to which the cause is to be transferred.⁶ Although Missouri Revised Statutes § 453.010.4 provides that a court shall hear a properly filed petition for adoption in a timely fashion, no specific time frame is provided.⁷

1. Missouri Revised Statutes §§ 453.030 and 453.040: Consent to Adoption

Probably the most significant changes to Chapter 453 were made to Missouri Revised Statutes §§ 453.030 and 453.040, pertaining to consent to adoption. Section 453.030.3 provides that consent to an adoption is required from: the mother of the child; a man who is the presumed father pursuant to Missouri Revised Statutes § 210.822.1 (1), (2), (3) or (5); a man who has filed, pursuant to Missouri Revised Statutes § 192.016, a notice of intent to claim paternity or acknowledgment of paternity either prior to the child's birth or within fifteen days of birth; a man that has filed an action to establish his paternity within fifteen days of the child's birth; or the child's current adoptive parents or other legally recognized mother and father.⁸ The amendments create a major exception concerning men who, prior to the amendments, might otherwise have been required to provide consent to the adoption. Under the amended Section 193.087, there are no time requirements for filing an affidavit acknowledging paternity with the Department of Health. Thus, for example, a man would not be required to consent if he executed such an affidavit on the sixteenth day after the child's birth.

Further, the Uniform Parentage Act provides "that any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed" by the execution of an affidavit filed with the Department of Health, pursuant to Missouri Revised Statutes § 193.087.⁹ Again, a man may appropriately file an action pursuant to the Uniform Parentage Act sixteen days after the birth of the child, yet his

4. MO. REV. STAT. § 453.005.3 (Supp. 1997).

5. MO. REV. STAT. § 453.010.1 (Supp. 1997).

6. MO. REV. STAT. § 453.010.2 (Supp. 1997).

7. MO. REV. STAT. § 453.010 (Supp. 1997).

8. MO. REV. STAT. § 453.030.3 (Supp. 1997).

9. MO. REV. STAT. § 210.826.2 (1994).

consent to the adoption now may not be required pursuant to Missouri Revised Statutes § 453.030.3.

In addition, Missouri Revised Statutes § 453.040 has been amended to provide that consent to the adoption is not required of a parent whose identity is unknown and cannot be ascertained at the time of the filing of the petition to adopt.¹⁰ No provisions require the consent of a parent if the identity of that parent is discovered after the filing of the petition to adopt. Further, consent is not required from a man who has not been determined to be the father and who executes a verified statement denying paternity and relinquishing any interest he may have in the child. Such a statement must provide that it is irrevocable and that it follows the requirements for consents as set forth in Section 453.030.¹¹ Finally, no consent is required of a parent who has not executed a consent and who, after proper service, defaults in a proceeding for adoption or for termination of parental rights.¹²

The specific requirements for the consent to the adoption are different for the mother and father. For the natural mother, Missouri Revised Statutes § 453.030 provides that the written consent to the adoption shall not be executed before the child is forty-eight hours old.¹³ The consent shall be executed before a judge or notary public; alternatively, the consent may be executed before two adult witnesses present at the time of consent, who identify the party signing the consent form and certify that the consent is knowingly and freely given.¹⁴ The consent of the father, if required, may be executed before or after the institution of the adoption proceedings and shall be acknowledged either by a notary public or before two adult witnesses who are not the prospective adoptive parents and who will verify the identity of the person signing the consent.¹⁵ Both consents shall be presented to the court for review and approval as soon as practicable, and the consents may be withdrawn at any time, until they have been reviewed and accepted by the judge.¹⁶

The consent form must be developed by the Department of Social Services and promulgated through rules and regulations.¹⁷ At a minimum, the consent form must specify that “[t]he 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.”¹⁸ It is up to the court to determine whether good cause exists to

10. MO. REV. STAT. § 453.040 (Supp. 1997).

11. MO. REV. STAT. § 453.040.4 (Supp. 1997).

12. MO. REV. STAT. § 453.040.5 (Supp. 1997).

13. MO. REV. STAT. § 453.030.5 (Supp. 1997).

14. MO. REV. STAT. § 453.030.5 (Supp. 1997).

15. MO. REV. STAT. § 453.030.4 (Supp. 1997).

16. MO. REV. STAT. §§ 453.030.6, 453.030.7 (Supp. 1997).

17. MO. REV. STAT. § 453.030.8 (Supp. 1997).

18. MO. REV. STAT. § 453.030.9(1) (Supp. 1997).

excuse the mother from disclosing the name of any or all men who may be the father of the child. The natural mother, by signing the consent, certifies that all available information necessary to locate the natural father has been provided to those persons having an interest in the child. There is no definition for "good cause" as used in this subsection, nor is there a penalty specified should the natural mother withhold information required by the consent form. In addition, Missouri Revised Statutes § 211.444, concerning consents to the termination of parental rights, was amended to be consistent with the requirements for consents to adoption pursuant to Missouri Revised Statutes §§ 453.030.4 and 453.030.5.¹⁹

Missouri Revised Statutes § 453.110 provides that no transfer of custody of a child for the purpose of adoption shall occur without a petition requesting that the court approve such transfer. The violation of this provision is a class D felony.²⁰ If such a transfer does occur without a prior court order, the court shall order an investigation and report to be compiled as provided for in Missouri Revised Statutes § 453.070 and shall make custody orders consistent with the best interests of the child.²¹ However, there is no prohibition to making a pre-adoptive placement if the right to supervise the placement and to resume custody is retained by the person or agency making such a placement.²² Upon a proper petition and hearing, the court may order a transfer of custody if: (1) the family assessment required by Section 453.070 has been filed and reviewed; (2) the guardian ad litem has recommended placement; (3) the petition for transfer of custody or termination of parental rights has been filed, along with the financial statement required by Section 453.075; (4) the assessment of the child required by Section 453.026 has been filed, and (5) there has been compliance with the Indian Child Welfare Act and the Interstate Compact on Child Placement, pursuant to Missouri Revised Statutes § 210.620.²³ However, no hearing is necessary if all the conditions required in Subsection 6 are met, the parties agree, the court grants leave, and there has been a termination of the natural parents' rights pursuant to Missouri Revised Statutes §§ 211.444 or 211.447.

Amendments to Missouri Revised Statutes § 453.075 provide that the verified accounting of expenses to be prepared and filed by the petitioners may include hospital, medical and physician expenses incurred by the natural mother and child in connection with the birth, counseling services for the parent and child for a reasonable time before and after the adoption, expenses incurred in obtaining the pre- and post-placement assessments, legal expenses, court costs and travel, as well as any other reasonable costs.²⁴

19. MO. REV. STAT. § 211.444 (Supp. 1997).

20. MO. REV. STAT. § 453.110.3 (Supp. 1997).

21. MO. REV. STAT. § 453.110.2 (Supp. 1997).

22. MO. REV. STAT. § 453.110.5 (Supp. 1997).

23. MO. REV. STAT. § 453.110.6 (Supp. 1997).

24. MO. REV. STAT. § 453.075.1 (Supp. 1997).

Prior to the issuance of the order transferring custody of the child, pre-placement assessments of both the child and the prospective adoptive parents are to be performed, guided by regulations to be developed and promulgated by the Department of Social Services.²⁵ The written report concerning the child shall be provided to the prospective parents, the guardian ad litem and the court as soon as practicable and prior to the placement of the child.²⁶ Pursuant to Missouri Revised Statutes § 453.077, when a child has been in an adoptive placement for six months, a post-placement assessment, addressing the emotional, physical and psychological status of the child, shall be done.²⁷ The specific contents of the post-placement assessment shall be determined by rules promulgated by the Department of Social Services' Division of Family Services.²⁸ Prior to the issuance of the final decree of adoption, the court shall conduct a hearing to determine whether the adoption should be finalized and whether the petitioners had lawful and actual custody for six months. The court also must determine that: post-placement assessments and final financial information was submitted and reviewed; the recommendation of the guardian ad litem was received; there is compliance with the Indian Child Welfare Act and Interstate Compact on the Placement of Children, if applicable; and the adoption is in the best interests of the child.²⁹ The court does not have continuing jurisdiction to deny continued contact between the birth parents. Prior to the completion of the adoption, any communication between the birth parents occurs at the discretion of the parties. Upon the issuance of the final decree, further contact shall be at the discretion of the adoptive parents.³⁰

2. Missouri Revised Statutes § 453.170: Foreign Adoptions

House Bill 343 also addresses foreign adoptions. Missouri Revised Statutes § 453.170 now provides that when an adoption occurs pursuant to the laws of another state, Missouri will recognize that decree for all purposes.³¹ Subsection 2 provides that the state also shall recognize foreign adoptions already recognized by the United States Department of Justice and the Immigration and Naturalization Service.³² Upon the provision of proof of adoption required by

25. MO. REV. STAT. §§ 453.026, 453.070 (Supp. 1997).

26. MO. REV. STAT. § 453.026.1 (Supp. 1997).

27. MO. REV. STAT. § 453.077 (Supp. 1997).

28. MO. REV. STAT. § 453.077.1 (Supp. 1997). The rules and regulations to be promulgated by the Department of Social Services will apply to the Division of Family Services, any licensed child-placing agency, and any intermediary making child placements, including attorneys, physicians, and clergy. MO. REV. STAT. § 453.014 (Supp. 1997).

29. MO. REV. STAT. § 453.080.1 (Supp. 1997).

30. MO. REV. STAT. § 453.080.4 (Supp. 1997).

31. MO. REV. STAT. § 453.170.1 (Supp. 1997).

32. MO. REV. STAT. § 453.170.2 (Supp. 1997).

Missouri Revised Statutes § 193.125, the Department of Health will issue a birth certificate for the adopted child. Pursuant to Section 453.170.3, the adoptive parents may petition the court for a change of name; in such action the court shall recognize and give effect to the decree of adoption and shall enter an order changing the name of the child as requested.³³

The Missouri General Assembly also amended Missouri Revised Statutes § 193.125 to require that the Department of Health's Bureau of Vital Statistics prepare birth certificates upon the receipt of proof of the adoption by a Missouri resident.³⁴ If the proof contains the name of at least one of the adoptive parents, a birth certificate shall be prepared in standard form.³⁵ The proof of adoption shall include a copy of the child's original birth certificate and decree of adoption, an English translation of the documents and a copy of the approval of the adoption from the Immigration and Naturalization Service.³⁶

In an effort to ensure that all persons who may have an interest in a child being adopted receive notification of a pending adoption, the putative father registry maintained by the Department of Health and authorized by Missouri Revised Statutes § 192.016 now is required to produce and distribute publications which will inform the public about the registry, including the procedures for voluntarily acknowledging paternity as well as the consequences of failing to do so.³⁷ This information is to be provided to the Department of Social Services, hospitals, libraries, clinics, and to other providers of child-related services upon request.³⁸

B. Missouri Revised Statutes § 211.447

The other major change House Bill 343 made was to Missouri Revised Statutes § 211.447, concerning actions to terminate parental rights. Three new grounds for termination were added. First, an order terminating parental rights may be entered upon a finding that the parent has been found guilty or has pled guilty to a felony sexual offense as defined in Missouri Revised Statutes Chapter 566, or to incest, pursuant to Missouri Revised Statutes § 564.020.

Secondly, the court also may order termination when it finds that the child was conceived and born as a result of an act of forcible rape.³⁹ Further, the biological father's guilty plea or conviction of the crime of forcible rape is conclusive evidence supporting the termination of the father's parental rights. There is no indication that a plea or finding of guilt is necessary to proceed with

33. MO. REV. STAT. § 453.170.3 (Supp. 1997).

34. MO. REV. STAT. § 193.125.7 (Supp. 1997).

35. MO. REV. STAT. § 193.125.7 (Supp. 1997).

36. MO. REV. STAT. § 193.125.7 (Supp. 1997).

37. MO. REV. STAT. § 192.016.7(2) (Supp. 1997).

38. MO. REV. STAT. § 192.016.7(2) (Supp. 1997).

39. MO. REV. STAT. § 211.447.2(5) (Supp. 1997).

termination pursuant to this subsection. In fact, in circumstances in which there is an acquittal or the prosecutor does not choose to pursue charges, the petition to terminate may allege facts supporting the crime of forcible rape, and, upon proof of the elements of the act by clear and convincing evidence, termination may be ordered. There is no provision for the termination of parental rights for the commission of crimes, other than forcible rape, involving acts which could result in the conception of a child.⁴⁰

The third addition to Missouri Revised Statutes § 211.447 authorizes the court to enter an order terminating parental rights when it finds that the parent is unfit to be a party to the parent-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.⁴¹

Inherent in a finding under this section is the determination that the parent has engaged in a pattern of abusive behavior which, either by commission or omission, directly impacts the parent-child relationship. The court also must determine that the behavior is of a type that cannot be remedied within the reasonably foreseeable future. In many respects, termination pursuant to this section is similar to a termination entered pursuant to Section 211.447.2(3), commonly referred to as “failure to rectify.” Both sections recognize that, under circumstances in which there may be no overt acts of abuse or neglect towards the child, a parent may be pervasively unable to appropriately provide for the child, to the extent that the child will be unable to thrive. Both sections also recognize that the period of time in which a parent has to ameliorate the conditions which led to the child being taken into care should be limited to the shortest time possible.

However, interesting differences exist between the two sections. First, Section 211.447.2(3) requires that the child be under the jurisdiction of the juvenile court for one year, whereas Section 211.447.2(6) requires only that the conditions render the parent unable to appropriately care for the child for the reasonably foreseeable future. This distinction can be significant now that termination can be ordered under circumstances in which, prior to the amendments, the child would have had to wait a full year before the petition could be filed. Secondly, Section 211.447.2(3) requires proof that the likelihood

40. Examples are statutory rape, pursuant to Missouri Revised Statutes Sections 566.032 and 566.034, and sexual assault, pursuant to Missouri Revised Statutes Section 566.040.

41. MO. REV. STAT. § 211.447.2(6) (Supp. 1997).

is small that the conditions leading to the child coming into care can be remedied; Section 211.447.2(6) requires only that such conditions will continue to exist for the foreseeable future. Because of this distinction, the inquiry of the court under this subdivision no longer extends to the issue of whether, from the standpoint of the parents, all conceivable avenues to salvage the family have been pursued. Rather, the focus shifts to whether, from the child's perspective, the amount of time necessary for the parent to overcome the barriers to reunification is unreasonable, as measured by the child's need for permanency at the earliest possible date. There also is no requirement in Section 211.447.2(6) that the petitioner show that the continuation of the parent-child relationship will adversely affect the child's ability to integrate into an adoptive or other permanent home, as required by Section 211.447.2(3).

Missouri Revised Statutes § 211.447.2(6) also provides a presumption of parental unfitness upon a showing that there has been an involuntary termination of parental rights pursuant to Missouri Revised Statutes § 211.447.2(1), (2), (3) or (4) within a three-year period immediately prior to the hearing on the petition to terminate parental rights.⁴² When there has been an involuntary termination of parental rights pursuant to Section 211.447.2(5) or (6) during the appropriate time period, there is no presumption of parental unfitness.

III. THE ADOPTION AND SAFE FAMILIES ACT OF 1997

On November 13, 1997, President Clinton signed into law the "Adoption and Safe Families Act of 1997,"⁴³ representing the first major revisions to the "Adoption Assistance and Child Welfare Act of 1980."⁴⁴ The Adoption Assistance and Child Welfare Act made fundamental changes to the way federal funding for child welfare services was allocated and codified the philosophy of permanency planning, primarily by incorporating the concept of "reasonable efforts."⁴⁵ As a result, Missouri enacted Missouri Revised Statutes § 211.183, which defined reasonable efforts as "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," and required that such efforts be made to "prevent or eliminate the need for removal of the child and, after removal, to make it possible for the child to return home."⁴⁶ Section 211.183 also provided that reasonable efforts to prevent the removal of the child from the home need not be made under circumstances in which the child could not be preserved in

42. MO. REV. STAT. § 211.447.2(6) (Supp. 1997).

43. Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in various sections of 42 U.S.C.).

44. 42 U.S.C. §§ 620, 670 (1994).

45. MO. REV. STAT. § 211.183 (1994).

46. MO. REV. STAT. § 211.183.2 (1994).

the home even with reasonable services.⁴⁷ Finally, the court is required to make specific findings on the issue of reasonable efforts in its order of disposition.⁴⁸

The Adoption and Safe Families Act made substantial changes to the reasonable efforts requirement by specifically providing that the child's health and safety must be of paramount concern when determining whether reasonable efforts were made.⁴⁹ While it seems to state the obvious, this small change represents a significant statement concerning the priorities of the child protection system. Previously, the focus of reasonable efforts was placed upon preventing removal of the child and, if removal was necessary, making it possible for the child to return home at the earliest possible date. Now, the interests of the child are given priority in determining what efforts are reasonable and when those efforts should be made.

Additionally, the Adoption and Safe Families Act provides that reasonable efforts shall not be required of the child welfare agency if:

1. the parent has subjected the child to aggravated circumstances (as defined by state law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
2. committed the murder of another child of the parent;
3. committed voluntary manslaughter of another child of the parent;
4. aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
5. committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
6. the parent's rights to a sibling have been terminated involuntarily.⁵⁰

As to Subdivision (1), Missouri has no statute specifically defining what "aggravated circumstances" might be. Furthermore, there is no indication whether a criminal conviction is necessary before Subdivisions (2) through (5) can be applied. If conviction is necessary, the ability of courts to compel parental performance in family treatment plans will be severely hampered because the parents' focus will be on their rights as criminal defendants, rather than rehabilitation. An interpretation of the Adoption and Safe Families Act requiring criminal conviction would be contrary to the legislative purpose—timely permanency for children.

If the juvenile court determines that reasonable efforts are not required, the court must hold a permanency hearing within thirty days to determine the permanency plan for the child.⁵¹ Subsequent to that hearing, the child welfare

47. MO. REV. STAT. § 211.183.4 (1994).

48. MO. REV. STAT. § 211.183.5 (1994).

49. 42 U.S.C.A. § 671(a)(15)(A) (West Supp. 1997).

50. 42 U.S.C.A. § 671(a)(15)(D)(i)-(iii) (West Supp. 1997).

51. 42 U.S.C.A. § 671(a)(15)(E)(i) (West Supp. 1997).

agency shall make reasonable efforts to place the child in accordance with the permanency plan and take steps to finalize the permanent placement.⁵²

Concurrent planning, or providing an alternate permanency plan in addition to reunification, also was endorsed by the Act. Specifically, 42 U.S.C. § 671(a)(15)(F) provides that “reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts” as provided for by law.⁵³ Designed for children who come into care under circumstances in which their return home is unlikely, this section provides child protection agencies a “back-up plan” when efforts to reunify children with their families fail. Thus valuable time and resources may be saved.

Prior to enactment of the Adoption and Safe Families Act, services were provided to families until such services no longer were reasonable or in the child’s best interests. At that point, an alternative permanency plan was created for the child. Such plan might include termination of parental rights for adoption, guardianship with an appropriate relative, or emancipation and independent living. The alternative permanency plan often is litigated for long periods of time, leaving the child in “temporary” foster care. Concurrent planning was devised as an alternative to this “sequential planning” form of case management. The philosophical basis for concurrent planning is the belief that every child needs permanent relationships with adults who will provide for their physical, emotional and psychological needs. Having garnered the support of the Adoption and Safe Families Act, concurrent planning should be able to be implemented without encountering the legal challenge that reunification must be pursued at all costs before adoption or guardianship may be considered.

For those families that can be reunified, the Act provides for an extension of funding for time-limited family preservation or reunification services. These services may include: individual and family counseling, substance abuse treatment, mental health services, services designed to address domestic violence, temporary child care, and transportation to effectuate the assistance given. These services are limited to fifteen months beginning on the date the child enters foster care.⁵⁴ For purposes of the Act, a child is deemed to have entered foster care on the earlier of two dates: the day of the first judicial finding that the child has been the victim of abuse or neglect or sixty days after the child was removed from the home.⁵⁵ Arguably, in Missouri, the first judicial determination that the child has been the victim of abuse or neglect occurs at the protective custody hearing, held within seventy-two hours of the parent’s request for the hearing and as early as three days after removal.

The Adoption and Safe Families Act also decreased the time allowed for the disposition hearing, provided for in Missouri Revised Statutes § 210.720, from

52. 42 U.S.C.A. § 671(a)(15)(E)(ii) (West Supp. 1997).

53. 42 U.S.C.A. § 671(a)(15)(F) (West Supp. 1997).

54. 42 U.S.C.A. §§ 629(a), 629(d)(1) (West Supp. 1997).

55. 42 U.S.C.A. § 675(5)(F) (West Supp. 1997).

eighteen months to twelve months after the initial placement.⁵⁶ In addition, this hearing is re-named the “permanency hearing,” the purpose of which is to determine the permanent plan for the child.⁵⁷ Specifically, the court is to determine whether: the child should be returned home; the child should continue in foster care, with the goal of reunifying the child with his family; the guardianship with other family members is appropriate; or proceedings to terminate parental rights to free the child for adoption should be instituted.⁵⁸ Additionally, 42 U.S.C. § 675(5) has been amended to provide that foster parents, pre-adoptive parents or relatives providing care for a child are entitled to notice of all hearings concerning the child, and an opportunity to be heard at those hearings.⁵⁹ However, the foster parents, pre-adoptive parents or relatives are not deemed to be parties simply on the basis of having the right to notice and opportunity to be heard.⁶⁰

There are circumstances in which the pursuit of termination of parental rights is mandated. 42 U.S.C. § 675(5) now provides that the state must initiate actions to terminate parental rights when: the child has been in foster care for fifteen of the most recent twenty-two months; the court has determined that the child is an abandoned infant (as defined by state law); or the parent has committed murder or voluntary manslaughter, or aided and abetted, attempted to commit, conspired or solicited to commit murder or voluntary manslaughter of another child in the home or felony assault resulting in serious bodily harm to the child or another child in the home. Under these circumstances, the state also is required to plan concurrently to place the child for adoption or guardianship. The state may opt not to pursue termination of parental rights when the child is being cared for by a relative at the option of the state, when the child’s case plan documents “a compelling reason for determining that filing such a petition would not be in the best interests of the child,” or when the state has not provided reasonable efforts to the family as required by law.⁶¹ Presently, there is no guidance regarding what would be a “compelling reason” for the state to opt not to file a petition to terminate parental rights. Ideally, the primary consideration in that determination will be the needs of children.

Also, time limits for complying with the mandated termination provisions are established. Regarding children who currently are in alternative care, the state must come into compliance for one-third of the children within six months after the end of the first regular legislative session, and for two-thirds of the children the state must comply within twelve months. The state must be in full compliance not later than eighteen months after the end of the first regular

56. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

57. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

58. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

59. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

60. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

61. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

session.⁶² For children entering foster care after November 13, 1997, if the state comes into compliance with the Act after the child has been in care fifteen months, the state shall comply with the provisions for mandatory termination within three months after the end of the first regular session of the legislature.⁶³ Preference is given to those children in care for the longest periods of time.⁶⁴

The Adoption and Safe Families Act also contains adoption promotion provisions, the first of which requires the child welfare agency to document steps the agency takes to find an adoptive home or other permanent arrangement for each child whose permanency plan is adoption.⁶⁵ The state also is required to document, at a minimum, child-specific recruitment efforts for each child available for adoption.⁶⁶ Additionally, the Department of Health and Human Services is to provide funding for adoption incentive payments and technical assistance to eligible states for the promotion of adoption of foster children. Technical assistance may include development of practice guidelines for expediting terminations, concurrent planning, risk assessment tools to identify children at high risk of harm should they be returned home, and models to expedite the placement of children under the age of one year into pre-adoptive homes.⁶⁷

To promote adoptions, states now may provide health insurance coverage for adoptive children who are determined to have special medical needs within the adoption subsidy agreement between the state and adoptive parents, when the child could not be placed without medical assistance.⁶⁸ Further, if the prior adoption has failed or the adoptive parents have died, then any child who is eligible for adoption subsidy payments shall continue to be eligible for such payments.⁶⁹ Finally, the state is required to develop a plan for the use of "cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children."⁷⁰

IV. MISSOURI SUPREME COURT RULES

On December 9, 1997, the Missouri Supreme Court issued major revisions to the rules governing practice and procedure in the juvenile courts. These changes will take effect on January 1, 1999. The changes recognize the

62. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

63. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

64. 42 U.S.C.A. § 675(5)(C) (West Supp. 1997).

65. 42 U.S.C.A. § 675(1) (West Supp. 1997).

66. 42 U.S.C.A. § 675(1)(E) (West Supp. 1997).

67. 42 U.S.C.A. § 670 (West Supp. 1997).

68. 42 U.S.C.A. § 671(a)(21) (West Supp. 1997).

69. 42 U.S.C.A. § 673(a)(2)(c) (West Supp. 1997).

70. 42 U.S.C.A. § 622(b)(72) (West Supp. 1997).

distinctions, both procedural and philosophical, between proceedings involving abuse and neglect and proceedings involving juvenile delinquency.

A. Abuse and Neglect

The amendments regarding children suffering from abuse or neglect require any person authorized to take custody of a juvenile to provide a written report to the juvenile officer assigned to the case, detailing the reason the child was taken into custody.⁷¹ Two types of protective custody now are recognized: "emergency protective custody"⁷² and "temporary protective custody."⁷³ Pursuant to Rule 111.11, a child may be taken into emergency custody by either a law enforcement official or a physician when there is "reasonable cause to believe that the juvenile is in imminent danger of suffering serious physical harm or a threat to life that may occur before a court could issue a protective custody order or before a juvenile officer could take the juvenile into temporary protective custody."⁷⁴ The jurisdiction of the juvenile court attaches at the time the juvenile is taken into emergency protective custody and extends until the child is placed into temporary protective custody by the juvenile officer.⁷⁵ Emergency protective custody may not exceed twelve hours.⁷⁶

To retain protective custody of a child after the duration of the emergency protective custody, the juvenile officer must have "reasonable cause to believe that the juvenile is without proper care, custody or support and that temporary protective custody is necessary to prevent personal harm to the juvenile."⁷⁷ The juvenile may be held in temporary protective custody for up to twenty-four hours unless otherwise authorized by the juvenile court.⁷⁸ If the initial twenty-four hour period of temporary protective custody expires without an extension from the juvenile court, then the juvenile officer must release the child.⁷⁹

To extend the period of temporary protective custody beyond twenty-four hours, the juvenile officer must file a petition in the juvenile court alleging that probable cause exists to believe the juvenile is without proper care, custody or support, and that the juvenile's circumstances require an extension of temporary protective custody.⁸⁰ If the juvenile remains in temporary protective custody, the

71. MO. SUP. CT. R. 111.02(b).

72. MO. SUP. CT. R. 111.11.

73. MO. SUP. CT. R. 111.12.

74. MO. SUP. CT. R. 111.11(a).

75. MO. SUP. CT. R. 111.11(b).

76. MO. SUP. CT. R. 111.11(c).

77. MO. SUP. CT. R. 111.12(b).

78. MO. SUP. CT. R. 111.12(d).

79. MO. SUP. CT. R. 111.12(e).

80. MO. SUP. CT. R. 111.13(a).

juvenile court shall notify the parties in writing of the right to a protective custody hearing.⁸¹

Upon the request of any party, the juvenile court shall conduct a protective custody hearing within three days of the request.⁸² At the protective custody hearing, the court must receive evidence relevant to whether the child should remain in protective custody. At the conclusion of the hearing, the court will order either that the child remain in protective custody or be released.⁸³ If protective custody is continued, the court shall review the case every thirty days until an order of disposition has been entered.⁸⁴

A written request for the release of a juvenile in protective custody may be filed by the juvenile, the juvenile's custodian, the guardian ad litem or the juvenile officer. The juvenile may be released upon a determination by the court that a change of circumstances makes protective custody no longer necessary.⁸⁵ The court may make this determination without a hearing, or may set a hearing "as soon as practicable."⁸⁶

B. Juvenile Delinquency

According to the amendments regarding juvenile delinquency, a juvenile who allegedly has committed a violation of the law must be released to his custodian unless detention has been authorized.⁸⁷ When the juvenile court is notified that a juvenile is being held, it must order either the juvenile's release or retention until a detention hearing can be held.⁸⁸

The court may order detention only upon a petition alleging that the juvenile has committed acts bringing him under the jurisdiction of the juvenile court⁸⁹ and a finding of probable cause to believe the juvenile committed the alleged acts.⁹⁰ If the court orders detention, the juvenile may not be held for more than twenty-four hours, unless the court finds that the juvenile has violated conditions of a prior court order establishing conditions of behavior for the juvenile and the juvenile has a record of willfully failing to appear at court proceedings, engaging in conduct causing physical harm to himself or others, or leaving court-ordered placements without permission.⁹¹

81. MO. SUP. CT. R. 111.13(c).

82. MO. SUP. CT. R. 111.14(a).

83. MO. SUP. CT. R. 111.14(c).

84. MO. SUP. CT. R. 111.14(d).

85. MO. SUP. CT. R. 111.15(a), (b).

86. MO. SUP. CT. R. 111.15(c); MO. SUP. CT. R. 119.01.

87. MO. SUP. CT. R. 111.02(c).

88. MO. SUP. CT. R. 111.07(a).

89. See MO. REV. STAT. § 211.031 (1994).

90. MO. SUP. CT. R. 111.07(a)(2).

91. MO. SUP. CT. R. 111.07(b).

V. MISSOURI CASES

Probably the most significant event of 1996 for children's advocates was the approval of the Guardian Ad Litem Standards by the Missouri Supreme Court. While not enacted into rule, the standards provide guidance to lawyers as to their roles as children's representatives and the duties they must undertake to adequately perform that role.

The first case in Missouri to address the duties of the guardian ad litem after the standards were approved was not a juvenile case but, rather, a case involving the modification of a divorce decree concerning custody of a child. In *Baumgart v. Baumgart*,⁹² the mother appealed the trial court's denial of her motion to modify the divorce decree concerning custody of the parties' daughter. Specifically, the mother alleged that the joint custody decree should be modified to grant her full custody of her children due to sexual abuse of the daughter by the father.⁹³ Evidence of the abuse was presented at two hearings on the motion. In the trial court's order, the judge found that there were substantial and continuing changed circumstances making the decree unreasonable. Thus, the judge found the decree should be modified.⁹⁴ However, the court did not change the custodial provisions. Instead, the court left custody of the children with the father subject to the mother's rights of visitation, and the mother appealed.⁹⁵

The Western District Court of Appeals reversed and remanded the case, holding that the guardian ad litem failed to properly discharge his duty to investigate and report the allegations of abuse.⁹⁶ Specifically, the court found that the record was incomplete and insufficient as to the allegations of abuse, though what information was present supported the appointment of a guardian ad litem pursuant to Missouri Revised Statutes § 452.423.1.⁹⁷ The court also discussed, in detail, the duties of the guardian enumerated in Section 452.423.2: presenting witnesses to offer testimony; conducting the necessary inquiry to determine the best interests of the child; interviewing the child where appropriate; and, if the guardian finds that the allegations of abuse are sufficient, referring the matter to the juvenile officer for further investigation and the possible filing of a petition pursuant to Missouri Revised Statutes Chapter 211.⁹⁸

Citing *In re Interest of J.L.H.*⁹⁹ and *Guier v. Guier*,¹⁰⁰ the court stated, "[w]hile [the guardian] is not required to make an explicit recommendation as

92. 944 S.W.2d 572 (Mo. Ct. App. 1997).

93. *Id.* at 574.

94. *Id.* at 575.

95. *Id.*

96. *Id.* at 580.

97. *Id.* at 578.

98. MO. REV. STAT. § 452.423.2(3) (Supp. 1997).

99. 647 S.W.2d 852, 867 (Mo. Ct. App. 1983).

100. 918 S.W.2d 940, 952 (Mo. Ct. App. 1996).

to child custody, the statutes and cases are clear that it is imperative that the guardian ad litem investigate and have input on the perspective of the child's best interest . . . [that] this be presented to the trial judge, and that he be active in determining the best interest of children."¹⁰¹ At trial, the guardian presented no witnesses, asked few questions of those witnesses presented, did not interview the child who was alleged to have been abused, did not refer the matter to the juvenile officer for further investigation, and did not make a recommendation concerning custody or visitation. The Western District found that these failures resulted in the insufficiency of the record on the issues of abuse. Therefore, the court remanded the cause for the appointment of a new guardian ad litem, a thorough investigation of all allegations of abuse, and a full and prompt hearing on the merits of the mother's motion to modify.¹⁰² Clearly, the guardian is significantly more than a passive recipient of information from the other parties to the litigation. The guardian must independently determine the impact of allegations of abuse upon the child's best interests from all available sources. If there is insufficient information, it is incumbent upon the guardian to obtain additional information upon which the guardian or the court may make decisions concerning the child. To do less is a failure of the guardian's duty to protect the best interests of the child.

The Western District Court of Appeals held in *In re N.J.B. v. State*¹⁰³ that allegations in a juvenile petition pursuant to Missouri Revised Statutes § 211.031.1(3) must be proven by clear and convincing evidence. In that case, a juvenile was alleged to have committed acts which would have amounted to unwanted sexual contact in violation of Missouri Revised Statutes § 566.090 but for the fact that the contact occurred through the clothing of the female. The juvenile court found the juvenile to be under its jurisdiction at the time these events occurred. The court found the allegations to be true beyond a reasonable doubt and committed the juvenile to the custody of the Missouri Department of Social Services' Division of Youth Services.¹⁰⁴

The juvenile appealed, alleging that the facts were insufficient to support the juvenile court's findings. The Western District agreed with the State that the proper burden of proof was clear and convincing evidence when the action is a motion to modify a previous juvenile disposition. The court relied on Missouri Supreme Court Rule 117.05(b), which states that in all hearings before the juvenile court the burden of proof is clear and convincing evidence except when the hearing is pursuant to a petition alleging as a basis for juvenile court jurisdiction acts which would be a crime if committed as an adult.¹⁰⁵ In those cases, the burden of proof is beyond a reasonable doubt.

101. *Baumgart*, 944 S.W.2d at 579.

102. *Id.* at 580.

103. 941 S.W.2d 782 (Mo. Ct. App. 1997).

104. *Id.* at 783.

105. *Id.* at 785.

The Western District also addressed the issue of granting custody of a child in a juvenile action to a third party in *In re Hill*.¹⁰⁶ In 1991, a child was born to an un-wed mother who left the child with her brother and sister-in-law. The juvenile court eventually ordered that the brother retain physical custody under the supervision of the Division of Family Services. The child's status remained the same until 1994, when the child's father surfaced. After the father's paternity was confirmed by genetic testing, the father began to visit regularly with the child. In 1995, during a review hearing, the court ordered that the child remain in his placement, finding that "special or extraordinary reasons" required the placement. On appeal, the father claimed: (1) the court erred in failing to require the juvenile officer to rebut the presumption that he was fit and proper as the child's custodian; (2) Missouri law wrongfully places the child's best interests before his presumed right to custody; and (3) the court erred in retroactively applying child welfare legislation to the case.¹⁰⁷

As to the father's first point, the court cited *In re Marriage of Carter*¹⁰⁸ and *C.M.W. v. C.W.*¹⁰⁹ in holding that the presumption of the fitness of a natural parent is rebutted when there exist "special and extraordinary reasons that custody be granted to someone other than the parent for the child's well-being, regardless of whether or not the evidence establishes the unfitness of the natural parent."¹¹⁰ The court held that even though there was no express finding that the father was unfit, substantial evidence of his unfitness existed. The evidence consisted of factual findings regarding the bonding of the child to the custodians and the psychological harm to the child that would result from his being removed from his current placement.¹¹¹

As to the second claim—that the child's best interests were improperly placed before the father's fundamental rights as a parent—the court found that there was no violation of the father's rights because the father continued to have regular visitation with his son, the Division continued to offer services to reunite the family, and the father had a continuing right to petition the court for a change of custody at any time. The court declined to rule on the father's third point on appeal and affirmed the trial court's judgement.¹¹²

VI. CONCLUSION

1997 proved to be a pivotal year for Missouri's children. The legislative and judicial changes described in this Article indicate a move away from a child

106. 937 S.W.2d 384 (Mo. Ct. App. 1997).

107. *Id.* at 386.

108. 794 S.W.2d 321, 325 (Mo. Ct. App. 1990).

109. 786 S.W.2d 623, 624 (Mo. Ct. App. 1990).

110. *Hill*, 937 S.W.2d at 386.

111. *Id.* at 387.

112. *Id.* at 388.

protection process laden with delay and uncertainty to a process that makes children's need for permanency its first priority. Nonetheless, significant issues remain. First, the issue of adequate funding for court-appointed guardians ad litem and juvenile court personnel will be preeminent as the impact of the legislative changes begins to be felt. Additionally, the judiciary will be hard pressed for court time and docket priority for juvenile cases. Service providers and public entities charged with protecting children will be taxed to the limit of their resources. Thus, the groundwork for reform has been laid. It remains to be seen whether 1998 will bring resolutions to these remaining issues and whether true systemic reform will continue.