

SECOND REGULAR SESSION

SENATE BILL NO. 757

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Pre-filed December 30, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3145S.02I

AN ACT

To repeal sections 210.145, 210.152, 210.192, 210.195, 491.074, 566.067, 573.010, 573.025, 573.035, 573.037, 573.050 and 660.520, RSMo 1994, and sections 210.109, 210.115, 210.150 and 559.115, RSMo Supp. 1999, and to enact in lieu thereof nineteen new sections relating to the protection of children, with penalty provisions.

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

Section A. Sections 210.145, 210.152, 210.192, 210.195, 491.074, 566.067, 573.010, 573.025, 573.035, 573.037, 573.050 and 660.520, RSMo 1994, and sections 210.109, 210.115, 210.150 and 559.115, RSMo Supp. 1999, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 210.109, 210.115, 210.145, 210.150, 210.152, 210.192, 210.195, 491.074, 559.115, 566.067, 568.065, 568.066, 568.067, 573.010, 573.025, 573.037, 573.045, 573.050 and 660.520, to read as follows:

210.109. 1. The division of family services shall establish a child protection system for the entire state.

2. The child protection system shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations or family assessments in response to reports of child abuse or neglect. The system shall endeavor to coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.

3. In implementing the child protection system, the division shall:

(1) Receive and maintain reports pursuant to the provisions of subsections 1 and 2 of section 210.145;

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

(2) Forward the report to the appropriate division staff who shall determine, through the use of protocols developed by the division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child. The division may investigate any report, but shall conduct an investigation involving reports, which if true, would constitute a violation of section 565.050, RSMo, if the victim is a child less than eighteen years of age, a violation of section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or any other violation of chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, a violation of section 567.050, RSMo, if the victim is a child less than eighteen years of age, a violation of section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, a violation of section 573.025 or 573.035, RSMo, or an attempt to commit any such crimes;

(3) Communicate reports of child abuse or neglect to the appropriate local office, pursuant to the provisions of subsection 4 of section 210.145;

(4) Contact the appropriate law enforcement agency **immediately** upon receipt of a report of a **suspected** violation of section 565.020, 565.021, 565.023, 565.024 or 565.050, RSMo, if the victim is a child less than eighteen years of age, a violation of section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or any other violation of chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, a violation of section 567.050, RSMo, if the victim is a child less than eighteen years of age, a violation of section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, a violation of section 573.025 or 573.035, RSMo, or an attempt to commit any such crimes, and shall provide such agency with a detailed description of the report received. The appropriate law enforcement agency shall assist the division in the investigation or provide the division, within a reasonable time, an explanation in writing detailing the reasons why it is unable to assist;

(5) Cause a thorough investigation or family assessment and services approach to be initiated within twenty-four hours of receipt of the report from the division, except in cases where the sole basis for the report is educational neglect. If the report indicates that educational neglect is the only complaint and there is no suspicion of other neglect or abuse, the investigation or family assessment and services approach shall be initiated within seventy-two hours of receipt of the report. If the report indicates the child is in danger of serious physical harm or threat to life, an investigation or family assessment and services approach shall include direct observation of the subject child within twenty-four hours of the receipt of the report;

(6) Investigate, if it is determined that an investigation is necessary, in compliance with the provisions of section 210.145;

(7) Assess, in cases where the family assessment and services approach is used, any service needs of the family. The assessment of risk and service needs shall be based on information

gathered from the family and other sources;

(8) Provide services, in cases in which the family assessment and services approach is used, which are voluntary and time-limited unless it is determined by the division based on the assessment of risk that there will be a high risk of abuse or neglect if the family refuses to accept the services. The division shall identify services for families where it is determined that the child is at high risk of future abuse or neglect. The division shall thoroughly document in the record its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family continues to refuse voluntary services or the child needs to be protected, the division may commence an investigation;

(9) Commence an immediate investigation if at any time during the family assessment and services approach the division determines that an investigation, as delineated in sections 210.109 to 210.183, is required. The division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

(10) Document at the time the case is closed, the outcome of the family assessment and services approach, any service provided and the removal of risk to the child, if it existed;

(11) Conduct a family assessment and services approach on reports initially referred for an investigation, if it is determined that a complete investigation is not required. If law enforcement officers are involved in the investigation, they shall provide written agreement with this decision. The reason for the termination of the investigative process shall be documented in the record;

(12) Assist the child and family in obtaining services, if at any time during the investigation it is determined that the child or any member of the family needs services;

(13) Collaborate with the community to identify comprehensive local services and assure access to those services for children and families where there is risk of abuse or neglect;

(14) Contact the person who made the report under section 210.115, pursuant to the provisions of section 210.145;

(15) Forward any evidence of malice or harassment to the local prosecuting or circuit attorney as required by the provisions of section 210.145;

(16) Provide services as required by section 210.145;

(17) Use multidisciplinary services as required by section 210.145;

(18) Update the information in the information system within thirty days of an oral report of abuse or neglect. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation or family assessment and services approach, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The division shall complete all investigations or family assessments within thirty days, unless good cause for the failure to complete the investigation or assessment is documented in the information system. If the investigation or

family assessment is not completed within thirty days the information system shall be updated at regular intervals and upon the completion of the investigation. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter;

(19) Maintain a record which contains the facts ascertained which support the determination as well as the facts that do not support the determination.

As used in this subsection, "report" includes any telephone call made pursuant to section 210.145.

4. By January 1, 1998, the division of family services shall submit documentation to the speaker of the house of representatives and the president pro tem of the senate on the success or failure of the child protection system established in this section. The general assembly may recommend statewide implementation or cancellation of the child protection system based on the success or failure of the system established in this section.

5. The documentation required by subsection 4 of this section shall include an independent evaluation of the child protection system completed according to accepted, objective research principles.

210.115. 1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, teacher, principal or other school official, Christian Science practitioner, peace officer or law enforcement official, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately report or cause a report to be made to the division in accordance with the provisions of sections 210.109 to 210.183. As used in this section, the term "abuse" is not limited to abuse inflicted by a person responsible for the child's care, custody and control as specified in section 210.110, but shall also include abuse inflicted by any other person.

2. Whenever such person is required to report pursuant to sections 210.109 to 210.183 in an official capacity as a staff member of a medical institution, school facility, or other agency, whether public or private, the person in charge or a designated agent shall be notified immediately. The person in charge or a designated agent shall then become responsible for immediately making or causing such report to be made to the division. Nothing in this section, however, is meant to preclude any person from reporting abuse or neglect.

3. Notwithstanding any other provision of sections 210.109 to 210.183, any child who does not receive specified medical treatment by reason of the legitimate practice of the religious belief

of the child's parents, guardian, or others legally responsible for the child, for that reason alone, shall not be found to be an abused or neglected child, and such parents, guardian or other persons legally responsible for the child shall not be entered into the central registry. However, the division may accept reports concerning such a child and may subsequently investigate or conduct a family assessment as a result of that report. Such an exception shall not limit the administrative or judicial authority of the state to ensure that medical services are provided to the child when the child's health requires it.

4. In addition to those persons and officials required to report actual or suspected abuse or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such person has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect.

5. Any person or official required to report pursuant to this section, including employees of the division, who has probable cause to suspect that a child who is or may be under the age of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to the appropriate medical examiner or coroner. **If, upon review of the circumstances and medical information, the medical examiner or coroner determines that the child died of natural causes while under medical care for an established natural disease, and that the child's personal physician shall be signing the death certificate, the child's personal physician shall, within twenty-four hours, notify the division of the child's death pursuant to this section. In all other cases,** the medical examiner or coroner shall accept the report for investigation, shall [in a timely manner] **within twenty-four hours** notify the division of the child's death pursuant to this section and shall report the findings to the child fatality review panel established pursuant to section 210.192.

6. Any person or individual required to report may also report the suspicion of abuse or neglect to any law enforcement agency or juvenile office. Such report shall not, however, take the place of reporting or causing a report to be made to the division.

7. If an individual required to report suspected instances of abuse or neglect pursuant to this section has reason to believe that the victim of such abuse or neglect is a resident of another state or was injured as a result of an act which occurred in another state, the person required to report such abuse or neglect may, in lieu of reporting to the Missouri division of family services, make such a report to the child protection agency of the other state with the authority to receive such reports pursuant to the laws of such other state. If such agency accepts the report, no report is required to be made, but may be made, to the Missouri division of family services.

210.145. 1. The division shall establish and maintain an information system operating at all times, capable of receiving and maintaining reports. This information system shall have the ability to receive reports over a single, statewide toll-free number. Such information system shall

maintain the results of all investigations, family assessments and services, and other relevant information.

2. The division shall maintain a central registry.

3. Although reports may be made anonymously, the division shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect, attempt to obtain the name and address of any person making a report.

4. Upon receipt of a report, the division shall immediately communicate such report to its appropriate local office, after a check has been made with the information system to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, of any siblings, and the perpetrator, and relevant dispositional information regarding such previous reports. Such relevant information as may be contained in the information system shall be also reported to the local office of the division.

5. Upon receipt of a report, which, if true, would constitute violation of section 565.020, 565.021, 565.023, 565.024 or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crime under chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025 [or], 573.035, **573.037 or 573.045**, RSMo, or an attempt to commit any such crimes, the local office shall contact the appropriate law enforcement agency and provide such agency with a detailed description of the report received. In such cases the local division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The appropriate law enforcement agency shall assist the division in the investigation or provide the division, within a reasonable time, an explanation in writing detailing the reasons why it is unable to assist.

6. The local office of the division shall cause a thorough investigation to be initiated immediately or no later than within twenty-four hours of receipt of the report from the division, except in cases where the sole basis for the report is educational neglect. If the report indicates that educational neglect is the only complaint and there is no suspicion of other neglect or abuse, the investigation shall be initiated within seventy-two hours of receipt of the report. If the report indicates the child is in danger of serious physical harm or threat to life, an investigation shall include direct observation of the subject child within twenty-four hours of the receipt of the report.

7. The investigation shall include but not be limited to the nature, extent, and cause of the abuse or neglect; the identity and age of the person responsible therefor; the names and conditions of other children in the home, if any; the home environment and the relationship of the subject child to the parents or other persons responsible for the child's care; any indication of incidents of physical violence against any other household or family member; and other pertinent data.

8. When a report has been made by a person required to report under section 210.115, the division shall contact the person who made such report within forty-eight hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, that may be pertinent.

9. Upon completion of the investigation, if the division suspects that the report was made maliciously or for the purpose of harassment, the division shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.

10. Protective or preventive social services shall be provided by the division to the family and subject child and to others in the home to prevent abuse or neglect, to safeguard their health and welfare, and to help preserve and stabilize the family whenever possible. The juvenile court shall cooperate with the division in providing such services.

11. Multidisciplinary services shall be used whenever possible in conducting the investigation and in providing protective or preventive social services, including the services of law enforcement, the juvenile officer, the juvenile court, and other agencies, both public and private. The division shall cooperate with law enforcement agencies and juvenile courts to develop training programs to increase the ability of division personnel, juvenile officers and law enforcement officers to investigate suspected cases of abuse and neglect. The division, with input from the department of health, shall assist in identifying pertinent training on child abuse and neglect in order for law enforcement to meet the requirements of section 590.105, RSMo.

12. Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter.

13. The division shall maintain a record which contains the facts ascertained which support the determination as well as the facts that do not support the determination.

14. A person required to report under section 210.115 to the division shall be informed by the division of his right to obtain information concerning the disposition of his report. Such person shall receive, from the local office, if requested, information on the general disposition of his report. The local office shall respond to the request within forty-five days.

15. In any judicial proceeding involving the custody of a child the fact that a report may have been made pursuant to sections 210.109 to 210.183 shall not be admissible. However, nothing

in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made.

16. The division of family services is hereby granted the authority to promulgate rules and regulations pursuant to the provisions of section [207.201] **207.021**, RSMo, and chapter 536, RSMo, to carry out the provisions of sections 210.109 to 210.183.

210.150. 1. The division of family services shall ensure the confidentiality of all reports and records made pursuant to sections 210.109 to 210.183 and maintained by the division, its local offices, the central registry, and other appropriate persons, officials, and institutions pursuant to sections 210.109 to 210.183. To protect the rights of the family and the child named in the report as a victim, the division of family services shall establish guidelines which will ensure that any disclosure of information concerning the abuse and neglect involving that child is made only to persons or agencies that have a right to such information. The division may require persons to make written requests for access to records maintained by the division. The division shall only release information to persons who have a right to such information. The division shall notify persons receiving information pursuant to subdivisions (2), (7), (8) and (9) of subsection 2 of this section of the purpose for which the information is released and of the penalties for unauthorized dissemination of information. Such information shall be used only for the purpose for which the information is released.

2. Only the following persons shall have access to investigation records contained in the central registry:

(1) Appropriate federal, state or local criminal justice agency personnel, or any agent of such entity, with a need for such information under the law to protect children from abuse or neglect;

(2) A physician or a designated agent who reasonably believes that the child being examined may be abused or neglected;

(3) Appropriate staff of the division and of its local offices, including interdisciplinary teams which are formed to assist the division in investigation, evaluation and treatment of child abuse and neglect cases or a multidisciplinary provider of professional treatment services for a child referred to the provider;

(4) Any child named in the report as a victim, or a legal representative, or the parent, if not the alleged perpetrator, or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division of family services shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. The division shall provide a method for confirming or certifying that a designee is acting on behalf of a subject;

(5) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division of family services shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(6) A grand jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of child abuse or neglect, juvenile court or other court conducting abuse or neglect or child protective proceedings, and other federal, state and local government entities, or any agent of such entity, with a need for such information in order to carry out its responsibilities under the law to protect children from abuse or neglect;

(7) Any person engaged in a bona fide research purpose, with the permission of the director; provided, however, that no information identifying the child named in the report as a victim or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the child named in the report as a victim or, if the child is less than eighteen years of age, through the child's parent, or guardian provides written permission;

(8) Any child-care facility; child-placing agency; residential-care facility, including group homes; juvenile courts; public or private elementary schools; public or private secondary schools; or any other public or private agency exercising temporary supervision over a child or providing or having care or custody of a child who may request an examination of the central registry from the division for all employees and volunteers or prospective employees and volunteers, who do or will provide services or care to children. Any agency or business recognized by the division of family services or business which provides training and places or recommends people for employment or for volunteers in positions where they will provide services or care to children may request the division to provide an examination of the central registry. Such agency or business shall provide verification of its status as a recognized agency. Requests for examinations shall be made to the division director or the director's designee in writing by the chief administrative officer of the above homes, centers, public and private elementary schools, public and private secondary schools, agencies, or courts. The division shall respond in writing to that officer. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect;

(9) Any parent or legal guardian who inquires about a child abuse or neglect report

involving a specific person or child-care facility who does or may provide services or care to a child of the person requesting the information. Request for examinations shall be made to the division director or the director's designee, in writing, by the parent or legal guardian of the child and shall be accompanied with a signed and notarized release form from the person who does or may provide care or services to the child. The notarized release form shall include the full name, date of birth and Social Security number of the person who does or may provide care or services to a child. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect. The response shall be given within ten working days of the time it was received by the division;

(10) Any person who inquires about a child abuse or neglect report involving a specific child care facility, child-placing agency, residential-care facility, public and private elementary schools, public and private secondary schools, juvenile court or other state agency. The information available to these persons is limited to the nature and disposition of any report contained in the central registry and shall not include any identifying information pertaining to any person mentioned in the report;

(11) Any state agency acting pursuant to statutes regarding a license of any person, institution, or agency which provides care for or services to children;

(12) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195.

3. Only the following persons shall have access to records maintained by the division pursuant to section 210.152 for which the division has received a report of child abuse and neglect and which the division has determined that there is insufficient evidence or in which the division proceeded with the family assessment and services approach:

(1) Appropriate staff of the division;

(2) Any child named in the report as a victim, or a legal representative, or the parent or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent. The names or other identifying information of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division of family services shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. The division shall provide for a method for confirming or certifying that a designee is acting on behalf of a subject;

(3) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division of family services shall determine if the release of such identifying information may place

a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(4) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195;

(5) Appropriate criminal justice agency personnel or juvenile officer;

(6) Multidisciplinary agency or individual including a physician or physician's designee who is providing services to the child or family, with the consent of the parent or guardian of the child or legal representative of the child;

(7) Any person engaged in bona fide research purpose, with the permission of the director; provided, however, that no information identifying the subjects of the reports or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the subject, or if a child, through the child's parent or guardian, provides written permission.

4. After a period of [two] **ten** years following a finding by the division, any person who is the subject of a report where there is insufficient evidence of abuse or neglect shall have the records removed from the division and destroyed.

5. Any person who knowingly violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the information system or the central registry and in reports and records made pursuant to sections 210.109 to 210.183, shall be guilty of a class A misdemeanor.

6. Nothing in this section shall preclude the release of findings or information about cases which resulted in a child fatality or near fatality. Such release is at the sole discretion of the director of the department of social services, based upon a review of the potential harm to other children within the immediate family.

210.152. 1. All identifying information, including telephone reports reported pursuant to section 210.145, relating to reports of abuse or neglect received by the division shall be retained by the division and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying information shall be retained by the division;

(2) For investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for [five] **ten** years from the date of the report [or from the date of the closing of a case opened by the division in response to the report] or from the date of the last report if there were subsequent reports, whichever is later. Such report shall include any exculpatory evidence known by the division, including exculpatory

evidence obtained after the closing of the case. At the end of such ~~[five-year]~~ **ten-year** period, the identifying information shall be removed from the records of the division and destroyed;

(3) For reports where the division uses the family assessment and services approach, identifying information shall be retained by the division;

(4) For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for ten years from the date of the report and then shall be removed from the records of the division.

2. Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination made by the division based on the investigation. The notice shall advise either:

(1) That the division has determined that there is probable cause to suspect abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such information shall remain confidential and will not be released except to law enforcement agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's determination through a review by the child abuse and neglect review board as provided in subsection 3 of this section;

(2) There is insufficient probable cause of abuse or neglect.

3. Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division as provided in this section may seek an administrative review by the child abuse and neglect review board pursuant to the provisions of section 210.153. Such request for review shall be made within sixty days of notification of the division's decision under this section. In those cases where criminal charges arising out of facts of the investigation are pending, the request review shall be made within sixty days from the court's final disposition or dismissal of the charges.

4. In any such action for administrative review, the child abuse and neglect review board shall sustain the division's determination if such determination is supported by evidence of probable cause and is not against the weight of such evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys and those persons providing testimony on behalf of the parties.

5. If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the county in which the alleged perpetrator resides and in circuits with split venue, in the venue in which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a resident of the state, proper venue shall be in Cole County. The case may be assigned to the family court division where such a division has been established. The request for a judicial review

shall be made within sixty days of the notification of the decision of the child abuse and neglect review board decision. In reviewing such decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may subpoena any witnesses except the alleged victim or the reporter. However, the circuit court shall have the discretion to allow the parties to submit the case upon a stipulated record.

6. In any such action for administrative review the child abuse and neglect review board shall notify the child or the parent, guardian or legal representative of the child that a review has been requested.

210.192. 1. The prosecuting attorney or the circuit attorney shall impanel a child fatality review panel for the county or city not within a county in which he serves to investigate the deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth. The panel shall be formed and shall operate according to the rules, guidelines and protocols provided by the department of social services.

2. The panel shall include, but shall not be limited to, the following:

- (1) The prosecuting or circuit attorney;
- (2) The coroner or medical examiner for the county or city not within a county;
- (3) Law enforcement personnel in the county or city not within a county;
- (4) A representative from the division of family services;
- (5) A provider of public health care services;
- (6) A representative of the juvenile court;
- (7) A provider of emergency medical services.

3. The prosecuting or circuit attorney shall organize the panel and shall call the first organizational meeting of the panel. The panel shall elect a chairman who shall convene the panel to meet to review [suspicious deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth, in accordance with the rules, guidelines and protocols developed by the department of social services.] **all deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth, which meet guidelines for review as set forth by the department of social services. In addition, the panel may review at its own discretion any child death reported to it by the medical examiner or coroner, even if it does not meet criteria for review as set forth by the division.** The panel shall issue a final report of each investigation to the department of social services, state technical assistance team and to the director of the department of health. The final report shall include a completed summary report form. The form shall be developed by the director of the department of social services in consultation with the director of the department of health. The department of health shall analyze the child fatality review panel reports and periodically prepare epidemiological reports which describe the incidence, causes, location and other factors pertaining to childhood deaths. The department of health and department of social

services shall make recommendations and develop programs to prevent childhood injuries and deaths.

4. The child fatality review panel shall enjoy such official immunity as exists at common law.

210.195. 1. The director of the department of social services shall establish a special team which shall:

- (1) Develop and implement protocols for the evaluation and review of child fatalities;
- (2) Provide training, expertise and assistance to county child fatality review panels for the review of child fatalities;
- (3) When required and unanimously requested by the county fatality review panel, assist in the review and prosecution of specific child fatalities; and
- (4) The special team may be known as the department of social services, state technical assistance team.

2. The director of the department of social services shall appoint regional coordinators to serve as resources to child fatality review panels established pursuant to section 210.192.

3. The director of the department of social services shall appoint a state child fatality review panel which shall meet **at least** biannually to provide oversight and make recommendations to the department of social services, state technical assistance team. The department of social services, state technical assistance team shall gather data from local child fatality review panels to identify systemic problems and shall submit [an annual report] **findings and recommendations** to the director of the department of social services, the governor, the speaker of the house of representatives, the president pro tempore of the senate, [and] the children's services commission, **juvenile officers, and the chairman of the local child fatality review panel, at least once a year**, on ways to prevent further child abuse **and injury** deaths.

491.074. Notwithstanding any other provisions of law to the contrary, a prior inconsistent statement of any witness testifying in the trial of [an] **a criminal** offense [under chapter 565, 566 or 568, RSMo,] shall be received as substantive evidence, and the party offering the prior inconsistent statement may argue the truth of such statement.

559.115. 1. Neither probation nor parole shall be granted by the circuit court between the time the transcript on appeal from the defendant's conviction has been filed in appellate court and the disposition of the appeal by such court.

2. A circuit court only upon its own motion and not that of the state or the defendant shall have the power to grant probation to a defendant anytime up to one hundred twenty days after such defendant has been delivered to the custody of the department of corrections but not thereafter. The court may request information and a recommendation from the department concerning the defendant and such defendant's behavior during the period of

incarceration. Except as provided in this section, the court may place the defendant on probation in a program created pursuant to section 217.777, RSMo, or may place the defendant on probation with any other conditions authorized by law.

3. Except when the defendant has been found to be a predatory sexual offender pursuant to section 558.018, RSMo, the court shall request that the defendant be placed in the sexual offender assessment unit of the department of corrections if the defendant has pleaded guilty to or has been found guilty of sexual abuse when classified as a class B felony.

4. The circuit court shall notify the state in writing when the court intends to grant probation to the defendant pursuant to the provisions of this section. The state may, in writing, request a hearing within ten days of receipt of the court's notification that the court intends to grant probation. Upon the state's request for a hearing, the court shall grant a hearing as soon as reasonably possible. If the state does not respond to the court's notice in writing within ten days, the court may proceed upon its own motion to grant probation.

5. Notwithstanding any other provision of law, probation may not be granted pursuant to this section to defendants who have been convicted of murder in the second degree pursuant to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible sodomy pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section 566.032, RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class B felony; **abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony**; a defendant who has been found to be a predatory sexual offender pursuant to section 558.018, RSMo; or any offense in which there exists a statutory prohibition against either probation or parole.

566.067. 1. A person commits the crime of child molestation in the first degree if he subjects another person who is less than [twelve] **fourteen** years of age to sexual contact.

2. Child molestation in the first degree is a class [C] **B** felony unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class [B] **A** felony.

568.065. 1. A person commits the crime of assault of a child in the first degree if he attempts to kill or knowingly causes or attempts to cause serious physical injury to a person less than seventeen years of age.

2. Assault of a child in the first degree is a class A felony.

3. It is no defense that the defendant believed the child to be older.

568.066. 1. A person commits the crime of assault of a child in the second degree if he:

(1) Attempts to cause or knowingly causes physical injury to a child by means

of a deadly weapon or dangerous instrument;

(2) Recklessly causes serious physical injury to a child; or

(3) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and when so operating, acts with criminal negligence to cause physical injury to a child.

2. For purposes of subsection 1 of this section, a "child" is a person less than seventeen years of age.

3. Assault of a child in the second degree is a class B felony.

4. It is no defense that the defendant believed the child to be older.

5. Assault of a child in the second degree is a lesser included offense of assault of a child in the first degree.

568.067. 1. A person commits the crime of assault of a child in the third degree if he:

(1) Attempts to cause or recklessly causes physical injury to a child, and such conduct was not discipline administered in a reasonable manner;

(2) With criminal negligence, causes physical injury to a child by means of a deadly weapon; or

(3) Recklessly engages in conduct which creates a grave risk of death or serious physical injury to a child.

2. For purposes of subsection 1 of this section, a "child" is a person less than seventeen years of age.

3. Assault of a child in the third degree is a class A misdemeanor.

4. It is no defense that the defendant believed the child to be older.

5. Assault of a child in the third degree is a lesser included offense of assault of a child in the second degree.

573.010. As used in this chapter the following terms shall mean:

(1) "Child pornography", any visual depiction, material or performance depicting sexual conduct, sexual contact, or a sexual performance, including the lascivious exhibition of the genitals or pubic area, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a child or the representation of a child under the age of eighteen; [provided, that it shall not include material which is not the visual reproduction of a live event;]

(2) "Computer", the box that houses the central processing unit (cpu), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, "computer" refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments

will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a computer system including both software applications and data;

(3) "Computer hardware", all equipment which can collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, optical, or similar computer impulses or data. Hardware includes, but is not limited to, any data-processing devices, such as central processing units, memory typewriters, and self-contained "laptop" or "notebook" computers; internal and peripheral storage devices, transistor-like binary devices, and other memory storage devices, such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two or more computers connected together or to a central computer server via cable or modem; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors, and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices, and electronic tone-generating devices; as well as any devices, mechanisms, or parts that can be used to restrict access to computer hardware, such as physical keys and locks;

(4) "Computer software", digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical, or other digital form. It commonly includes programs to run operating systems, applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters, and communications programs;

(5) "Computer-related documentation", written, recorded, printed, or electronically stored material which explains or illustrates how to configure or use computer hardware, software, or other related items;

(6) "Digital camera", a camera that records images in a format which enables the images to be downloaded into a computer;

[(2)] (7) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(8) "Electronic transfer", the transmission or transfer of computer data, computer or computer-generated image or picture via modem, facsimile, telephone or

cellular phone, or any other means of transferring electronic data using a common carrier of communications, telephone or cellular phone service, cable television or satellite transmissions, either intrastate, interstate or foreign commerce, from one computer, facsimile, television, telephone or cellular phone, or other electronic equipment to another computer, facsimile, television, telephone or cellular phone, or other electronic equipment;

[(3)] (9) "Explicit sexual material", any **visual depiction**, pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

[(4)] (10) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit **electronic transfer, ship or transport in commerce**, or otherwise provide;

(11) "Identifiable minor" a minor who is capable of being recognized as an actual person by his or her face or other distinguishing feature or physical characteristic, although a prosecutor would not be required to prove the minor's actual identity;

(12) "Lascivious", characterized by or expressing lust or lewdness;

[(5)] (13) "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, **visual depiction, stored computer data, computer or computer-generated image or picture, digital camera image or picture**, videotape or videotape production, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical **production or reproduction**, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates and other latent representational objects;

[(6)] (14) "Minor", any person under the age of eighteen;

[(7)] (15) "Nudity", the showing of post-pubertal human genitals or pubic area, with less than a fully opaque covering;

[(8)] (16) "Obscene", any material or performance is obscene if, **taken as a whole**:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) **[Taken as a whole with]** The average person, applying contemporary community standards, **would find the material** it depicts or describes sexual conduct in a patently offensive way; and

(c) **[Taken as a whole, it]** **A reasonable person would find the material** lacks serious literary, artistic, political or scientific value;

[(9)] (17) "Performance", any play, motion picture film, **computer image or computer-**

generated image or picture, digital camera image or picture, videotape, dance or exhibition performed before an audience of one or more;

[(10)] **(18)** "Pornographic for minors", any material or performance is pornographic for minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

[(11)] **(19)** "Promote", to manufacture, **reproduce** issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, **electronic transfer, or ship or transport in commerce**, or advertise, or to offer or agree to do the same;

[(12)] **(20)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

[(13)] **(21)** "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

[(14)] **(22)** "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(23) "Visual depiction", any photograph, film, video, picture, drawing, digital camera image or picture, stored computer data, computer image or computer-generated image or picture, which is produced by electronic mechanical or other means, of sexual conduct, sexual contact or a sexual performance, where:

(a) Its production involved the use of a minor engaging in sexual conduct, sexual contact or sexual performance, including the lascivious exhibition of the genitals or pubic area;

(b) Such visual depiction is, or is represented as, a minor engaging in sexual conduct, sexual contact or a sexual performance, including the lascivious exhibition of the genitals or pubic area;

(c) Such visual depiction has been created, adapted or modified to appear that an identifiable minor is engaging in sexual conduct, sexual contact or a sexual

performance, including the lascivious exhibition of the genitals or pubic area; or

(d) It is advertised, distributed, promoted or presented in such a manner as to convey the impression that it is a visual depiction of a minor engaging in sexual conduct, sexual contact or a sexual performance, including the lascivious exhibition of the genitals or pubic area;

[(15)] (24) "Wholesale promote", to manufacture, reproduce, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, electronic transfer, or ship, or transport in commerce, or to offer or agree to do the same for purposes of resale or redistribution.

573.025. 1. A person commits the crime of promoting child pornography [in the first degree] if, knowing its content and character, he [photographs, films, videotapes, produces, publishes or otherwise creates child pornography, or knowingly causes another to do so.]:

(1) Photographs, films, videotapes, produces, publishes or otherwise creates child pornography, or knowingly causes another to do so;

(2) Alters, changes, or transfers to any other medium any visual depiction, material, photograph, videotape, film, digital camera graphic file, stored computer data, computer image or computer-generated images or pictures of child pornography for the purpose of electronic transfer, mailing, shipping, or transporting in commerce;

(3) Promotes the performance or showing of child pornography;

(4) Sells, delivers, reproduces, electronic transfers, mails, ships or transports through intrastate, interstate or foreign commerce, exhibits or otherwise makes available or offers or agrees to sell, deliver, reproduce, electronic transfer, mail, ship or transport in commerce, exhibit or otherwise make available, any child pornography; or

(5) Buys, procures, receives or possesses child pornography with the purpose to furnish it to others.

2. Promoting child pornography [in the first degree] is a class [B] A felony, and upon conviction an additional fine of at least five thousand dollars, but not more than five hundred thousand dollars may be added to any other penalties imposed by law.

3. For purposes of this section, each and every item of child pornography shall be a violation of this section and shall constitute a separate offense.

[573.035. 1. A person commits the crime of promoting child pornography in the second degree if, knowing its content and character, he:

(1) Sells, delivers, exhibits or otherwise makes available, or offers or agrees to sell, deliver, exhibit, or otherwise make available, any child pornography; or

(2) Buys, procures or possesses child pornography with the purpose to furnish it to others.

2. Promoting child pornography in the second degree is a class D felony, and upon

conviction an additional fine of at least five thousand dollars, but not more than five hundred thousand dollars may be added to any other penalties imposed by law.]

573.037. 1. A person commits the crime of possession of child pornography if he knowingly:

(1) Possesses or controls any **visual depiction or** obscene material that has a minor as one of its participants or portrays **a minor** as an observer of sexual conduct, sexual contact or a sexual performance [a minor]; or

(2) Possesses or controls any [material] **visual depiction** that shows a minor participating or engaging in sexual conduct.

2. Possession of child pornography is a class [A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section committed at a different time, in which case it is a class D] **B** felony.

573.045. 1. A person commits the crime of furnishing child pornography to a minor if, knowing its content and character, he:

(1) Furnishes any visual depiction of child pornography, knowing that the person to whom it is furnished is a minor, or the person to whom it is furnished has identified themselves as a minor or acting in reckless disregard or the likelihood that such person is a minor; or

(2) Mails, ships, electronic transfers, or transports in commerce a visual depiction of child pornography to a minor knowing that the person to whom it is sent is a minor, the person to whom it is sent has identified themselves as a minor or acting in reckless disregard of the likelihood that such person is a minor.

2. Furnishing child pornography to a minor is a class A felony.

3. For purposes of this section, each and every visual depiction of child pornography shall be a violation of this section and shall constitute a separate offense.

573.050. 1. In any prosecution under this chapter evidence shall be admissible to show:

(1) What the predominant appeal of the material or performance would be for ordinary adults or minors;

(2) The literary, artistic, political or scientific value of the material or performance;

(3) The degree of public acceptance in this state and in the local community;

(4) The appeal to prurient interest in advertising or other promotion of the material or performance;

(5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.

2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography, **furnishing child pornography to minors**, or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than eighteen years of age may be made as set forth in section 568.100, RSMo, **or the person who participated in the child pornography is an identifiable minor as set forth in section 573.010**, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, **possession of child pornography or furnishing child pornography to minors**, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

660.520. 1. There is hereby established in the department of social services a special team, **to be known as the "state technical assistance team", to act in cases of child abuse, child neglect, child sexual abuse, child exploitation or child fatality** which shall:

(1) Provide training, expertise and assistance to county multidisciplinary teams for the investigation and prosecution of child **abuse, child neglect, child sexual abuse, child exploitation or child fatality** cases;

(2) Assist in the investigation of child **abuse, child neglect, child sexual abuse, child exploitation or child fatality** cases, upon the request of [local] **the lead** law enforcement [agencies] **agency**, prosecutors, [or] division of family services staff, **medical examiners, coroners or juvenile officers. Where assistance has been requested, state technical assistance team investigators shall conduct investigations into child abuse, child neglect, child sexual abuse, child exploitation or child fatalities and shall cooperate with the appropriate police officials of this state or its political subdivisions. State technical assistance team investigators providing such assistance shall have the training for peace officers set forth in sections 590.100 to 590.180, RSMo, and shall have the power of arrest for child abuse, child neglect, child sexual abuse, child exploitation or child fatality offenses only. While assisting in the investigation of those offenses specified in this section, state technical assistance team investigators shall be deemed peace officers if they are assaulted;**

(3) Assist county multidisciplinary teams to develop and implement protocols for the investigation and prosecution of **child abuse, child neglect, child sexual abuse, child exploitation or child fatality** cases.

2. The team may call upon the expertise of the office of the attorney general, the Missouri office of prosecution services, the missing persons unit of the state highway patrol, the department of health, the department of mental health or any other [state] agency.

3. Each county may develop a multidisciplinary team for the purpose of determining the appropriate investigative and therapeutic action to be initiated on [child sexual abuse] **referenced in subsection 1 of this section** complaints reported to the division of family services. The multidisciplinary team may include, but is not limited to, a prosecutor, or his representative, an investigator from the division of family services, a physician, a representative from a mental health care services agency and a representative of the police agency of primary jurisdiction.

4. The division of family services shall provide training and assistance to county multidisciplinary teams and shall assist in the investigation of child **abuse, child neglect, child sexual abuse, child exploitation or child fatality** cases upon the request of local law enforcement agencies, the local multidisciplinary team, or the local prosecutor.

5. All reports and records made and maintained by the state technical assistance team relating to investigations conducted pursuant to this section, including arrests, shall be available in the same manner as set forth in sections 610.010 through 610.200, RSMo.

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