

FIRST REGULAR SESSION

# SENATE BILL NO. 609

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCOTT.

Read 1st time February 26, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1666S.01I

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### AN ACT

To repeal sections 210.025, 210.110, 210.145, 210.152, 210.183, 210.254, 210.903, 210.909, 211.031, 211.059, 453.110, and 475.024, RSMo, and to enact in lieu thereof twelve new section relating to protection of children, with penalty provisions.

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

Section A. Sections 210.025, 210.110, 210.145, 210.152, 210.183, 210.254, 210.903, 210.909, 211.031, 211.059, 453.110, and 475.024, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 210.025, 210.110, 210.145, 210.152, 210.183, 210.254, 210.903, 210.909, 211.031, 211.059, 453.110, and 475.024, to read as follows:

210.025. 1. To qualify for receipt of state or federal funds for providing child-care services in the home either by direct payment or through reimbursement to a child-care beneficiary, an applicant and any person over the age of eighteen who is living in the applicant's home shall be required to submit to a criminal background check pursuant to section 43.540, RSMo, and a check of the central registry for child abuse established in section 210.145. Effective January 1, 2001, the requirements of this subsection or subsection 2 of this section shall be satisfied through registration with the family care safety registry established in sections 210.900 to 210.936. Any costs associated with such checks shall be paid by the applicant.

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

2. Upon receipt of an application for state or federal funds for providing child-care services in the home, the division of family services shall:

(1) Determine if a [probable cause] finding of child abuse or neglect **by a preponderance of the evidence** involving the applicant or any person over the age of eighteen who is living in the applicant's home has been recorded pursuant to section 210.221 or 210.145;

(2) Determine if the applicant or any person over the age of eighteen who is living in the applicant's home has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.221 or 210.496; and

(3) Request a criminal background check of the applicant and any person over the age of eighteen who is living in the applicant's home pursuant to section 43.540, RSMo.

3. Except as otherwise provided in subsection 4 of this section, upon completion of the background checks in subsection 2 of this section, an applicant shall be denied state or federal funds for providing child care if such applicant or any person over the age of eighteen who is living in the applicant's home:

(1) Has had a [probable cause] finding of child abuse or neglect **by a preponderance of the evidence** pursuant to section 210.145;

(2) Has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.496;

(3) Has pled guilty or nolo contendere to or been found guilty of any felony for an offense against the person as defined by chapter 565, RSMo, or any other offense against the person involving the endangerment of a child as prescribed by law; of any misdemeanor or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for an offense against the family as defined in chapter 568, RSMo, with the exception of the sale of fireworks, as defined in section 320.110, RSMo, to a child under the age of eighteen; of any misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which the director has knowledge or any offenses or reports which will disqualify an applicant from receiving state or federal funds.

4. An applicant shall be given an opportunity by the division to offer any extenuating or mitigating circumstances regarding the findings, refusals or violations against such applicant or any person over the age of eighteen who is living in the applicant's home listed in subsection 2 of this section. Such extenuating and mitigating circumstances may be considered by the division in its determination of

whether to permit such applicant to receive state or federal funds for providing child care in the home.

5. An applicant who has been denied state or federal funds for providing child care in the home may appeal such denial decision in accordance with the provisions of section 208.080, RSMo.

6. If an applicant is denied state or federal funds for providing child care in the home based on the background check results for any person over the age of eighteen who is living in the applicant's home, the applicant shall not apply for such funds until such person is no longer living in the applicant's home.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

210.110. As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the following terms mean:

(1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse;

(2) "Central registry", a registry of persons where the division has found [probable cause to believe] **by a preponderance of the evidence that the individual has committed child abuse or neglect** or a court has [substantiated through court adjudication] **found by a preponderance of the evidence** that the individual has committed child abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to 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 pursuant to 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, RSMo, or an attempt to commit any such crimes;

(3) "Child", any person, regardless of physical or mental condition, under eighteen years of age;

(4) "Director", the director of the Missouri division of family services;

(5) "Division", the Missouri division of family services;

(6) "Family assessment and services", an approach to be developed by the division of family services which will provide for a prompt assessment of a child who has been reported to the division as a victim of abuse or neglect by a person responsible for that child's care, custody or control and of that child's family, including risk of abuse and neglect and, if necessary, the provision of community-based services to reduce the risk and support the family;

(7) "Investigation", the collection of physical and verbal evidence to determine if a child has been abused or neglected;

(8) "Jail or detention center personnel", employees and volunteers working in any premises or institution where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are being held under custody of the law;

(9) "Neglect", failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being;

(10) ["Probable cause", available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected] **"Preponderance of the evidence", that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not;**

(11) "Report", the communication of an allegation of child abuse or neglect to the division pursuant to section 210.115;

(12) "Those responsible for the care, custody, and control of the child", those included but not limited to the parents or guardian of a child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day. Those responsible for the care, custody and control shall also include any adult who, based on relationship to the parents of the child, members of

the child's household or the family, has access to the child.

210.145. 1. The division shall [establish and] **develop protocols which give priority to:**

**(1) Ensuring the well-being and safety of the child in instances where child abuse or neglect has been alleged;**

**(2) Provide due process for those accused of child abuse or neglect; and**

**(3) 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. Upon receipt of a report, the division shall immediately [communicate such report to its appropriate local office and any relevant information as may be contained in the information system.] **classify the reported incident of child abuse or neglect into one of three categories:**

**(1) Alleged incidents which indicate the need for an emergency preliminary investigation;**

**(2) Alleged incidents which warrant a central registry investigation; and**

**(3) Alleged incidents for which summary closure are appropriate.**

**The division shall conduct an intake assessment to determine whether an alleged incident of child abuse, if true, indicates the child is in danger of death, sexual abuse, or serious physical harm. If the report indicates the child is in danger of death, sexual abuse, or serious physical harm, the division shall immediately communicate such report to its appropriate local office together with any class I or class II information which may be contained in the information system. The local office shall immediately begin an emergency preliminary investigation of the alleged incident.**

**3. An emergency preliminary investigation shall be conducted by the local office and shall include direct observations of the subject child within twenty-four hours of the receipt of the report. Local law enforcement shall take all necessary steps to facilitate such direct observation. If a parent having legal custody of the child or a legal guardian of the child is not the alleged abuser, the parent or legal guardian of the child must be notified prior to the child being interviewed. Such parent or legal guardian, if**

**immediately available, may attend the interview either personally or telephonically and through the parent's attorney. The division shall develop interview protocols to be followed by the division and the local office whenever interviewing children and shall promulgate said protocols as rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo. The division shall not meet with the child in any residence or building where abuse of such child is alleged to have occurred. When the child is reported absent from the residence, the location and the well-being of the child shall be verified.**

**4. If, at any time during an emergency preliminary investigation the local office determines that there does not exist probable cause that the child is in danger of death, sexual abuse, or serious physical harm the emergency preliminary investigation shall be terminated and the local division staff shall determine, through the use of protocols developed by the division, whether [an] a central registry investigation, summary closure, 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.]**

**[3.] 5. Upon the division's referral of an emergency preliminary investigation to the local office** the local office shall contact the appropriate law enforcement agency immediately upon receipt of a report which [division personnel determine merits an investigation, or, which,] if true, would constitute a suspected violation of any of the following: 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, 573.037 or 573.045, RSMo, or an attempt to commit any such crimes. The local office shall 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 either assist the division in the investigation or provide the division, within twenty-four hours, an explanation in writing detailing the reasons why it is unable to assist.] **No statement obtained by the division during the**

course of an emergency preliminary investigation may be used in any central registry investigation unless the interview was videotape or audiotape recorded in its entirety.

6. If, at any time during an intake assessment, a preliminary investigation or a central registry investigation, or family assessment and services approach, the division or the local office may determine that summary case closure is appropriate. If the division determines that neither division or local office intervention is appropriate, the reasons for not assigning the case for emergency preliminary investigation, central registry investigation or family assessment shall be clearly documented in writing on the intake documents and signed by a division supervisor. Situations where continued investigation is not warranted include the following:

- (1) The allegation is essentially the same incident of child abuse or neglect which has already been reported or assigned for investigation;
- (2) The allegation does not meet the definition of child abuse or neglect;
- (3) The allegation arises from a reporter who is reporting speculation or information from second- or third-hand sources, which is vague or insufficient or the reporter is unable to articulate any basis in fact for the suspicion;
- (4) The reporter is unreliable or not credible due to the reporter's prior history of making repeatedly false or questionable reports or due to the allegation's lack of substance and the apparent color of self interest on the part of the reporter;
- (5) The reporter has withdrawn the allegations before the investigation has begun, based on new information and there is insufficient reason to proceed; or
- (6) The division lacks jurisdiction to investigate the matter.

If, after the intake assessment, the division determines that neither an emergency preliminary investigation or a summary case closure is appropriate, the division shall communicate such report to its appropriate local office and any relevant information as may be contained in the information system for a central registry investigation or family assessment and services approach.

[4.] 7. Upon referral of an incident report for a central registry

**investigation or family assessment and services approach, the division shall immediately communicate such report to its appropriate local office together with any Class I information which may be contained in the information system.** The local office of the division shall cause [an] **a central registry** investigation or family assessment and services approach to be initiated [immediately or no later than within twenty-four] **within forty-eight** 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]. **If necessary**, local law enforcement shall take all necessary steps to facilitate such direct observation. **Any interview of an alleged victim of child abuse or neglect by the division or any member of the interdisciplinary team shall be videotape recorded in its entirety.** The division shall develop interview protocols to be followed by the division and the local office whenever interviewing children and shall promulgate said protocols as rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo. If the parents of the child are not the alleged abusers, the parents of the child must be notified prior to the child being interviewed by the division. **Each parent or legal guardian may attend the interview either personally or by telephone and through the parent's attorney.** The division shall not meet with the child in any [location] **residence or building** where abuse of such child is alleged to have occurred. When the child is reported absent from the residence, the location and the well-being of the child shall be verified. **The division or the local office shall commence an immediate emergency preliminary investigation if at any time during the central registry investigation it is determined the child is in danger of death, sexual abuse, or serious physical harm.** The division staff who have conducted the central registry investigation may remain involved in the emergency preliminary investigation of the child and family.

[5.] **8.** The director of the division shall name at least one chief investigator for each local division office, who shall direct the division response on any case involving a second or subsequent incident regarding the same subject child or perpetrator. The duties of a chief investigator shall include verification of direct

observation of the subject child by the division and shall ensure information regarding the status of an investigation is provided to the public school district liaison. The public school district liaison shall develop protocol in conjunction with the chief investigator to ensure information regarding an investigation is shared with appropriate school personnel. The superintendent of each school district shall designate a specific person or persons to act as the public school district liaison. Should the subject child attend a nonpublic school the chief investigator shall notify the school principal of the investigation. Upon notification of an investigation, all information received by the public school district liaison or the school shall be subject to the provisions of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g, and federal rule 34 C.F.R., Part 99.

**[6.] 9.** The **emergency preliminary investigation or central registry** 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 for the abuse or neglect; 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.

**[7.] 10.** 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 **emergency preliminary investigations and within seventy-two hours in central registry investigations 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.

**[8.] 11.** Upon completion of the **emergency preliminary investigation or central registry** 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.

**12. Emergency child protection teams shall be used whenever conducting an emergency preliminary investigation. Emergency child protection teams shall consist of designated division local office personnel, the juvenile officer and, if necessary to facilitate direct observation of the allegedly abused child, local law enforcement.**

**[9.] 13.** Multidisciplinary teams **[shall] may** be used whenever conducting the **central registry** investigation as determined by the division in conjunction with local law enforcement. Multidisciplinary teams shall be used in providing protective

or preventive social services, including the services of law enforcement, a liaison of the local public school, the juvenile officer, the juvenile court, and other agencies, both public and private.

**[10.] 14.** If the appropriate local division personnel determine after an **emergency preliminary investigation or central registry investigation** has begun that [completing] **continuing** an investigation **to completion** is not appropriate, the division shall **summarily close the case or** conduct a family assessment and services approach. The division shall provide written notification to local law enforcement prior to terminating any investigative process. The reason for the termination of the investigative process shall be documented in the record of the division and the written notification submitted to local law enforcement. Such notification shall not preclude nor prevent any investigation by law enforcement.

**[11.] 15.** If the appropriate local division personnel determines to use a family assessment and services approach, the division shall:

(1) Assess 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;

(2) Provide services 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;

(3) Commence an immediate **emergency preliminary investigation if at any time during the family assessment and services approach the division determines that an emergency preliminary investigation, as delineated in subsections 2 through 13 of this section, is required, or commence an immediate central registry investigation if at any time during the family assessment and services approach the division determines that [an] a central registry investigation, as delineated in [sections 210.109 to 210.183] subsections 2 through 13 of this section, is required.** The division staff who have conducted the assessment may remain involved in the provision of services to the child and family; **and**

(4) 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.

**[12.] 16.** 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.] 17.** 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 or her report. Such person shall receive, from the local office, if requested, information on the general disposition of his or her report. A person required to report to the division pursuant to section 210.115 may receive, if requested, findings and information concerning the case. Such release of information shall be at the discretion of the director based upon a review of the mandated reporter's ability to assist in protecting the child or the potential harm to the child or other children within the family. The local office shall respond to the request within forty-five days. The findings shall be made available to the mandated reporter within five days of the outcome of the investigation.

**[14.] 18.** 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.

**[15.] 19.** In any judicial proceeding involving the custody of a child where the court determines that the child is in need of services pursuant to subdivision (d) of subsection 1 of section 211.031, RSMo, and has taken jurisdiction, the child's parent, guardian or custodian shall not be entered into the registry.

**[16.] 20.** The division of family services is hereby granted the authority to

promulgate rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo, to carry out the provisions of sections 210.109 to 210.183.

**[17.] 21.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

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 initiated by a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for ten years from the date of the report. For all other investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for two years from the date of the report. 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 two-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] **by a preponderance of the evidence that** 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; or
- (2) [There is insufficient probable cause of abuse or neglect] **That the division has not determined by a preponderance of the evidence that abuse or neglect exists.**

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 for 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 division proves by a preponderance of the evidence that the alleged perpetrator abused or neglected a child. The abuse and neglect review board shall provide the alleged perpetrator the opportunity to appear and present testimony. The Missouri Rules of Civil Procedure and Rules of Evidence shall apply to these proceedings.** 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] **demand in writing that the division initiate de novo circuit court proceedings. This demand for judicial proceedings shall be made within sixty days of the notification of the decision of the child abuse and neglect review board decision.** The

**division shall initiate de novo [judicial review] proceedings** in the circuit court in **Cole county within fourteen days. The alleged perpetrator shall be permitted to change venue to** 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,] **In this de novo proceeding, the division shall be the petitioner and must prove by a preponderance of the evidence that the alleged perpetrator abused or neglected a child.** The circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The [alleged perpetrator] **Missouri Rules of Civil Procedure and Rules of Evidence shall apply to these proceedings. The parties** 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.

210.183. 1. At the time of the initial investigation of a report of child abuse or neglect, the division employee conducting the investigation shall provide the alleged perpetrator with a written description of the investigation process. Such written notice shall be given substantially in the following form:

"The investigation is being undertaken by the Division of Family Services pursuant to the requirements of chapter 210 of the Revised Missouri Statutes in response to a report of child abuse or neglect.

"The identity of the person who reported the incident of abuse or neglect is confidential and may not even be known to the Division since the report could have been made anonymously.

"This investigation is required by law to be conducted in order to enable the Division of Family Services to identify incidents of abuse or neglect in order to provide protective or preventive social services to families who are in need of such services.

"The division shall make every reasonable attempt to complete the investigation within thirty days. Within ninety days you will receive a letter from

the Division which will inform you of one of the following:

- "(1) That the Division has found insufficient evidence of abuse or neglect; or
- "(2) That there appears to be probable cause to suspect the existence of child abuse or neglect in the judgment of the Division and that the Division will contact the family to offer social services.

"If the Division finds [there is probable cause to believe] **by a preponderance of the evidence that** child abuse or neglect has occurred or the case is substantiated by court adjudication, a record of the report and information gathered during the investigation will remain on file with the Division.

"If you disagree with the determination of the Division and feel that there is insufficient [probable cause to believe] **evidence to prove** abuse or neglect has occurred **by a preponderance of the evidence**, you have a right to request an administrative review at which time you may hire an attorney to represent you. If you request an administrative review on the issue, you will be notified of the date and time of your administrative review hearing by the child abuse and neglect review board. If the division's decision is reversed by the child abuse and neglect review board, the Division records concerning the report and investigation will be updated to reflect such finding. If the child abuse and neglect review board upholds the division's decision, an appeal may be filed in circuit court within sixty days of the child abuse and neglect review board's decision."

2. If the division uses the family assessment approach, the division shall at the time of the initial contact provide the parent of the child with the following information:

- (1) The purpose of the contact with the family;
- (2) The name of the person responding and his office telephone number;
- (3) The assessment process to be followed during the division's intervention with the family including the possible services available and expectations of the family.

210.254. 1. Child-care facilities operated by religious organizations pursuant to the exempt status recognized in subdivision (5) of section 210.211 shall upon enrollment of any child provide the parent or guardian enrolling the child two copies of a notice of parental responsibility, one copy of which shall be retained in the files of the facility after the enrolling parent acknowledges, by signature, having read and accepted the information contained therein.

2. The notice of parental responsibility shall include the following:

- (1) Notification that the child-care facility is exempt as a religious

organization from state licensing and therefore not inspected or supervised by the department of health and senior services other than as provided herein and that the facility has been inspected by those designated in section 210.252 and is complying with the fire, health and sanitation requirements of sections 210.252 to 210.257;

(2) The names, addresses and telephone numbers of agencies and authorities which inspect the facility for fire, health and safety and the date of the most recent inspection by each;

(3) The staff/child ratios for enrolled children under two years of age, for children ages two to four and for those five years of age and older as required by the department of health and senior services regulations in licensed facilities, the standard ratio of staff to number of children for each age level maintained in the exempt facility, and the total number of children to be enrolled by the facility;

(4) Notification that background checks have been conducted on each individual caregiver and all other personnel at the facility. The background check shall be conducted upon employment and every two years thereafter on each individual caregiver and all other personnel at the facility. Such background check shall include a screening for child abuse or neglect through the division of family services, and a criminal record review through the Missouri highway patrol pursuant to section 43.540, RSMo. The fee for the criminal record review shall be limited to the actual costs incurred by the Missouri highway patrol in conducting such review not to exceed ten dollars;

(5) The disciplinary philosophy and policies of the child-care facility; and

(6) The educational philosophy and policies of the child-care facility.

3. A copy of notice of parental responsibility, signed by the principal operating officer of the exempt child-care facility and the individual primarily responsible for the religious organization conducting the child-care facility and copies of the annual fire and safety inspections shall be filed annually during the month of August with the director of the department of health and senior services. Exempt child-care facilities which begin operation after August 28, 1993, shall file such notice at least five days prior to starting to operate.

**4. Discipline, when administered in a reasonable manner at a child-care facility exempted from license requirements pursuant to subdivisions (1) to (7) of section 210.211 or section 210.516, and in accordance with the facility's written policy of discipline, is not abuse within the meaning of this chapter. The provisions of sections 210.110 to 210.165 notwithstanding, the division of family services shall not have jurisdiction over or**

investigate any report of alleged child abuse arising out of or related to any discipline administered in a reasonable manner by any facility personnel pursuant to a written policy of discipline established by the facility. Upon receipt of any reports of child abuse by the division of family services pursuant to sections 210.110 to 210.165 which allegedly involves personnel of the facility, the division of family services shall notify the principal operating officer of the exempt child-care facility where the alleged incident occurred. If the report pertains to an alleged incident of child abuse other than the administration of discipline by facility personnel pursuant to a written policy of discipline, a notification of the reported child abuse shall be sent by the principal operating officer to the child's parent or legal guardian. The report shall be jointly investigated by the child's parent or legal guardian and the facility's principal operating officer or his designee. The investigation shall begin no later than forty-eight hours after notification from the division of family services is received, and shall consist of, but need not be limited to, interviewing and recording statements of the child and interviewing the child's parent or legal guardian within two working days after the start of the investigation (by telephone if the parent or legal guardian is not locally available), interviewing facility's personnel allegedly involved in the report, and of any witnesses to the alleged incident. The principal operating officer shall issue a report of the findings and recommendations after the conclusion of the investigation within seven days after receiving notice from the division of family services. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The findings and conclusions shall be made in substantially the following form:

- (1) The report of the alleged child abuse is unsubstantiated. The child's parent or legal guardian and the facility's principal operating officer agree that the evidence shows that no abuse occurred;
- (2) The report of the alleged child abuse is substantiated. The child's parent or legal guardian and the facility's operating officer agree that the evidence is sufficient to support a finding that the alleged incident of child abuse did occur;
- (3) The issue involved in the alleged incident of child abuse is unresolved. The child's parent or legal guardian and the facility's principal

**operating officer are unable to agree on their findings and conclusions on the alleged incident.**

**5. The findings and conclusions of the principal operating officer shall be sent to the division of family services. If the findings and conclusions of the principal operating officer are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the division of family services' central registry. If the findings and conclusions of the principal operating officer are that the report of the alleged child abuse is substantiated, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the principal operating officer and shall include the information in the division's central registry. If the findings and conclusions of the principal operating officer are that the issue involved in the alleged incident of child abuse is unresolved, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the principal operating officer, however, the incident and the names of the parties allegedly involved shall not be entered into the central registry of the division of family services unless and until a court of competent jurisdiction has determined by a preponderance of the evidence that the party or parties have committed the alleged child abuse or neglect.**

210.903. 1. To protect children, the elderly, and disabled individuals in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health and senior services a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers', elder-care workers', and personal-care workers' background and on child-care, elder-care and personal-care providers through:

- (1) The patrol's criminal record check system pursuant to section 43.540, RSMo, including state and national information, to the extent possible;
- (2) [Probable cause] Findings of abuse and neglect **by a preponderance of the evidence** pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section 570.145, RSMo;
- (3) The division of aging's employee disqualification list pursuant to section

660.315, RSMo;

(4) As of January 1, 2003, the department of mental health's employee disqualification registry;

(5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to section 210.496;

(6) Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259; and

(7) Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo.

210.909. 1. Upon submission of a completed registration form by a child-care worker, elder-care worker or personal-care attendant, the department shall:

(1) Determine if a [probable cause] finding of child abuse or neglect **by a preponderance of the evidence** involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a [probable cause] finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;

(2) Determine if the applicant has been refused licensure or has experienced involuntary licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

(5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of sentence to a charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573, 575 and 578, RSMo; and

(6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any convictions, employee disqualification listings, registry listings, [probable cause] findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the

determination recorded on the registry pursuant to this section.

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:

(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support; or

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130, RSMo;

(d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian or custodian is unable to afford or access appropriate mental health treatment or care for the child;

(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his or her home without sufficient cause, permission, or justification; or

(d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or

(e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which

does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(4) For the adoption of a person;

(5) For the commitment of a child or person seventeen years of age to the guardianship of the department of social services as provided by law.

2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person seventeen years of age who resides in a county of this state shall be made as follows:

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child or person seventeen years of age may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's residence or the residence of the person seventeen years of age for future action;

(2) Upon the motion of any party or on its own motion prior to final disposition on the pending matter, the court in which a proceeding is commenced may transfer the proceeding of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age, or the county in which the offense pursuant to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

(3) Upon motion of any party or on its own motion, the court in which jurisdiction has been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age for further action with the prior consent of the receiving court;

(4) Upon motion of any party or upon its own motion at any time following a judgment of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause may place the child or person seventeen years of age under the supervision of another juvenile court within or without the state pursuant to section 210.570, RSMo, with the consent of the receiving court;

(5) **Upon motion of any child or person seventeen years of age or his or her parent, the court having jurisdiction shall grant a change of judge, a change of venue to the family court or juvenile court of another judicial circuit, or both;**

(6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or person seventeen years of age, certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the transfer.

3. In any proceeding involving any child or person seventeen years of age taken into custody in a county other than the county of the child's residence or the residence of a person seventeen years of age, the juvenile court of the county of the child's residence or the residence of a person seventeen years of age shall be notified of such taking into custody within seventy-two hours.

**4. Nothing in this section shall be interpreted as authorizing a juvenile officer or deputy juvenile officer to take custody of a child or person seventeen years of age.**

**211.059. 1. Any interrogation of, or interview with a child taken into custody by a juvenile officer or law enforcement official shall be audiotape recorded or videotape recorded in its entirety. "Custody", for purposes of this section, is defined as any situation in which a child has been deprived of his liberty to leave. Any failure to comply with the provisions of this section shall render any and all statements made by the child inadmissible in any future judicial proceeding. Each of the warnings in subsection 2 of this section shall be given while recording.**

**2. When a child is taken into custody by a juvenile officer or law enforcement official, [with or without a warrant for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 of section 211.031,] the child shall be advised prior to questioning:**

- (1) That he has the right to remain silent; and
- (2) That any statement he does make to anyone can be and may be used

against him; and

(3) That he has a right to have a parent, guardian or custodian present during questioning; and

(4) That he has a right to consult with an attorney and that one will be appointed and paid for him if he cannot afford one.

**[2.] 3.** If the child indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, **or that he wishes to have his parent, guardian, custodian, or attorney present during questioning**, the officer shall cease questioning.

453.110. 1. **(1) It is a class A misdemeanor for any person or agency to pay, offer to pay, or to receive money or anything of value for the placement for adoption or for the consent to an adoption of a child. The provisions of this subdivision shall not apply to any fee paid for adoption services provided by the division of family services, a child care facility, foster home, residential care facility, or child placing agency, or an attorney providing adoption legal services.**

**(2) The provisions of this section shall not make it unlawful to pay for or receive the maternity-connected medical or hospital and necessary living expenses of the mother preceding and during confinement as an act of charity, as long as the payment is not contingent upon placement of the child for adoption, consent to the adoption, or cooperation in the completion of the adoption.**

**(3) It is a class A misdemeanor for any parent to obtain the financial benefits set forth in subdivision (2) of this subsection with the intent to receive those financial benefits where there is an intent to do either of the following:**

**(a) Not complete the adoption; or**

**(b) Not consent to the adoption.**

**(4) It is a class A misdemeanor for any parent to obtain the financial benefits set forth in subdivision (2) of this subsection from two or more prospective adopting families or persons, if either parent does both of the following:**

**(a) Knowingly fails to disclose to those families or persons that there are other prospective adopting families or persons interested in adopting the child, with knowledge that there is an obligation to disclose that information;**

**(b) Knowingly accepts the financial benefits set forth in subdivision (2) of this subsection if the aggregate amount exceeds the reasonable maternity-connected medical or hospital and necessary living expenses of the mother preceding and during the pregnancy.**

**2.** No person, agency, organization or institution shall surrender custody of a minor child, or transfer the custody of such a child to another, and no person, agency, organization or institution shall take possession or charge of a minor child so transferred, without first having filed a petition before the circuit court sitting as a juvenile court of the county where the child may be, praying that such surrender or transfer may be made, and having obtained such an order from such court approving or ordering transfer of custody.

**[2.] 3.** If any such surrender or transfer is made without first obtaining such an order, such court shall, on petition of any public official or interested person, agency, organization or institution, ~~order an investigation and report as described in section 453.070 to be completed by the division of family services and shall make such order as to the custody of such child in the best interest of such child.~~

**[3. Any person violating the terms of this section shall be guilty of a class D felony.]**

**4.** The investigation required by subsection 2 of this section shall be initiated by the division of family services within forty-eight hours of the filing of the court order requesting the investigation and report and shall be completed within thirty days. The court shall order the person having custody in violation of the provisions of this section to pay the costs of the investigation and report.

**5.** This section shall not be construed to prohibit any parent, agency, organization or institution from placing a child in a ~~family home for care~~ **temporary placement (including, but not limited to: a family home; church; athletic, academic, or charitable camp; babysitting; military academy; child care facility; foster home; or residential care facility)**, if the right to supervise the care of the child and to resume custody thereof is retained, or from placing a child with a licensed **or license exempt** foster home within the state through a child placing agency licensed by this state as part of a preadoption placement.

**6.** After the filing of a petition for the transfer of custody for the purpose of adoption, the court may enter an order of transfer of custody if the court finds all of the following:

**(1)** A family assessment has been made as required in section 453.070 and has been reviewed by the court;

- (2) A recommendation has been made by the guardian ad litem;
- (3) A petition for transfer of custody for adoption has been properly filed or an order terminating parental rights has been properly filed;
- (4) The financial affidavit has been filed as required under section 453.075;
- (5) The written report regarding the child who is the subject of the petition containing the information has been submitted as required by section 453.026;
- (6) Compliance with the Indian Child Welfare Act, if applicable; and
- (7) Compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo.

7. A hearing on the transfer of custody for the purpose of adoption is not required if:

- (1) The conditions set forth in subsection 6 of this section are met;
- (2) The parties agree and the court grants leave; and
- (3) Parental rights have been terminated pursuant to section 211.444 or 211.447, RSMo.

475.024. A parent of a minor, by a properly executed power of attorney, may delegate to another individual, **child care facility, foster home, residential care facility, or child placing agency, whether license or exempted from licensing pursuant to sections 210.211 or 210.516, RSMo**, for a period not exceeding one year, any of his powers regarding care or custody of the minor child, except his power to consent to marriage or adoption of the minor child.

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