

FIRST REGULAR SESSION

SENATE BILL NO. 177

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time January 26, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1178S.011

AN ACT

To repeal section 630.167, RSMo, and to enact in lieu thereof one new section relating to department of mental health investigative reports.

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

Section A. Section 630.167, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 630.167, to read as follows:

630.167. 1. Upon receipt of a report, the department or the department
2 of health and senior services, if such facility or program is licensed pursuant to
3 chapter 197, shall initiate an investigation within twenty-four hours.

4 2. If the investigation indicates possible abuse or neglect of a patient,
5 resident or client, the investigator shall refer the complaint together with the
6 investigator's report to the department director for appropriate action. If, during
7 the investigation or at its completion, the department has reasonable cause to
8 believe that immediate removal from a facility not operated or funded by the
9 department is necessary to protect the residents from abuse or neglect, the
10 department or the local prosecuting attorney may, or the attorney general upon
11 request of the department shall, file a petition for temporary care and protection
12 of the residents in a circuit court of competent jurisdiction. The circuit court in
13 which the petition is filed shall have equitable jurisdiction to issue an ex parte
14 order granting the department authority for the temporary care and protection
15 of the resident for a period not to exceed thirty days.

16 3. (1) Except as otherwise provided in this section, reports referred to in
17 section 630.165 and the investigative reports referred to in this section shall be

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

18 confidential, shall not be deemed a public record, and shall not be subject to the
19 provisions of section 109.180 or chapter 610. Investigative reports pertaining to
20 abuse and neglect shall remain confidential until a final report is complete,
21 subject to the conditions contained in this section. Final reports of substantiated
22 abuse or neglect issued on or after August 28, 2007, are open and shall be
23 available for release in accordance with chapter 610. The names and all other
24 identifying information in such final substantiated reports, including diagnosis
25 and treatment information about the patient, resident, or client who is the subject
26 of such report, shall be confidential and may only be released to the patient,
27 resident, or client who has not been adjudged incapacitated under chapter 475,
28 the custodial parent or guardian parent, or other guardian of the patient, resident
29 or client. The names and other descriptive information of the complainant,
30 witnesses, or other persons for whom findings are not made against in the final
31 substantiated report shall be confidential and not deemed a public record. Final
32 reports of unsubstantiated allegations of abuse and neglect shall remain closed
33 records and shall only be released to the parents or other guardian of the patient,
34 resident, or client who is the subject of such report, patient, resident, or client
35 and the department vendor, provider, agent, or facility where the patient,
36 resident, or client was receiving department services at the time of the
37 unsubstantiated allegations of abuse and neglect, but the names and any other
38 descriptive information of the complainant or any other person mentioned in the
39 reports shall not be disclosed unless such complainant or person specifically
40 consents to such disclosure. Requests for final reports of substantiated or
41 unsubstantiated abuse or neglect from a patient, resident or client who has not
42 been adjudged incapacitated under chapter 475 may be denied or withheld if the
43 director of the department or his or her designee determines that such release
44 would jeopardize the person's therapeutic care, treatment, habilitation, or
45 rehabilitation, or the safety of others and provided that the reasons for such
46 denial or withholding are submitted in writing to the patient, resident or client
47 who has not been adjudged incapacitated under chapter 475. All reports referred
48 to in this section shall be admissible in any judicial proceedings or hearing in
49 accordance with section [36.390] **621.075** or any administrative hearing before
50 the director of the department of mental health, or the director's designee. All
51 such reports may be disclosed by the department of mental health to law
52 enforcement officers and public health officers, but only to the extent necessary
53 to carry out the responsibilities of their offices, and to the department of social

54 services, and the department of health and senior services, and to boards
55 appointed pursuant to sections 205.968 to 205.990 that are providing services to
56 the patient, resident or client as necessary to report or have investigated abuse,
57 neglect, or rights violations of patients, residents or clients provided that all such
58 law enforcement officers, public health officers, department of social services'
59 officers, department of health and senior services' officers, and boards shall be
60 obligated to keep such information confidential.

61 (2) Except as otherwise provided in this section, the proceedings, findings,
62 deliberations, reports and minutes of committees of health care professionals as
63 defined in section 537.035 or mental health professionals as defined in section
64 632.005 who have the responsibility to evaluate, maintain, or monitor the quality
65 and utilization of mental health services are privileged and shall not be subject
66 to the discovery, subpoena or other means of legal compulsion for their release to
67 any person or entity or be admissible into evidence into any judicial or
68 administrative action for failure to provide adequate or appropriate care. Such
69 committees may exist, either within department facilities or its agents,
70 contractors, or vendors, as applicable. Except as otherwise provided in this
71 section, no person who was in attendance at any investigation or committee
72 proceeding shall be permitted or required to disclose any information acquired in
73 connection with or in the course of such proceeding or to disclose any opinion,
74 recommendation or evaluation of the committee or board or any member thereof;
75 provided, however, that information otherwise discoverable or admissible from
76 original sources is not to be construed as immune from discovery or use in any
77 proceeding merely because it was presented during proceedings before any
78 committee or in the course of any investigation, nor is any member, employee or
79 agent of such committee or other person appearing before it to be prevented from
80 testifying as to matters within their personal knowledge and in accordance with
81 the other provisions of this section, but such witness cannot be questioned about
82 the testimony or other proceedings before any investigation or before any
83 committee.

84 (3) Nothing in this section shall limit authority otherwise provided by law
85 of a health care licensing board of the state of Missouri to obtain information by
86 subpoena or other authorized process from investigation committees or to require
87 disclosure of otherwise confidential information relating to matters and
88 investigations within the jurisdiction of such health care licensing boards;
89 provided, however, that such information, once obtained by such board and

90 associated persons, shall be governed in accordance with the provisions of this
91 subsection.

92 (4) Nothing in this section shall limit authority otherwise provided by law
93 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
94 records by the entity or agency authorized to implement a system to protect and
95 advocate the rights of persons with developmental disabilities under the
96 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
97 authorized to implement a system to protect and advocate the rights of persons
98 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing
99 in this section shall serve to negate assurances that have been given by the
100 governor of Missouri to the U.S. Administration on Developmental Disabilities,
101 Office of Human Development Services, Department of Health and Human
102 Services concerning access to records by the agency designated as the protection
103 and advocacy system for the state of Missouri. However, such information, once
104 obtained by such entity or agency, shall be governed in accordance with the
105 provisions of this subsection.

106 4. Anyone who makes a report pursuant to this section or who testifies in
107 any administrative or judicial proceeding arising from the report shall be immune
108 from any civil liability for making such a report or for testifying unless such
109 person acted in bad faith or with malicious purpose.

110 5. Within five working days after a report required to be made pursuant
111 to this section is received, the person making the report shall be notified in
112 writing of its receipt and of the initiation of the investigation.

113 6. No person who directs or exercises any authority in a residential
114 facility, day program or specialized service shall evict, harass, dismiss or retaliate
115 against a patient, resident or client or employee because he or she or any member
116 of his or her family has made a report of any violation or suspected violation of
117 laws, ordinances or regulations applying to the facility which he or she has
118 reasonable cause to believe has been committed or has occurred.

119 7. Any person who is discharged as a result of an administrative
120 substantiation of allegations contained in a report of abuse or neglect may, after
121 exhausting administrative remedies as provided in chapter 36, appeal such
122 decision to the circuit court of the county in which such person resides within
123 ninety days of such final administrative decision. The court may accept an
124 appeal up to twenty-four months after the party filing the appeal received notice
125 of the department's determination, upon a showing that:

126 (1) Good cause exists for the untimely commencement of the request for
127 the review;

128 (2) If the opportunity to appeal is not granted it will adversely affect the
129 party's opportunity for employment; and

130 (3) There is no other adequate remedy at law.

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Unofficial

Bill

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