

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 758
96TH GENERAL ASSEMBLY

Reported from the Committee on Health, Mental Health, Seniors and Families, April 12, 2012, with recommendation that the Senate Committee Substitute do pass.

5601S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 210.135 and 210.145, RSMo, and to enact in lieu thereof two new sections relating to child abuse and neglect.

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

Section A. Sections 210.135 and 210.145, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 210.135 and 210.145, to
3 read as follows:

210.135. 1. Any person, official, or institution complying with the
2 provisions of sections 210.110 to 210.165 in the making of a report, the taking of
3 color photographs, or the making of radiologic examinations pursuant to sections
4 210.110 to 210.165, or both such taking of color photographs and making of
5 radiologic examinations, or the removal or retaining a child pursuant to sections
6 210.110 to 210.165, or in cooperating with the division, or any other law
7 enforcement agency, juvenile office, court, or child-protective service agency of
8 this or any other state, in any of the activities pursuant to sections 210.110 to
9 210.165, or any other allegation of child abuse, neglect or assault, pursuant to
10 sections 568.045 to 568.060, shall have immunity from any liability, civil or
11 criminal, that otherwise might result by reason of such actions. Provided,
12 however, any person, official or institution intentionally filing a false report,
13 acting in bad faith, or with ill intent, shall not have immunity from any liability,
14 civil or criminal. Any such person, official, or institution shall have the same
15 immunity with respect to participation in any judicial proceeding resulting from
16 the report.

17 2. Any person, who is not a school district employee, who makes a report

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

18 to any employee of the school district of child abuse by a school employee shall
19 have immunity from any liability, civil or criminal, that otherwise might result
20 because of such report. Provided, however, that any such person who makes a
21 false report, knowing that the report is false, or who acts in bad faith or with ill
22 intent in making such report shall not have immunity from any liability, civil or
23 criminal. Any such person shall have the same immunity with respect to
24 participation in any judicial proceeding resulting from the report.

25 **3. In a case involving the death or serious injury of a child after**
26 **a report has been made under sections 210.109 to 210.165, the division**
27 **shall conduct a preliminary evaluation in order to determine whether**
28 **a review of the ability of the circuit manager or case worker or workers**
29 **to perform their duties competently is necessary. The preliminary**
30 **evaluation shall examine:**

31 **(1) The hotline worker or workers who took any reports related**
32 **to such case;**

33 **(2) The division case worker or workers assigned to the**
34 **investigation of such report; and**

35 **(3) The circuit manager assigned to the county where the report**
36 **was investigated.**

37 **Any preliminary evaluation shall be completed no later than three days**
38 **after the child's death. If the division determines a review and**
39 **assessment is necessary, it shall be completed no later than three days**
40 **after the child's death.**

210.145. 1. The division shall develop protocols which give priority to:

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

4 **(2) Promoting the preservation and reunification of children and families**
5 **consistent with state and federal law;**

6 **(3) Providing due process for those accused of child abuse or neglect; and**

7 **(4) Maintaining an information system operating at all times, capable of**
8 **receiving and maintaining reports. This information system shall have the ability**
9 **to receive reports over a single, statewide toll-free number. Such information**
10 **system shall maintain the results of all investigations, family assessments and**
11 **services, and other relevant information.**

12 **2. The division shall utilize structured decision-making protocols for**
13 **classification purposes of all child abuse and neglect reports. The protocols**

14 developed by the division shall give priority to ensuring the well-being and safety
15 of the child. All child abuse and neglect reports shall be initiated within
16 twenty-four hours and shall be classified based upon the reported risk and injury
17 to the child. The division shall promulgate rules regarding the structured
18 decision-making protocols to be utilized for all child abuse and neglect reports.

19 3. Upon receipt of a report, the division shall determine if the report
20 merits investigation, including reports which if true would constitute a suspected
21 violation of any of the following: section 565.020, 565.021, 565.023, 565.024, or
22 565.050 if the victim is a child less than eighteen years of age, section 566.030 or
23 566.060 if the victim is a child less than eighteen years of age, or other crimes
24 under chapter 566 if the victim is a child less than eighteen years of age and the
25 perpetrator is twenty-one years of age or older, section 567.050 if the victim is a
26 child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050,
27 568.060, 568.080, or 568.090, section 573.025, 573.035, 573.037, or 573.040, or an
28 attempt to commit any such crimes. The division shall immediately communicate
29 all reports that merit investigation to its appropriate local office and any relevant
30 information as may be contained in the information system. The local division
31 staff shall determine, through the use of protocols developed by the division,
32 whether an investigation or the family assessment and services approach should
33 be used to respond to the allegation. The protocols developed by the division
34 shall give priority to ensuring the well-being and safety of the child.

35 4. **When the child abuse and neglect hotline receives three or**
36 **more calls, within a seventy-two hour period, from one or more**
37 **individuals concerning the same child, the division shall conduct a**
38 **review to determine whether the calls meet the criteria and statutory**
39 **definition for a child abuse and neglect report to be accepted. In**
40 **conducting the review, the division shall contact the hotline caller or**
41 **callers in order to collect information to determine whether the calls**
42 **meet the criteria for harassment.**

43 5. The local office shall contact the appropriate law enforcement agency
44 immediately upon receipt of a report which division personnel determine merits
45 an investigation and provide such agency with a detailed description of the report
46 received. In such cases the local division office shall request the assistance of the
47 local law enforcement agency in all aspects of the investigation of the
48 complaint. The appropriate law enforcement agency shall either assist the
49 division in the investigation or provide the division, within twenty-four hours, an

50 explanation in writing detailing the reasons why it is unable to assist.

51 [5.] **6.** The local office of the division shall cause an investigation or
52 family assessment and services approach to be initiated in accordance with the
53 protocols established in subsection 2 of this section, except in cases where the sole
54 basis for the report is educational neglect. If the report indicates that
55 educational neglect is the only complaint and there is no suspicion of other
56 neglect or abuse, the investigation shall be initiated within seventy-two hours of
57 receipt of the report. If the report indicates the child is in danger of serious
58 physical harm or threat to life, an investigation shall include direct observation
59 of the subject child within twenty-four hours of the receipt of the report. Local
60 law enforcement shall take all necessary steps to facilitate such direct
61 observation. **Callers to the child abuse and neglect hotline shall be**
62 **instructed by the division's hotline to call 911 in instances where the**
63 **child may be in immediate danger.** If the parents of the child are not the
64 alleged abusers, a parent of the child must be notified prior to the child being
65 interviewed by the division. **No person responding to or investigating a**
66 **child abuse and neglect report shall call prior to a home visit or leave**
67 **any documentation of any attempted visit, such as business cards,**
68 **pamphlets, or other similar identifying information if he or she has a**
69 **reasonable basis to believe the following factors are present:**

70 **(1) (a) No person is present in the home at the time of the home**
71 **visit; and**

72 **(b) The alleged perpetrator resides in the home or the physical**
73 **safety of the child may be compromised if the alleged perpetrator**
74 **becomes aware of the attempted visit;**

75 **(2) The alleged perpetrator will be alerted regarding the**
76 **attempted visit; or**

77 **(3) The family has a history of domestic violence or fleeing the**
78 **community.**

79 **If the alleged perpetrator is present during a visit by the person**
80 **responding to or investigating the report, such person shall provide**
81 **written material to the alleged perpetrator informing him or her of his**
82 **or her rights regarding such visit, including but not limited to the right**
83 **to contact an attorney. The alleged perpetrator shall be given a**
84 **reasonable amount of time to read such written material or have such**
85 **material read to him or her by the case worker before the visit**

86 **commences, but in no event shall such time exceed five minutes; except**
87 **that, such requirement to provide written material and reasonable time**
88 **to reach such material shall not apply in cases where the child faces an**
89 **immediate threat or danger, or the person responding to investigating**
90 **the report is or feels threatened or in danger of physical harm.** If the
91 abuse is alleged to have occurred in a school or child-care facility the division
92 shall not meet with the child in any school building or child-care facility building
93 where abuse of such child is alleged to have occurred. When the child is reported
94 absent from the residence, the location and the well-being of the child shall be
95 verified. For purposes of this subsection, child-care facility shall have the same
96 meaning as such term is defined in section 210.201.

97 [6.] 7. The director of the division shall name at least one chief
98 investigator for each local division office, who shall direct the division response
99 on any case involving a second or subsequent incident regarding the same subject
100 child or perpetrator. The duties of a chief investigator shall include verification
101 of direct observation of the subject child by the division and shall ensure
102 information regarding the status of an investigation is provided to the public
103 school district liaison. The public school district liaison shall develop protocol in
104 conjunction with the chief investigator to ensure information regarding an
105 investigation is shared with appropriate school personnel. The superintendent
106 of each school district shall designate a specific person or persons to act as the
107 public school district liaison. Should the subject child attend a nonpublic school
108 the chief investigator shall notify the school principal of the investigation. Upon
109 notification of an investigation, all information received by the public school
110 district liaison or the school shall be subject to the provisions of the federal
111 Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g,
112 and federal rule 34 C.F.R., Part 99.

113 [7.] 8. The investigation shall include but not be limited to the nature,
114 extent, and cause of the abuse or neglect; the identity and age of the person
115 responsible for the abuse or neglect; the names and conditions of other children
116 in the home, if any; the home environment and the relationship of the subject
117 child to the parents or other persons responsible for the child's care; any
118 indication of incidents of physical violence against any other household or family
119 member; and other pertinent data.

120 [8.] 9. When a report has been made by a person required to report under
121 section 210.115, the division shall contact the person who made such report

122 within forty-eight hours of the receipt of the report in order to ensure that full
123 information has been received and to obtain any additional information or
124 medical records, or both, that may be pertinent.

125 [9.] 10. Upon completion of the investigation, if the division suspects that
126 the report was made maliciously or for the purpose of harassment, the division
127 shall refer the report and any evidence of malice or harassment to the local
128 prosecuting or circuit attorney.

129 [10.] 11. Multidisciplinary teams shall be used whenever conducting the
130 investigation as determined by the division in conjunction with local law
131 enforcement. Multidisciplinary teams shall be used in providing protective or
132 preventive social services, including the services of law enforcement, a liaison of
133 the local public school, the juvenile officer, the juvenile court, and other agencies,
134 both public and private.

135 [11.] 12. For all family support team meetings involving an alleged
136 victim of child abuse or neglect, the parents, legal counsel for the parents, foster
137 parents, the legal guardian or custodian of the child, the guardian ad litem for
138 the child, and the volunteer advocate for the child shall be provided notice and
139 be permitted to attend all such meetings. Family members, other than alleged
140 perpetrators, or other community informal or formal service providers that
141 provide significant support to the child and other individuals may also be invited
142 at the discretion of the parents of the child. In addition, the parents, the legal
143 counsel for the parents, the legal guardian or custodian and the foster parents
144 may request that other individuals, other than alleged perpetrators, be permitted
145 to attend such team meetings. Once a person is provided notice of or attends
146 such team meetings, the division or the convenor of the meeting shall provide
147 such persons with notice of all such subsequent meetings involving the
148 child. Families may determine whether individuals invited at their discretion
149 shall continue to be invited.

150 [12.] 13. If the appropriate local division personnel determine after an
151 investigation has begun that completing an investigation is not appropriate, the
152 division shall conduct a family assessment and services approach. The division
153 shall provide written notification to local law enforcement prior to terminating
154 any investigative process. The reason for the termination of the investigative
155 process shall be documented in the record of the division and the written
156 notification submitted to local law enforcement. Such notification shall not
157 preclude nor prevent any investigation by law enforcement.

158 **[13.] 14.** If the appropriate local division personnel determines to use a
159 family assessment and services approach, the division shall:

160 (1) Assess any service needs of the family. The assessment of risk and
161 service needs shall be based on information gathered from the family and other
162 sources;

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

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

177 (4) Document at the time the case is closed, the outcome of the family
178 assessment and services approach, any service provided and the removal of risk
179 to the child, if it existed.

180 **[14.] 15.** Within thirty days of an oral report of abuse or neglect, the local
181 office shall update the information in the information system. The information
182 system shall contain, at a minimum, the determination made by the division as
183 a result of the investigation, identifying information on the subjects of the report,
184 those responsible for the care of the subject child and other relevant dispositional
185 information. The division shall complete all investigations within thirty days,
186 unless good cause for the failure to complete the investigation is documented in
187 the information system. If a child involved in a pending investigation dies, the
188 investigation shall remain open until the division's investigation surrounding the
189 death is completed. If the investigation is not completed within thirty days, the
190 information system shall be updated at regular intervals and upon the completion
191 of the investigation. The information in the information system shall be updated
192 to reflect any subsequent findings, including any changes to the findings based
193 on an administrative or judicial hearing on the matter.

194 [15.] **16.** A person required to report under section 210.115 to the
195 division and any person making a report of child abuse or neglect made to the
196 division which is not made anonymously shall be informed by the division of his
197 or her right to obtain information concerning the disposition of his or her
198 report. Such person shall receive, from the local office, if requested, information
199 on the general disposition of his or her report. Such person may receive, if
200 requested, findings and information concerning the case. Such release of
201 information shall be at the discretion of the director based upon a review of the
202 reporter's ability to assist in protecting the child or the potential harm to the
203 child or other children within the family. The local office shall respond to the
204 request within forty-five days. The findings shall be made available to the
205 reporter within five days of the outcome of the investigation. If the report is
206 determined to be unsubstantiated, the reporter may request that the report be
207 referred by the division to the office of child advocate for children's protection and
208 services established in sections 37.700 to 37.730. Upon request by a reporter
209 under this subsection, the division shall refer an unsubstantiated report of child
210 abuse or neglect to the office of child advocate for children's protection and
211 services.

212 [16.] **17.** The division shall provide to any individual who is not satisfied
213 with the results of an investigation information about the office of child advocate
214 and the services it may provide under sections 37.700 to 37.730.

215 [17.] **18.** In any judicial proceeding involving the custody of a child the
216 fact that a report may have been made pursuant to sections 210.109 to 210.183
217 shall not be admissible. However:

218 (1) Nothing in this subsection shall prohibit the introduction of evidence
219 from independent sources to support the allegations that may have caused a
220 report to have been made; and

221 (2) The court may on its own motion, or shall if requested by a party to
222 the proceeding, make an inquiry not on the record with the children's division to
223 determine if such a report has been made. If a report has been made, the court
224 may stay the custody proceeding until the children's division completes its
225 investigation.

226 [18.] **19.** In any judicial proceeding involving the custody of a child where
227 the court determines that the child is in need of services [pursuant to subdivision
228 (d)] **under paragraph (d) of subdivision (1)** of subsection 1 of section 211.031
229 and has taken jurisdiction, the child's parent, guardian or custodian shall not be

230 entered into the registry.

231 [19.] **20.** The children's division is hereby granted the authority to
232 promulgate rules and regulations pursuant to the provisions of section 207.021
233 and chapter 536 to carry out the provisions of sections 210.109 to 210.183.

234 [20.] **21.** Any rule or portion of a rule, as that term is defined in section
235 536.010, that is created under the authority delegated in this section shall
236 become effective only if it complies with and is subject to all of the provisions of
237 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
238 nonseverable and if any of the powers vested with the general assembly pursuant
239 to chapter 536 to review, to delay the effective date or to disapprove and annul
240 a rule are subsequently held unconstitutional, then the grant of rulemaking
241 authority and any rule proposed or adopted after August 28, 2000, shall be
242 invalid and void.

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Bill

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