

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 505
97TH GENERAL ASSEMBLY

Reported from the Committee on Education, May 14, 2013, with recommendation that the Senate Committee Substitute do pass.

0878S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 37.710, 160.261, 160.262, 162.068, 162.069, 210.115, 556.061, 568.060, and 595.220, RSMo, and to enact in lieu thereof nine new sections relating to child abuse and neglect, with penalty provisions and an emergency clause.

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

Section A. Sections 37.710, 160.261, 160.262, 162.068, 162.069, 210.115, 556.061, 568.060, and 595.220, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 37.710, 160.261, 160.262, 162.068, 162.069, 210.115, 556.061, 568.060, and 595.220, to read as follows:

37.710. 1. The office shall have access to the following information:

(1) The names and physical location of all children in protective services, treatment, or other programs under the jurisdiction of the children's division, the department of mental health, and the juvenile court;

(2) All written reports of child abuse and neglect; and

(3) All current records required to be maintained pursuant to chapters 210 and 211.

2. The office shall have the authority:

(1) To communicate privately by any means possible with any child under protective services and anyone working with the child, including the family, relatives, courts, employees of the department of social services and the department of mental health, and other persons or entities providing treatment and services;

(2) To have access, including the right to inspect, copy and subpoena

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

15 records held by the clerk of the juvenile or family court, juvenile officers, law
16 enforcement agencies, institutions, public or private, and other agencies, or
17 persons with whom a particular child has been either voluntarily or otherwise
18 placed for care, or has received treatment within this state or in another state;

19 (3) To work in conjunction with juvenile officers and guardians ad litem;

20 (4) To file any findings or reports of the child advocate regarding the
21 parent or child with the court, and issue recommendations regarding the
22 disposition of an investigation, which may be provided to the court and to the
23 investigating agency;

24 (5) To file amicus curiae briefs on behalf of the interests of the parent or
25 child;

26 (6) To initiate meetings with the department of social services, the
27 department of mental health, the juvenile court, and juvenile officers;

28 (7) To take whatever steps are appropriate to see that persons are made
29 aware of the services of the child advocate's office, its purpose, and how it can be
30 contacted;

31 (8) To apply for and accept grants, gifts, and bequests of funds from other
32 states, federal, and interstate agencies, and independent authorities, private
33 firms, individuals, and foundations to carry out his or her duties and
34 responsibilities. The funds shall be deposited in a dedicated account established
35 within the office to permit moneys to be expended in accordance with the
36 provisions of the grant or bequest;

37 (9) Subject to appropriation, to establish as needed local panels on a
38 regional or county basis to adequately and efficiently carry out the functions and
39 duties of the office, and address complaints in a timely manner; and

40 (10) To mediate between alleged victims of sexual misconduct and school
41 districts **or charter schools** as provided in subsection 1 of section 160.262.

42 3. For any information obtained from a state agency or entity under
43 sections 37.700 to 37.730, the office of child advocate shall be subject to the same
44 disclosure restrictions and confidentiality requirements that apply to the state
45 agency or entity providing such information to the office of child advocate. For
46 information obtained directly by the office of child advocate under sections 37.700
47 to 37.730, the office of child advocate shall be subject to the same disclosure
48 restrictions and confidentiality requirements that apply to the children's division
49 regarding information obtained during a child abuse and neglect investigation
50 resulting in an unsubstantiated report.

160.261. 1. The local board of education of each school district shall
2 clearly establish a written policy of discipline, including the district's
3 determination on the use of corporal punishment and the procedures in which
4 punishment will be applied. A written copy of the district's discipline policy and
5 corporal punishment procedures, if applicable, shall be provided to the pupil and
6 parent or legal guardian of every pupil enrolled in the district at the beginning
7 of each school year and also made available in the office of the superintendent of
8 such district, during normal business hours, for public inspection. All employees
9 of the district shall annually receive instruction related to the specific contents
10 of the policy of discipline and any interpretations necessary to implement the
11 provisions of the policy in the course of their duties, including but not limited to
12 approved methods of dealing with acts of school violence, disciplining students
13 with disabilities and instruction in the necessity and requirements for
14 confidentiality.

15 2. The policy shall require school administrators to report acts of school
16 violence to all teachers at the attendance center and, in addition, to other school
17 district employees with a need to know. For the purposes of this chapter or
18 chapter 167, "need to know" is defined as school personnel who are directly
19 responsible for the student's education or who otherwise interact with the student
20 on a professional basis while acting within the scope of their assigned duties. As
21 used in this section, the phrase "act of school violence" or "violent behavior"
22 means the exertion of physical force by a student with the intent to do serious
23 physical injury as defined in subdivision (6) of section 565.002 to another person
24 while on school property, including a school bus in service on behalf of the
25 district, or while involved in school activities. The policy shall at a minimum
26 require school administrators to report, as soon as reasonably practical, to the
27 appropriate law enforcement agency any of the following crimes, or any act which
28 if committed by an adult would be one of the following crimes:

- 29 (1) First degree murder under section 565.020;
- 30 (2) Second degree murder under section 565.021;
- 31 (3) Kidnapping under section 565.110;
- 32 (4) First degree assault under section 565.050;
- 33 (5) Forcible rape under section 566.030;
- 34 (6) Forcible sodomy under section 566.060;
- 35 (7) Burglary in the first degree under section 569.160;
- 36 (8) Burglary in the second degree under section 569.170;

37 (9) Robbery in the first degree under section 569.020;
38 (10) Distribution of drugs under section 195.211;
39 (11) Distribution of drugs to a minor under section 195.212;
40 (12) Arson in the first degree under section 569.040;
41 (13) Voluntary manslaughter under section 565.023;
42 (14) Involuntary manslaughter under section 565.024;
43 (15) Second degree assault under section 565.060;
44 (16) Sexual assault under section 566.040;
45 (17) Felonious restraint under section 565.120;
46 (18) Property damage in the first degree under section 569.100;
47 (19) The possession of a weapon under chapter 571;
48 (20) Child molestation in the first degree pursuant to section 566.067;
49 (21) Deviate sexual assault pursuant to section 566.070;
50 (22) Sexual misconduct involving a child pursuant to section 566.083;
51 (23) Sexual abuse pursuant to section 566.100;
52 (24) Harassment under section 565.090; or
53 (25) Stalking under section 565.225;
54 committed on school property, including but not limited to actions on any school
55 bus in service on behalf of the district or while involved in school activities. The
56 policy shall require that any portion of a student's individualized education
57 program that is related to demonstrated or potentially violent behavior shall be
58 provided to any teacher and other school district employees who are directly
59 responsible for the student's education or who otherwise interact with the student
60 on an educational basis while acting within the scope of their assigned
61 duties. The policy shall also contain the consequences of failure to obey
62 standards of conduct set by the local board of education, and the importance of
63 the standards to the maintenance of an atmosphere where orderly learning is
64 possible and encouraged.

65 3. The policy shall provide that any student who is on suspension for any
66 of the offenses listed in subsection 2 of this section or any act of violence or
67 drug-related activity defined by school district policy as a serious violation of
68 school discipline pursuant to subsection 9 of this section shall have as a condition
69 of his or her suspension the requirement that such student is not allowed, while
70 on such suspension, to be within one thousand feet of any school property in the
71 school district where such student attended school or any activity of that district,
72 regardless of whether or not the activity takes place on district property unless:

73 (1) Such student is under the direct supervision of the student's parent,
74 legal guardian, or custodian and the superintendent or the superintendent's
75 designee has authorized the student to be on school property;

76 (2) Such student is under the direct supervision of another adult
77 designated by the student's parent, legal guardian, or custodian, in advance, in
78 writing, to the principal of the school which suspended the student and the
79 superintendent or the superintendent's designee has authorized the student to be
80 on school property;

81 (3) Such student is enrolled in and attending an alternative school that
82 is located within one thousand feet of a public school in the school district where
83 such student attended school; or

84 (4) Such student resides within one thousand feet of any public school in
85 the school district where such student attended school in which case such student
86 may be on the property of his or her residence without direct adult supervision.

87 4. Any student who violates the condition of suspension required pursuant
88 to subsection 3 of this section may be subject to expulsion or further suspension
89 pursuant to the provisions of sections 167.161, 167.164, and 167.171. In making
90 this determination consideration shall be given to whether the student poses a
91 threat to the safety of any child or school employee and whether such student's
92 unsupervised presence within one thousand feet of the school is disruptive to the
93 educational process or undermines the effectiveness of the school's disciplinary
94 policy. Removal of any pupil who is a student with a disability is subject to state
95 and federal procedural rights. This section shall not limit a school district's
96 ability to:

97 (1) Prohibit all students who are suspended from being on school property
98 or attending an activity while on suspension;

99 (2) Discipline students for off-campus conduct that negatively affects the
100 educational environment to the extent allowed by law.

101 5. The policy shall provide for a suspension for a period of not less than
102 one year, or expulsion, for a student who is determined to have brought a weapon
103 to school, including but not limited to the school playground or the school parking
104 lot, brought a weapon on a school bus or brought a weapon to a school activity
105 whether on or off of the school property in violation of district policy, except that:

106 (1) The superintendent or, in a school district with no high school, the
107 principal of the school which such child attends may modify such suspension on
108 a case-by-case basis; and

109 (2) This section shall not prevent the school district from providing
110 educational services in an alternative setting to a student suspended under the
111 provisions of this section.

112 6. For the purpose of this section, the term "weapon" shall mean a firearm
113 as defined under 18 U.S.C. 921 and the following items, as defined in section
114 571.010: a blackjack, a concealable firearm, an explosive weapon, a firearm, a
115 firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon,
116 a rifle, a shotgun, a spring gun or a switchblade knife; except that this section
117 shall not be construed to prohibit a school board from adopting a policy to allow
118 a Civil War reenactor to carry a Civil War era weapon on school property for
119 educational purposes so long as the firearm is unloaded. The local board of
120 education shall define weapon in the discipline policy. Such definition shall
121 include the weapons defined in this subsection but may also include other
122 weapons.

123 7. All school district personnel responsible for the care and supervision
124 of students are authorized to hold every pupil strictly accountable for any
125 disorderly conduct in school or on any property of the school, on any school bus
126 going to or returning from school, during school-sponsored activities, or during
127 intermission or recess periods.

128 8. Teachers and other authorized district personnel in public schools
129 responsible for the care, supervision, and discipline of schoolchildren, including
130 volunteers selected with reasonable care by the school district, shall not be civilly
131 liable when acting in conformity with the established policies developed by each
132 board, including but not limited to policies of student discipline or when reporting
133 to his or her supervisor or other person as mandated by state law acts of school
134 violence or threatened acts of school violence, within the course and scope of the
135 duties of the teacher, authorized district personnel or volunteer, when such
136 individual is acting in conformity with the established policies developed by the
137 board. Nothing in this section shall be construed to create a new cause of action
138 against such school district, or to relieve the school district from liability for the
139 negligent acts of such persons.

140 9. Each school board shall define in its discipline policy acts of violence
141 and any other acts that constitute a serious violation of that policy. "Acts of
142 violence" as defined by school boards shall include but not be limited to exertion
143 of physical force by a student with the intent to do serious bodily harm to another
144 person while on school property, including a school bus in service on behalf of the

145 district, or while involved in school activities. School districts shall for each
146 student enrolled in the school district compile and maintain records of any
147 serious violation of the district's discipline policy. Such records shall be made
148 available to teachers and other school district employees with a need to know
149 while acting within the scope of their assigned duties, and shall be provided as
150 required in section 167.020 to any school district in which the student
151 subsequently attempts to enroll.

152 10. Spanking, when administered by certificated personnel and in the
153 presence of a witness who is an employee of the school district, or the use of
154 reasonable force to protect persons or property, when administered by personnel
155 of a school district in a reasonable manner in accordance with the local board of
156 education's written policy of discipline, is not abuse within the meaning of
157 chapter 210. The provisions of sections 210.110 to 210.165 notwithstanding, the
158 children's division shall not have jurisdiction over or investigate any report of
159 alleged child abuse arising out of or related to the use of reasonable force to
160 protect persons or property when administered by personnel of a school district
161 or any spanking administered in a reasonable manner by any certificated school
162 personnel in the presence of a witness who is an employee of the school district
163 pursuant to a written policy of discipline established by the board of education
164 of the school district, as long as no allegation of sexual misconduct arises from the
165 spanking or use of force.

166 11. If a student reports alleged sexual misconduct on the part of a teacher
167 or other school employee to a person employed in a school facility who is required
168 to report such misconduct to the children's division under section 210.115, such
169 person and the superintendent of the school district shall **[forward] report** the
170 allegation to the children's division **[within twenty-four hours of receiving the**
171 **information] as set forth in section 210.115.** Reports made to the children's
172 division under this subsection shall be investigated by the division in accordance
173 with the provisions of sections 210.145 to 210.153 and shall not be investigated
174 by the school district under subsections 12 to 20 of this section for purposes of
175 determining whether the allegations should or should not be substantiated. The
176 district may investigate the allegations for the purpose of making any decision
177 regarding the employment of the accused employee.

178 12. Upon receipt of any reports of child abuse by the children's division
179 other than reports provided under subsection 11 of this section, pursuant to
180 sections 210.110 to 210.165 which allegedly involve personnel of a school district,

181 the children's division shall notify the superintendent of schools of the district or,
182 if the person named in the alleged incident is the superintendent of schools, the
183 president of the school board of the school district where the alleged incident
184 occurred.

185 13. If, after an initial investigation, the superintendent of schools or the
186 president of the school board finds that the report involves an alleged incident of
187 child abuse other than the administration of a spanking by certificated school
188 personnel or the use of reasonable force to protect persons or property when
189 administered by school personnel pursuant to a written policy of discipline or that
190 the report was made for the sole purpose of harassing a public school employee,
191 the superintendent of schools or the president of the school board shall
192 immediately refer the matter back to the children's division and take no further
193 action. In all matters referred back to the children's division, the division shall
194 treat the report in the same manner as other reports of alleged child abuse
195 received by the division.

196 14. If the report pertains to an alleged incident which arose out of or is
197 related to a spanking administered by certificated personnel or the use of
198 reasonable force to protect persons or property when administered by personnel
199 of a school district pursuant to a written policy of discipline or a report made for
200 the sole purpose of harassing a public school employee, a notification of the
201 reported child abuse shall be sent by the superintendent of schools or the
202 president of the school board to the law enforcement in the county in which the
203 alleged incident occurred.

204 15. The report shall be jointly investigated by the law enforcement officer
205 and the superintendent of schools or, if the subject of the report is the
206 superintendent of schools, by a law enforcement officer and the president of the
207 school board or such president's designee.

208 16. The investigation shall begin no later than forty-eight hours after
209 notification from the children's division is received, and shall consist of, but need
210 not be limited to, interviewing and recording statements of the child and the
211 child's parents or guardian within two working days after the start of the
212 investigation, of the school district personnel allegedly involved in the report, and
213 of any witnesses to the alleged incident.

214 17. The law enforcement officer and the investigating school district
215 personnel shall issue separate reports of their findings and recommendations
216 after the conclusion of the investigation to the school board of the school district

217 within seven days after receiving notice from the children's division.

218 18. The reports shall contain a statement of conclusion as to whether the
219 report of alleged child abuse is substantiated or is unsubstantiated.

220 19. The school board shall consider the separate reports referred to in
221 subsection 17 of this section and shall issue its findings and conclusions and the
222 action to be taken, if any, within seven days after receiving the last of the two
223 reports. The findings and conclusions shall be made in substantially the
224 following form:

225 (1) The report of the alleged child abuse is unsubstantiated. The law
226 enforcement officer and the investigating school board personnel agree that there
227 was not a preponderance of evidence to substantiate that abuse occurred;

228 (2) The report of the alleged child abuse is substantiated. The law
229 enforcement officer and the investigating school district personnel agree that the
230 preponderance of evidence is sufficient to support a finding that the alleged
231 incident of child abuse did occur;

232 (3) The issue involved in the alleged incident of child abuse is
233 unresolved. The law enforcement officer and the investigating school personnel
234 are unable to agree on their findings and conclusions on the alleged incident.

235 20. The findings and conclusions of the school board under subsection 19
236 of this section shall be sent to the children's division. If the findings and
237 conclusions of the school board are that the report of the alleged child abuse is
238 unsubstantiated, the investigation shall be terminated, the case closed, and no
239 record shall be entered in the children's division central registry. If the findings
240 and conclusions of the school board are that the report of the alleged child abuse
241 is substantiated, the children's division shall report the incident to the
242 prosecuting attorney of the appropriate county along with the findings and
243 conclusions of the school district and shall include the information in the
244 division's central registry. If the findings and conclusions of the school board are
245 that the issue involved in the alleged incident of child abuse is unresolved, the
246 children's division shall report the incident to the prosecuting attorney of the
247 appropriate county along with the findings and conclusions of the school board,
248 however, the incident and the names of the parties allegedly involved shall not
249 be entered into the central registry of the children's division unless and until the
250 alleged child abuse is substantiated by a court of competent jurisdiction.

251 21. Any superintendent of schools, president of a school board or such
252 person's designee or law enforcement officer who knowingly falsifies any report

253 of any matter pursuant to this section or who knowingly withholds any
254 information relative to any investigation or report pursuant to this section is
255 guilty of a class A misdemeanor.

256 22. In order to ensure the safety of all students, should a student be
257 expelled for bringing a weapon to school, violent behavior, or for an act of school
258 violence, that student shall not, for the purposes of the accreditation process of
259 the Missouri school improvement plan, be considered a dropout or be included in
260 the calculation of that district's educational persistence ratio.

160.262. 1. The office of the child advocate as created in section 37.705
2 shall be authorized to coordinate mediation efforts between school districts and
3 students **and charter schools and students** when requested by both parties
4 when allegations of child abuse arise in a school setting. The office of the child
5 advocate shall maintain a list of individuals who are qualified mediators. The
6 child advocate shall be available as one of the mediators on the list from which
7 parents can choose.

8 2. Mediation procedures shall meet the following requirements:

9 (1) The mediation process shall not be used to deny or delay any other
10 complaint process available to the parties; and

11 (2) The mediation process shall be conducted by a qualified and impartial
12 mediator trained in effective mediation techniques who is not affiliated with
13 schools or school professional associations, is not a mandated reporter of child
14 abuse under state law or regulation, and who is available as a public service.

15 3. No student, parent of a student, school employee, **charter school**, or
16 school district shall be required to participate in mediation under this section. If
17 either the school district **or charter school** or the student or student's parent
18 does not wish to enter into mediation, mediation shall not occur.

19 4. Each session in the mediation process shall be scheduled in a timely
20 manner and be held in a location that is convenient to the parties in dispute.

21 5. Discussions that occur during the mediation process shall be
22 confidential and may not be used as evidence in any subsequent administrative
23 proceeding, administrative hearing, nor in any civil or criminal proceeding of any
24 state or federal court.

25 6. If the parties resolve a dispute through the mediation process, the
26 parties shall execute a legally binding agreement that sets forth the resolution
27 and:

28 (1) States that all discussions that occurred during the mediation process

29 shall remain confidential and may not be used as evidence in any subsequent
30 administrative proceeding, administrative hearing, or civil proceeding of any
31 federal or state court; and

32 (2) Is signed by a representative of each party who has authority to bind
33 the party.

162.068. 1. By July 1, 2012, every school district shall adopt a written
2 policy on information that the district provides about former employees, both
3 certificated and noncertificated, to other public schools. **By July 1, 2014, every**
4 **charter school shall adopt a written policy on information that the**
5 **charter school provides about former employees, both certificated and**
6 **noncertificated, to other public schools.** The policy shall include who is
7 permitted to respond to requests for information from potential employers and the
8 information the district **or charter school** would provide when responding to
9 such a request. The policy shall require that notice of this provision be provided
10 to all current employees and to all potential employers who contact the school
11 district **or charter school** regarding the possible employment of [a school
12 district] **an** employee.

13 2. Any school district **or charter school** that employs a person about
14 whom the children's division conducts an investigation involving allegations of
15 sexual misconduct with a student and reaches a finding of substantiated shall
16 immediately suspend the employment of such person, notwithstanding any other
17 provision of law, but the district **or charter school** may return the person to his
18 or her employment if the child abuse and neglect review board's finding that the
19 allegation is substantiated is reversed by a court on appeal and becomes
20 final. Nothing shall preclude a school district **or charter school** from otherwise
21 lawfully terminating the employment of any employee about whom there has been
22 a finding of unsubstantiated resulting from an investigation by the children's
23 division involving allegations of sexual misconduct with a student.

24 3. Any [school district] employee who is permitted to respond to requests
25 for information regarding former employees under a policy adopted by his or her
26 school district **or charter school** under subsection 2 of this section and who
27 communicates only the information which such policy directs, and who acts in
28 good faith and without malice shall be immune against any civil action for
29 damages brought by the former employee arising out of the communication of
30 such information. If any such action is brought, the [school district] employee
31 may, at his or her option, request the attorney general to defend him or her in

32 such suit and the attorney general shall provide such defense, except that if the
33 attorney general represents the school district or the department of elementary
34 and secondary education in a pending licensing matter under section 168.071 the
35 attorney general shall not represent the school district employee.

36 4. Notwithstanding the provisions of subsection 2 of this section, if a
37 district **or charter school** that has employed any employee whose job involves
38 contact with children receives allegations of sexual misconduct concerning the
39 employee and as a result of such allegations or as a result of such allegations
40 being substantiated by the child abuse and neglect review board dismisses the
41 employee or allows the employee to resign in lieu of being fired and fails to
42 disclose the allegations of sexual misconduct when furnishing a reference for the
43 former employee or responding to a potential employer's request for information
44 regarding such employee, the district **or charter school** shall be directly liable
45 for damages to any student of a subsequent employing district **or charter**
46 **school** who is found by a court of competent jurisdiction to be a victim of the
47 former employee's sexual misconduct, and the district **or charter school** shall
48 bear third-party liability to the employing district **or charter school** for any
49 legal liability, legal fees, costs, and expenses incurred by the employing district
50 **or charter school** caused by the failure to disclose such information to the
51 employing district **or charter school**.

52 5. If a school district **or charter school** has previously employed a
53 person about whom the children's division has conducted an investigation
54 involving allegations of sexual misconduct with a student and has reached a
55 finding of substantiated and another public school contacts the district **or**
56 **charter school** for a reference for the former employee, the district **or charter**
57 **school** shall disclose the results of the children's division's investigation to the
58 public school.

59 6. Any school district **or charter school** employee, acting in good faith,
60 who reports alleged sexual misconduct on the part of a teacher or other school
61 employee shall not be discharged or otherwise discriminated against in any
62 fashion because of such reporting.

162.069. 1. Every school district shall, by March 1, 2012, promulgate a
2 written policy concerning employee-student communication. **The governing**
3 **body of each charter school shall adopt a written policy concerning**
4 **employee-student communication by January 1, 2014.** Such policy shall
5 include, but not be limited to, the use of electronic media and other mechanisms

6 to prevent improper communications between staff members and students.

7 **2. The school board of each school district and the governing**
8 **body of each charter school shall, by January 1, 2014, adopt and**
9 **implement training guidelines and an annual training program for all**
10 **school employees who are mandatory reporters of child abuse or**
11 **neglect under section 210.115.**

12 **3. Every school district and the governing body of each charter**
13 **school shall, by July 1, [2012] 2014, include in its teacher and employee training**
14 **a component that provides up-to-date and reliable information on identifying**
15 **signs of sexual abuse in children and danger signals of potentially abusive**
16 **relationships between children and adults. The training shall emphasize the**
17 **importance of mandatory reporting of abuse under section 210.115 including the**
18 **obligation of mandated reporters to report suspected abuse by other mandated**
19 **reporters, and how to establish an atmosphere of trust so that students feel their**
20 **school has concerned adults with whom they feel comfortable discussing matters**
21 **related to abuse. The training shall also emphasize that:**

22 **(1) All mandatory reporters shall, upon finding reasonable cause,**
23 **directly and immediately report suspected child abuse or neglect as**
24 **provided in section 210.115;**

25 **(2) No supervisor or administrator may impede or inhibit any**
26 **reporting under section 210.115; and**

27 **(3) No person making a report under section 210.115 shall be**
28 **subject to any sanction, including any adverse employment action, for**
29 **making such report.**

210.115. 1. When any physician, medical examiner, coroner, dentist,
2 chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic
3 personnel that are engaged in the examination, care, treatment or research of
4 persons, and any other health practitioner, psychologist, mental health
5 professional, social worker, day care center worker or other child-care worker,
6 juvenile officer, probation or parole officer, jail or detention center personnel,
7 teacher, principal or other school official, minister as provided by section 352.400,
8 peace officer or law enforcement official, or other person with responsibility for
9 the care of children has reasonable cause to suspect that a child has been or may
10 be subjected to abuse or neglect or observes a child being subjected to conditions
11 or circumstances which would reasonably result in abuse or neglect, that person
12 shall immediately report [or cause a report to be made] to the division in

13 accordance with the provisions of sections 210.109 to 210.183. **No internal**
14 **investigation shall be initiated until such a report has been made.** As
15 used in this section, the term "abuse" is not limited to abuse inflicted by a person
16 responsible for the child's care, custody and control as specified in section
17 210.110, but shall also include abuse inflicted by any other person.

18 2. [Whenever such person is required to report pursuant to sections
19 210.109 to 210.183 in an official capacity as a staff member of a medical
20 institution, school facility, or other agency, whether public or private, the person
21 in charge or a designated agent shall be notified immediately. The person in
22 charge or a designated agent shall then become responsible for immediately
23 making or causing such report to be made to the division] **If two or more**
24 **members of a medical institution who are required to report jointly**
25 **have knowledge of a known or suspected instance of child abuse or**
26 **neglect, a single report may be made by a designated member of that**
27 **medical team. Any member who has knowledge that the member**
28 **designated to report has failed to do so shall thereafter immediately**
29 **make the report.** Nothing in this section, however, is meant to preclude any
30 person from reporting abuse or neglect.

31 3. **The reporting requirements under this section are individual,**
32 **and no supervisor or administrator may impede or inhibit any**
33 **reporting under this section. No person making a report under this**
34 **section shall be subject to any sanction, including any adverse**
35 **employment action, for making such report. Every employer shall**
36 **ensure that any employee required to report pursuant to subsection 1**
37 **of this section has immediate and unrestricted access to**
38 **communications technology necessary to make an immediate report**
39 **and is temporarily relieved of other work duties for such time as is**
40 **required to make any report required under subsection 1 of this**
41 **section.**

42 4. Notwithstanding any other provision of sections 210.109 to 210.183,
43 any child who does not receive specified medical treatment by reason of the
44 legitimate practice of the religious belief of the child's parents, guardian, or
45 others legally responsible for the child, for that reason alone, shall not be found
46 to be an abused or neglected child, and such parents, guardian or other persons
47 legally responsible for the child shall not be entered into the central
48 registry. However, the division may accept reports concerning such a child and

49 may subsequently investigate or conduct a family assessment as a result of that
50 report. Such an exception shall not limit the administrative or judicial authority
51 of the state to ensure that medical services are provided to the child when the
52 child's health requires it.

53 [4.] 5. In addition to those persons and officials required to report actual
54 or suspected abuse or neglect, any other person may report in accordance with
55 sections 210.109 to 210.183 if such person has reasonable cause to suspect that
56 a child has been or may be subjected to abuse or neglect or observes a child being
57 subjected to conditions or circumstances which would reasonably result in abuse
58 or neglect.

59 [5.] 6. Any person or official required to report pursuant to this section,
60 including employees of the division, who has probable cause to suspect that a
61 child who is or may be under the age of eighteen, who is eligible to receive a
62 certificate of live birth, has died shall report that fact to the appropriate medical
63 examiner or coroner. If, upon review of the circumstances and medical
64 information, the medical examiner or coroner determines that the child died of
65 natural causes while under medical care for an established natural disease, the
66 coroner, medical examiner or physician shall notify the division of the child's
67 death and that the child's attending physician shall be signing the death
68 certificate. In all other cases, the medical examiner or coroner shall accept the
69 report for investigation, shall immediately notify the division of the child's death
70 as required in section 58.452 and shall report the findings to the child fatality
71 review panel established pursuant to section 210.192.

72 [6.] 7. Any person or individual required to report may also report the
73 suspicion of abuse or neglect to any law enforcement agency or juvenile
74 office. Such report shall not, however, take the place of reporting [or causing a
75 report to be made] to the division.

76 [7.] 8. If an individual required to report suspected instances of abuse or
77 neglect pursuant to this section has reason to believe that the victim of such
78 abuse or neglect is a resident of another state or was injured as a result of an act
79 which occurred in another state, the person required to report such abuse or
80 neglect may, in lieu of reporting to the Missouri division of family services, make
81 such a report to the child protection agency of the other state with the authority
82 to receive such reports pursuant to the laws of such other state. If such agency
83 accepts the report, no report is required to be made, but may be made, to the
84 [Missouri] division [of family services].

556.061. In this code, unless the context requires a different definition,
2 the following shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section
5 556.051;

6 (3) "Commercial film and photographic print processor", any person who
7 develops exposed photographic film into negatives, slides or prints, or who makes
8 prints from negatives or slides, for compensation. The term commercial film and
9 photographic print processor shall include all employees of such persons but shall
10 not include a person who develops film or makes prints for a public agency;

11 (4) "Confinement":

12 (a) A person is in confinement when such person is held in a place of
13 confinement pursuant to arrest or order of a court, and remains in confinement
14 until:

15 a. A court orders the person's release; or

16 b. The person is released on bail, bond, or recognizance, personal or
17 otherwise; or

18 c. A public servant having the legal power and duty to confine the person
19 authorizes his release without guard and without condition that he return to
20 confinement;

21 (b) A person is not in confinement if:

22 a. The person is on probation or parole, temporary or otherwise; or

23 b. The person is under sentence to serve a term of confinement which is
24 not continuous, or is serving a sentence under a work-release program, and in
25 either such case is not being held in a place of confinement or is not being held
26 under guard by a person having the legal power and duty to transport the person
27 to or from a place of confinement;

28 (5) "Consent": consent or lack of consent may be expressed or implied.
29 Assent does not constitute consent if:

30 (a) It is given by a person who lacks the mental capacity to authorize the
31 conduct charged to constitute the offense and such mental incapacity is manifest
32 or known to the actor; or

33 (b) It is given by a person who by reason of youth, mental disease or
34 defect, or intoxication, is manifestly unable or known by the actor to be unable
35 to make a reasonable judgment as to the nature or harmfulness of the conduct
36 charged to constitute the offense; or

37 (c) It is induced by force, duress or deception;

38 (6) "Criminal negligence" has the meaning specified in section 562.016;

39 (7) "Custody", a person is in custody when the person has been arrested
40 but has not been delivered to a place of confinement;

41 (8) "Dangerous felony" means the felonies of arson in the first degree,
42 assault in the first degree, attempted forcible rape if physical injury results,
43 attempted forcible sodomy if physical injury results, forcible rape, forcible
44 sodomy, kidnapping, murder in the second degree, assault of a law enforcement
45 officer in the first degree, domestic assault in the first degree, elder abuse in the
46 first degree, robbery in the first degree, statutory rape in the first degree when
47 the victim is a child less than twelve years of age at the time of the commission
48 of the act giving rise to the offense, statutory sodomy in the first degree when the
49 victim is a child less than twelve years of age at the time of the commission of the
50 act giving rise to the offense, and, abuse of a child [pursuant to subdivision (2)
51 of subsection 3 of] **if the child dies as a result of injuries sustained from**
52 **conduct chargeable under** section 568.060, child kidnapping, and parental
53 kidnapping committed by detaining or concealing the whereabouts of the child for
54 not less than one hundred twenty days under section 565.153;

55 (9) "Dangerous instrument" means any instrument, article or substance,
56 which, under the circumstances in which it is used, is readily capable of causing
57 death or other serious physical injury;

58 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any
59 weapon from which a shot, readily capable of producing death or serious physical
60 injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or
61 metal knuckles;

62 (11) "Felony" has the meaning specified in section 556.016;

63 (12) "Forcible compulsion" means either:

64 (a) Physical force that overcomes reasonable resistance; or

65 (b) A threat, express or implied, that places a person in reasonable fear
66 of death, serious physical injury or kidnapping of such person or another person;

67 (13) "Incapacitated" means that physical or mental condition, temporary
68 or permanent, in which a person is unconscious, unable to appraise the nature of
69 such person's conduct, or unable to communicate unwillingness to an act. A
70 person is not incapacitated with respect to an act committed upon such person if
71 he or she became unconscious, unable to appraise the nature of such person's
72 conduct or unable to communicate unwillingness to an act, after consenting to the

73 act;

74 (14) "Infraction" has the meaning specified in section 556.021;

75 (15) "Inhabitable structure" has the meaning specified in section 569.010;

76 (16) "Knowingly" has the meaning specified in section 562.016;

77 (17) "Law enforcement officer" means any public servant having both the
78 power and duty to make arrests for violations of the laws of this state, and
79 federal law enforcement officers authorized to carry firearms and to make arrests
80 for violations of the laws of the United States;

81 (18) "Misdemeanor" has the meaning specified in section 556.016;

82 (19) "Offense" means any felony, misdemeanor or infraction;

83 (20) "Physical injury" means physical pain, illness, or any impairment of
84 physical condition;

85 (21) "Place of confinement" means any building or facility and the grounds
86 thereof wherein a court is legally authorized to order that a person charged with
87 or convicted of a crime be held;

88 (22) "Possess" or "possessed" means having actual or constructive
89 possession of an object with knowledge of its presence. A person has actual
90 possession if such person has the object on his or her person or within easy reach
91 and convenient control. A person has constructive possession if such person has
92 the power and the intention at a given time to exercise dominion or control over
93 the object either directly or through another person or persons. Possession may
94 also be sole or joint. If one person alone has possession of an object, possession
95 is sole. If two or more persons share possession of an object, possession is joint;
96 (23) "Public servant" means any person employed in any way by a
97 government of this state who is compensated by the government by reason of such
98 person's employment, any person appointed to a position with any government of
99 this state, or any person elected to a position with any government of this state.
100 It includes, but is not limited to, legislators, jurors, members of the judiciary and
101 law enforcement officers. It does not include witnesses;

102 (24) "Purposely" has the meaning specified in section 562.016;

103 (25) "Recklessly" has the meaning specified in section 562.016;

104 (26) "Ritual" or "ceremony" means an act or series of acts performed by
105 two or more persons as part of an established or prescribed pattern of activity;

106 (27) "Serious emotional injury", an injury that creates a substantial risk
107 of temporary or permanent medical or psychological damage, manifested by
108 impairment of a behavioral, cognitive or physical condition. Serious emotional

109 injury shall be established by testimony of qualified experts upon the reasonable
110 expectation of probable harm to a reasonable degree of medical or psychological
111 certainty;

112 (28) "Serious physical injury" means physical injury that creates a
113 substantial risk of death or that causes serious disfigurement or protracted loss
114 or impairment of the function of any part of the body;

115 (29) "Sexual conduct" means acts of human masturbation; deviate sexual
116 intercourse; sexual intercourse; or physical contact with a person's clothed or
117 unclothed genitals, pubic area, buttocks, or the breast of a female in an act of
118 apparent sexual stimulation or gratification;

119 (30) "Sexual contact" means any touching of the genitals or anus of any
120 person, or the breast of any female person, or any such touching through the
121 clothing, for the purpose of arousing or gratifying sexual desire of any person;

122 (31) "Sexual performance", any performance, or part thereof, which
123 includes sexual conduct by a child who is less than seventeen years of age;

124 (32) "Voluntary act" has the meaning specified in section 562.011.

568.060. 1. As used in this section, the following terms shall mean:

2 (1) "Abuse", the infliction of physical, sexual, or mental injury against a
3 child by any person eighteen years of age or older. For purposes of this section,
4 abuse shall not include injury inflicted on a child by accidental means by a person
5 with care, custody, or control of the child, or discipline of a child by a person with
6 care, custody, or control of the child, including spanking, in a reasonable manner;

7 (2) "Abusive head trauma", a serious physical injury to the head or brain
8 caused by any means, including but not limited to shaking, jerking, pushing,
9 pulling, slamming, hitting, or kicking;

10 (3) "Mental injury", an injury to the intellectual or psychological capacity
11 or the emotional condition of a child as evidenced by an observable and
12 substantial impairment of the ability of the child to function within his or her
13 normal range of performance or behavior;

14 (4) "Neglect", the failure to provide, by those responsible for the care,
15 custody, and control of a child under the age of eighteen years, the care
16 reasonable and necessary to maintain the physical and mental health of the child,
17 when such failure presents a substantial probability that death or physical injury
18 or sexual injury would result;

19 (5) "Physical injury", physical pain, illness, or any impairment of physical
20 condition, including but not limited to bruising, lacerations, hematomas, welts,

21 or permanent or temporary disfigurement and impairment of any bodily function
22 or organ;

23 (6) "Serious emotional injury", an injury that creates a substantial risk
24 of temporary or permanent medical or psychological damage, manifested by
25 impairment of a behavioral, cognitive, or physical condition. Serious emotional
26 injury shall be established by testimony of qualified experts upon the reasonable
27 expectation of probable harm to a reasonable degree of medical or psychological
28 certainty;

29 (7) "Serious physical injury", a physical injury that creates a substantial
30 risk of death or that causes serious disfigurement or protracted loss or
31 impairment of the function of any part of the body.

32 2. A person commits the offense of abuse or neglect of a child if such
33 person knowingly causes a child who is less than eighteen years of age:

34 (1) To suffer physical or mental injury as a result of abuse or neglect; or

35 (2) To be placed in a situation in which the child may suffer physical or
36 mental injury as the result of abuse or neglect.

37 3. A person commits the offense of abuse or neglect of a child if such
38 person recklessly causes a child who is less than eighteen years of age to suffer
39 from abusive head trauma.

40 4. A person does not commit the offense of abuse or neglect of a child by
41 virtue of the sole fact that the person delivers or allows the delivery of child to
42 a provider of emergency services.

43 5. The offense of abuse or neglect of a child is:

44 (1) A class C felony, without eligibility for probation or parole until the
45 defendant has served no less than one year of such sentence, unless the person
46 has previously been found guilty of a violation of this section or of a violation of
47 the law of any other jurisdiction that prohibits the same or similar conduct or the
48 injury inflicted on the child is a serious emotional injury or a serious physical
49 injury, in which case abuse or neglect of a child is a class B felony, without
50 eligibility for probation or parole until the defendant has served not less than five
51 years of such sentence; or

52 (2) A class A felony if the child dies as a result of injuries
53 sustained from conduct chargeable under the provisions of this section.

54 6. Notwithstanding subsection 5 of this section to the contrary, the offense
55 of abuse or neglect of a child is a class A felony, without eligibility for probation
56 or parole until the defendant has served not less than fifteen years of such

57 sentence, if:

58 (1) The injury is a serious emotional injury or a serious physical injury;

59 (2) The child is less than fourteen years of age; and

60 (3) The injury is the result of sexual abuse as defined under section
61 566.100 or sexual exploitation of a minor as defined under section 573.023.

62 7. The circuit or prosecuting attorney may refer a person who is suspected
63 of abuse or neglect of a child to an appropriate public or private agency for
64 treatment or counseling so long as the agency has consented to taking such
65 referrals. Nothing in this subsection shall limit the discretion of the circuit or
66 prosecuting attorney to prosecute a person who has been referred for treatment
67 or counseling pursuant to this subsection.

68 8. Nothing in this section shall be construed to alter the requirement that
69 every element of any crime referred to herein must be proven beyond a reasonable
70 doubt.

71 9. Discipline, including spanking administered in a reasonable manner,
72 shall not be construed to be abuse under this section.

595.220. 1. The department of public safety shall make payments to
2 appropriate medical providers, out of appropriations made for that purpose, to
3 cover the reasonable charges of the forensic examination of persons who may be
4 a victim of a sexual offense if:

5 (1) The victim or the victim's guardian consents in writing to the
6 examination; and

7 (2) The report of the examination is made on a form approved by the
8 attorney general with the advice of the department of public safety. The
9 department shall establish maximum reimbursement rates for charges submitted
10 under this section, which shall reflect the reasonable cost of providing the
11 forensic exam.

12 2. A minor may consent to examination under this section. Such consent
13 is not subject to disaffirmance because of minority, and consent of parent or
14 guardian of the minor is not required for such examination. The appropriate
15 medical provider making the examination shall give written notice to the parent
16 or guardian of a minor that such an examination has taken place.

17 3. The attorney general, with the advice of the department of public
18 safety, shall develop the forms and procedures for gathering evidence during the
19 forensic examination under the provisions of this section. The department of
20 health and senior services shall develop a checklist, protocols, and procedures for

21 appropriate medical providers to refer to while providing medical treatment to
22 victims of a sexual offense, including those specific to victims who are minors.

23 4. Evidentiary collection kits shall be developed and made available,
24 subject to appropriation, to appropriate medical providers by the highway patrol
25 or its designees and eligible crime laboratories. Such kits shall be distributed
26 with the forms and procedures for gathering evidence during forensic
27 examinations of victims of a sexual offense to appropriate medical providers upon
28 request of the provider, in the amount requested, and at no charge to the medical
29 provider. All appropriate medical providers shall, with the written consent of the
30 victim, perform a forensic examination using the evidentiary collection kit, or
31 other collection procedures developed for victims who are minors, and forms and
32 procedures for gathering evidence following the checklist for any person
33 presenting as a victim of a sexual offense.

34 5. In reviewing claims submitted under this section, the department shall
35 first determine if the claim was submitted within ninety days of the examination.
36 If the claim is submitted within ninety days, the department shall, at a
37 minimum, use the following criteria in reviewing the claim: examination charges
38 submitted shall be itemized and fall within the definition of forensic examination
39 as defined in subdivision (3) of subsection [7] 8 of this section.

40 6. All appropriate medical provider charges for eligible forensic
41 examinations shall be billed to and paid by the department of public safety. No
42 appropriate medical provider conducting forensic examinations and providing
43 medical treatment to victims of sexual offenses shall charge the victim for the
44 forensic examination. For appropriate medical provider charges related to the
45 medical treatment of victims of sexual offenses, if the victim is an eligible
46 claimant under the crime victims' compensation fund, the victim shall seek
47 compensation under sections 595.010 to 595.075.

48 7. **The department of public safety shall establish rules regarding**
49 **the reimbursement of the costs of forensic examinations for children**
50 **under fourteen years of age, including establishing conditions and**
51 **definitions for emergency and non-emergency forensic examinations**
52 **and may by rule establish additional qualifications for appropriate**
53 **medical providers performing non-emergency forensic examinations for**
54 **children under fourteen years of age. The department shall provide**
55 **reimbursement regardless of whether or not the findings indicate that**
56 **the child was abused.**

57 8. For purposes of this section, the following terms mean:

58 (1) "Appropriate medical provider",

59 **(a) Any licensed nurse, physician, or physician assistant, and any**
60 institution employing licensed nurses, physicians, or physician assistants,
61 provided that such licensed professionals are the only persons at such institution
62 to perform tasks under the provisions of this section; **or**

63 **(b) For the purposes of any non-emergency forensic examination**
64 **of a child under fourteen years of age, the department of public safety**
65 **may establish additional qualifications for any provider listed in**
66 **paragraph (a) of this subdivision under rules authorized under**
67 **subsection 7 of this section;**

68 (2) "Evidentiary collection kit", a kit used during a forensic examination
69 that includes materials necessary for appropriate medical providers to gather
70 evidence in accordance with the forms and procedures developed by the attorney
71 general for forensic examinations;

72 (3) "Forensic examination", an examination performed by an appropriate
73 medical provider on a victim of an alleged sexual offense to gather evidence for
74 the evidentiary collection kit or using other collection procedures developed for
75 victims who are minors;

76 (4) "Medical treatment", the treatment of all injuries and health concerns
77 resulting directly from a patient's sexual assault or victimization;

78 **(5) "Emergency forensic examination", an examination of a**
79 **person under fourteen years of age that occurs within five days of the**
80 **alleged sexual offense. The department of public safety may further**
81 **define the term "emergency forensic examination" by rule;**

82 **(6) "Non-emergency forensic examination", an examination of a**
83 **person under fourteen years of age that occurs more than five days**
84 **after the alleged sexual offense. The department of public safety may**
85 **further define the term "non-emergency forensic examination" by rule.**

86 **[8.] 9.** The department shall have authority to promulgate rules and
87 regulations necessary to implement the provisions of this section. Any rule or
88 portion of a rule, as that term is defined in section 536.010, that is created under
89 the authority delegated in this section shall become effective only if it complies
90 with and is subject to all of the provisions of chapter 536 and, if applicable,
91 section 536.028. This section and chapter 536 are nonseverable and if any of the
92 powers vested with the general assembly pursuant to chapter 536 to review, to

93 delay the effective date, or to disapprove and annul a rule are subsequently held
94 unconstitutional, then the grant of rulemaking authority and any rule proposed
95 or adopted after August 28, 2009, shall be invalid and void.

Section B. Because immediate action is necessary to protect children the
2 repeal and reenactment of sections 556.061 and 568.060 of section A of this act
3 is deemed necessary for the immediate preservation of the public health, welfare,
4 peace, and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and the repeal and reenactment of sections 556.061
6 and 568.060 of section A of this act shall be in full force and effect upon its
7 passage and approval.

Unofficial ✓

Bill

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