

SECOND REGULAR SESSION

SENATE BILL NO. 802

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 29, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5657S.011

AN ACT

To repeal sections 210.145, 210.152, and 210.183, RSMo, and to enact in lieu thereof three new sections relating to child abuse investigations, with an existing penalty provision.

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

Section A. Sections 210.145, 210.152, and 210.183, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 210.145,
3 210.152, and 210.183, to read as follows:

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

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

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

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

50 6. The local office of the division shall cause an investigation or family
51 assessment and services approach to be initiated in accordance with the protocols
52 established in subsection 2 of this section, except in cases where the sole basis for
53 the report is educational neglect. If the report indicates that educational neglect

54 is the only complaint and there is no suspicion of other neglect or abuse, the
55 investigation shall be initiated within seventy-two hours of receipt of the report.
56 If the report indicates the child is in danger of serious physical harm or threat
57 to life, an investigation shall include direct observation of the subject child within
58 twenty-four hours of the receipt of the report. Local law enforcement shall take
59 all necessary steps to facilitate such direct observation. Callers to the child abuse
60 and neglect hotline shall be instructed by the division's hotline to call 911 in
61 instances where the child may be in immediate danger. If the parents of the
62 child are not the alleged abusers, a parent of the child must be notified prior to
63 the child being interviewed by the division. No person responding to or
64 investigating a child abuse and neglect report shall call prior to a home visit or
65 leave any documentation of any attempted visit, such as business cards,
66 pamphlets, or other similar identifying information if he or she has a reasonable
67 basis to believe the following factors are present:

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

69 (b) The alleged perpetrator resides in the home or the physical safety of
70 the child may be compromised if the alleged perpetrator becomes aware of the
71 attempted visit;

72 (2) The alleged perpetrator will be alerted regarding the attempted visit;
73 or

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

75 If the alleged perpetrator is present during a visit by the person responding to or
76 investigating the report, such person shall provide written material to the alleged
77 perpetrator informing him or her of his or her rights regarding such visit,
78 including but not limited to the right to contact an attorney. The alleged
79 perpetrator shall be given a reasonable amount of time to read such written
80 material or have such material read to him or her by the case worker before the
81 visit commences, but in no event shall such time exceed five minutes; except that,
82 such requirement to provide written material and reasonable time to read such
83 material shall not apply in cases where the child faces an immediate threat or
84 danger, or the person responding to investigating the report is or feels threatened
85 or in danger of physical harm. If the abuse is alleged to have occurred in a school
86 or child care facility the division shall not meet with the child in any school
87 building or child-care facility building where abuse of such child is alleged to
88 have occurred. When the child is reported absent from the residence, the location
89 and the well-being of the child shall be verified. For purposes of this subsection,

90 child care facility shall have the same meaning as such term is defined in section
91 210.201.

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

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

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

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

124 11. Multidisciplinary teams shall be used whenever conducting the
125 investigation as determined by the division in conjunction with local law

126 enforcement. Multidisciplinary teams shall be used in providing protective or
127 preventive social services, including the services of law enforcement, a liaison of
128 the local public school, the juvenile officer, the juvenile court, and other agencies,
129 both public and private.

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

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

153 14. If the appropriate local division personnel determines to use a family
154 assessment and services approach, the division shall:

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

158 (2) Provide services which are voluntary and time-limited unless it is
159 determined by the division based on the assessment of risk that there will be a
160 high risk of abuse or neglect if the family refuses to accept the services. The
161 division shall identify services for families where it is determined that the child

162 is at high risk of future abuse or neglect. The division shall thoroughly document
163 in the record its attempt to provide voluntary services and the reasons these
164 services are important to reduce the risk of future abuse or neglect to the child.
165 If the family continues to refuse voluntary services or the child needs to be
166 protected, the division may commence an investigation;

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

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

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

190 16. A person required to report under section 210.115 to the division and
191 any person making a report of child abuse or neglect made to the division which
192 is not made anonymously shall be informed by the division of his or her right to
193 obtain information concerning the disposition of his or her report. Such person
194 shall receive, from the local office, if requested, information on the general
195 disposition of his or her report. Such person may receive, if requested, findings
196 and information concerning the case. Such release of information shall be at the
197 discretion of the director based upon a review of the reporter's ability to assist in

198 protecting the child or the potential harm to the child or other children within the
199 family. The local office shall respond to the request within forty-five days. The
200 findings shall be made available to the reporter within five days of the outcome
201 of the investigation. If the report is determined to be unsubstantiated, the
202 reporter may request that the report be referred by the division to the office of
203 child advocate for children's protection and services established in sections 37.700
204 to 37.730. Upon request by a reporter under this subsection, the division shall
205 refer an unsubstantiated report of child abuse or neglect to the office of child
206 advocate for children's protection and services.

207 17. The division shall provide to any individual who is not satisfied with
208 the results of an investigation information about the office of child advocate and
209 the services it may provide under sections 37.700 to 37.730.

210 18. In any judicial proceeding involving the custody of a child the fact that
211 a report may have been made pursuant to sections 210.109 to 210.183 shall not
212 be admissible. However:

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

216 (2) The court may on its own motion, or shall if requested by a party to
217 the proceeding, make an inquiry not on the record with the children's division to
218 determine if such a report has been made.

219 If a report has been made, the court may stay the custody proceeding until the
220 children's division completes its investigation.

221 19. In any judicial proceeding involving the custody of a child where the
222 court determines that the child is in need of services under paragraph (d) of
223 subdivision (1) of subsection 1 of section 211.031 and has taken jurisdiction, the
224 child's parent, guardian or custodian shall not be entered into the registry.

225 20. The children's division is hereby granted the authority to promulgate
226 rules and regulations pursuant to the provisions of section 207.021 and chapter
227 536 to carry out the provisions of sections 210.109 to 210.183.

228 21. Any rule or portion of a rule, as that term is defined in section
229 536.010, that is created under the authority delegated in this section shall
230 become effective only if it complies with and is subject to all of the provisions of
231 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
232 nonseverable and if any of the powers vested with the general assembly pursuant
233 to chapter 536 to review, to delay the effective date or to disapprove and annul

234 a rule are subsequently held unconstitutional, then the grant of rulemaking
235 authority and any rule proposed or adopted after August 28, 2000, shall be
236 invalid and void.

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

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

7 (2) (a) For investigation reports initiated against a person required to
8 report pursuant to section 210.115, where insufficient evidence of abuse or neglect
9 is found by the division and where the division determines the allegation of abuse
10 or neglect was made maliciously, for purposes of harassment or in retaliation for
11 the filing of a report by a person required to report, identifying information shall
12 be expunged by the division within forty-five days from the conclusion of the
13 investigation;

14 (b) For investigation reports, where insufficient evidence of abuse or
15 neglect is found by the division and where the division determines the allegation
16 of abuse or neglect was made maliciously, for purposes of harassment or in
17 retaliation for the filing of a report, identifying information shall be expunged by
18 the division within forty-five days from the conclusion of the investigation;

19 (c) For investigation reports initiated by a person required to report under
20 section 210.115, where insufficient evidence of abuse or neglect is found by the
21 division, identifying information shall be retained for five years from the
22 conclusion of the investigation. For all other investigation reports where
23 insufficient evidence of abuse or neglect is found by the division, identifying
24 information shall be retained for two years from the conclusion of the
25 investigation. Such reports shall include any exculpatory evidence known by the
26 division, including exculpatory evidence obtained after the closing of the case. At
27 the end of such time period, the identifying information shall be removed from
28 the records of the division and destroyed;

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

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

34 the division.

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

40 (1) That the division has determined by a probable cause finding prior to
41 August 28, 2004, or by a preponderance of the evidence after August 28, 2004,
42 that abuse or neglect exists and that the division shall retain all identifying
43 information regarding the abuse or neglect; that such information shall remain
44 confidential and will not be released except to law enforcement agencies,
45 prosecuting or circuit attorneys, or as provided in section 210.150; that the
46 alleged perpetrator has sixty days from the date of receipt of the notice to seek
47 reversal of the division's determination through a review by the child abuse and
48 neglect review board as provided in subsection 4 of this section; or

49 (2) That the division has not made a probable cause finding or determined
50 by a preponderance of the evidence that abuse or neglect exists.

51 3. The children's division may reopen a case for review at the request of
52 the alleged perpetrator, the alleged victim, or the office of the child advocate if
53 new, specific, and credible evidence is obtained that the division's decision was
54 based on fraud or misrepresentation of material facts relevant to the division's
55 decision and there is credible evidence that absent such fraud or
56 misrepresentation the division's decision would have been different. If the
57 alleged victim is under the age of eighteen, the request for review may be made
58 by the alleged victim's parent, legal custodian, or legal guardian. All requests to
59 reopen an investigation for review shall be made within a reasonable time and
60 not more than one year after the children's division made its decision. The
61 division shall not reopen a case for review based on any information which the
62 person requesting the review knew, should have known, or could by the exercise
63 of reasonable care have known before the date of the division's final decision in
64 the case, unless the person requesting the review shows by a preponderance of
65 the evidence that he or she could not have provided such information to the
66 division before the date of the division's final decision in the case. Any person,
67 other than the office of the child advocate, who makes a request to reopen a case
68 for review based on facts which the person knows to be false or misleading or who
69 acts in bad faith or with the intent to harass the alleged victim or perpetrator

70 shall not have immunity from any liability, civil or criminal, for providing the
71 information and requesting that the division reopen the investigation. Any
72 person who makes a request to reopen an investigation based on facts which the
73 person knows to be false shall be guilty of a class A misdemeanor. The children's
74 division shall not reopen an investigation under any circumstances while the case
75 is pending before a court of this state nor when a court has entered a final
76 judgment after de novo judicial review pursuant to this section.

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

85 5. In any such action for administrative review, the child abuse and
86 neglect review board shall sustain the division's determination if such
87 determination was supported by evidence of probable cause prior to August 28,
88 2004, or is supported by a preponderance of the evidence after August 28, 2004,
89 and is not against the weight of such evidence. The child abuse and neglect
90 review board hearing shall be closed to all persons except the parties, their
91 attorneys and those persons providing testimony on behalf of the parties.

92 6. If the alleged perpetrator is aggrieved by the decision of the child abuse
93 and neglect review board, the alleged perpetrator may seek de novo judicial
94 review in the circuit court in the county in which the alleged perpetrator resides
95 and in circuits with split venue, in the venue in which the alleged perpetrator
96 resides, or in Cole County. If the alleged perpetrator is not a resident of the
97 state, proper venue shall be in Cole County. The case may be assigned to the
98 family court division where such a division has been established. The request for
99 a judicial review shall be made within sixty days of notification of the decision of
100 the child abuse and neglect review board decision. In reviewing such decisions,
101 the circuit court shall provide the alleged perpetrator the opportunity to appear
102 and present testimony. The alleged perpetrator may subpoena any witnesses
103 except the alleged victim or the reporter. However, the circuit court shall have
104 the discretion to allow the parties to submit the case upon a stipulated record.

105 7. In any such action for administrative review, the child abuse and

106 neglect review board shall notify the child or the parent, guardian or legal
107 representative of the child that a review has been requested.

210.183. 1. At the time of the initial investigation of a report of child
2 abuse or neglect, the division employee conducting the investigation shall provide
3 the alleged perpetrator with a written description of the investigation
4 process. Such written notice shall be given substantially in the following form:
5 "The investigation is being undertaken by the Children's Division pursuant
6 to the requirements of chapter 210 of the Revised Missouri Statutes in response
7 to a report of child abuse or neglect.

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

11 This investigation is required by law to be conducted in order to enable the
12 Children's Division to identify incidents of abuse or neglect in order to provide
13 protective or preventive social services to families who are in need of such
14 services.

15 The division shall make every reasonable attempt to complete the
16 investigation within [~~thirty~~] **forty-five** days, except if a child involved in the
17 pending investigation dies, the investigation shall remain open until the
18 division's investigation surrounding the death is completed. Otherwise, within
19 [~~ninety~~] **one-hundred** days you will receive a letter from the Division which will
20 inform you of one of the following:

21 (1) That the Division has found insufficient evidence of abuse or neglect;
22 or

23 (2) That there appears to be by a preponderance of the evidence reason
24 to suspect the existence of child abuse or neglect in the judgment of the Division
25 and that the Division will contact the family to offer social services.

26 If the Division finds by a preponderance of the evidence reason to believe
27 child abuse or neglect has occurred or the case is substantiated by court
28 adjudication, a record of the report and information gathered during the
29 investigation will remain on file with the Division.

30 If you disagree with the determination of the Division and feel that there
31 is insufficient reason to believe by a preponderance of the evidence that abuse or
32 neglect has occurred, you have a right to request an administrative review at
33 which time you may hire an attorney to represent you. If you request an
34 administrative review on the issue, you will be notified of the date and time of

35 your administrative review hearing by the child abuse and neglect review board.
36 If the Division's decision is reversed by the child abuse and neglect review board,
37 the Division records concerning the report and investigation will be updated to
38 reflect such finding. If the child abuse and neglect review board upholds the
39 Division's decision, an appeal may be filed in circuit court within sixty days of the
40 child abuse and neglect review board's decision."

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

44 (1) The purpose of the contact with the family;

45 (2) The name of the person responding and his or her office telephone
46 number;

47 (3) The assessment process to be followed during the division's
48 intervention with the family including the possible services available and
49 expectations of the family.

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Bill

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