

FIRST REGULAR SESSION

SENATE BILL NO. 535

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time March 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2240S.011

AN ACT

To repeal section 210.152, RSMo, and to enact in lieu thereof one new section 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Section A. Section 210.152, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 210.152, to read as follows:

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

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

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 **(d) For investigation reports where the division has sufficient**
30 **evidence, but for the identification of a specific perpetrator or**
31 **perpetrators, to determine that a child was abused or neglected, the**
32 **division shall retain the report and all identifying information, but**
33 **shall not place a perpetrator on the central registry. The division shall**
34 **retain all identifying information for the purpose of utilizing such**
35 **information in subsequent investigations or family assessments of the**
36 **same child, the child's family, or members of the child's household. The**
37 **division shall retain and disclose information and findings in the same**
38 **manner as the division retains and discloses family assessments. If the**
39 **division made a finding of abuse or neglect against an unknown**
40 **perpetrator prior to August 28, 2017, the division shall remove the**
41 **unknown perpetrator from the central registry, but shall retain and**
42 **utilize all identifying information as otherwise provided in this section;**

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

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

49 2. Within ninety days, or within one hundred twenty days in cases
50 involving sexual abuse, or until the division's investigation is complete in cases
51 involving a child fatality or near-fatality, after receipt of a report of abuse or
52 neglect that is investigated, the alleged perpetrator named in the report and the
53 parents of the child named in the report, if the alleged perpetrator is not a
54 parent, shall be notified in writing of any determination made by the division
55 based on the investigation. The notice shall advise either:

56 (1) That the division has determined by a probable cause finding prior to
57 August 28, 2004, or by a preponderance of the evidence after August 28, 2004,
58 that abuse or neglect exists and that the division shall retain all identifying
59 information regarding the abuse or neglect; that such information shall remain
60 confidential and will not be released except to law enforcement agencies,
61 prosecuting or circuit attorneys, or as provided in section 210.150; that the
62 alleged perpetrator has sixty days from the date of receipt of the notice to seek
63 reversal of the division's determination through a review by the child abuse and
64 neglect review board as provided in subsection 4 of this section; [or]

65 (2) That the division has not made a probable cause finding or determined
66 by a preponderance of the evidence that abuse or neglect exists; **or**

67 **(3) The division has been unable to determine the identity of the**
68 **perpetrator of the abuse or neglect. The notice shall also inform the**
69 **child's parents and legal guardian that the division will retain, utilize,**
70 **and disclose all information and findings as provided in family**
71 **assessment and services cases.**

72 3. The children's division may reopen a case for review [at the request of
73 the alleged perpetrator, the alleged victim, or the office of the child advocate] if
74 new, specific, and credible evidence is obtained [that the division's decision was
75 based on fraud or misrepresentation of material facts relevant to the division's
76 decision and there is credible evidence that absent such fraud or
77 misrepresentation the division's decision would have been different. If the
78 alleged victim is under the age of eighteen, the request for review may be made
79 by the alleged victim's parent, legal custodian, or legal guardian. All requests to
80 reopen an investigation for review shall be made within a reasonable time and
81 not more than one year after the children's division made its decision. The
82 division shall not reopen a case for review based on any information which the
83 person requesting the review knew, should have known, or could by the exercise
84 of reasonable care have known before the date of the division's final decision in
85 the case, unless the person requesting the review shows by a preponderance of
86 the evidence that he or she could not have provided such information to the
87 division before the date of the division's final decision in the case. Any person,
88 other than the office of the child advocate, who makes a request to reopen a case
89 for review based on facts which the person knows to be false or misleading or who
90 acts in bad faith or with the intent to harass the alleged victim or perpetrator
91 shall not have immunity from any liability, civil or criminal, for providing the

92 information and requesting that the division reopen the investigation. Any
93 person who makes a request to reopen an investigation based on facts which the
94 person knows to be false shall be guilty of a class A misdemeanor. The children's
95 division shall not reopen an investigation under any circumstances while the case
96 is pending before a court of this state nor when a court has entered a final
97 judgment after de novo judicial review pursuant to this section].

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

106 5. In any such action for administrative review, the child abuse and
107 neglect review board shall sustain the division's determination if such
108 determination was supported by evidence of probable cause prior to August 28,
109 2004, or is supported by a preponderance of the evidence after August 28, 2004,
110 and is not against the weight of such evidence. The child abuse and neglect
111 review board hearing shall be closed to all persons except the parties, their
112 attorneys and those persons providing testimony on behalf of the parties.

113 6. If the alleged perpetrator is aggrieved by the decision of the child abuse
114 and neglect review board, the alleged perpetrator may seek de novo judicial
115 review in the circuit court in the county in which the alleged perpetrator resides
116 and in circuits with split venue, in the venue in which the alleged perpetrator
117 resides, or in Cole County. If the alleged perpetrator is not a resident of the
118 state, proper venue shall be in Cole County. The case may be assigned to the
119 family court division where such a division has been established. The request for
120 a judicial review shall be made within sixty days of notification of the decision of
121 the child abuse and neglect review board decision. In reviewing such decisions,
122 the circuit court shall provide the alleged perpetrator the opportunity to appear
123 and present testimony. The alleged perpetrator may subpoena any witnesses
124 except the alleged victim or the reporter. However, the circuit court shall have
125 the discretion to allow the parties to submit the case upon a stipulated record.

126 7. In any such action for administrative review, the child abuse and
127 neglect review board shall notify the child or the parent, guardian or legal

128 representative of the child that a review has been requested.

✓

Unofficial

Bill

Copy