

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1158
99TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Children, April 27, 2017, with recommendation that the Senate Committee Substitute do pass.

2281S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 21.771, 210.110, and 210.152, RSMo, and to enact in lieu thereof three new sections relating to child abuse, with an existing penalty provision and an emergency clause for certain sections.

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

Section A. Sections 21.771, 210.110, and 210.152, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 21.771,
3 210.110, and 210.152, to read as follows:

21.771. 1. There is established a joint committee of the general assembly
2 to be known as the "Joint Committee on Child Abuse and Neglect" to be composed
3 of seven members of the senate and seven members of the house of
4 representatives. The senate members of the joint committee shall be appointed
5 by the president pro tem and minority floor leader of the senate and the house
6 members shall be appointed by the speaker and minority floor leader of the house
7 of representatives. The appointment of each member shall continue during the
8 member's term of office as a member of the general assembly or until a successor
9 has been appointed to fill the member's place. No party shall be represented by
10 more than four members from the house of representatives nor more than four
11 members from the senate. A majority of the committee shall constitute a quorum,
12 but the concurrence of a majority of the members shall be required for the
13 determination of any matter within the committee's duties.

14 2. The joint committee shall:

15 (1) Make a continuing study and analysis of the state child abuse and

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

16 neglect reporting and investigation system;

17 (2) Devise a plan for improving the structured decision making regarding
18 the removal of a child from a home;

19 (3) Determine the additional personnel and resources necessary to
20 adequately protect the children of this state and improve their welfare and the
21 welfare of families;

22 (4) Address the need for additional foster care homes and to improve the
23 quality of care provided to abused and neglected children in the custody of the
24 state;

25 (5) Determine from its study and analysis the need for changes in
26 statutory law;

27 (6) Make any other recommendation to the general assembly necessary to
28 provide adequate protections for the children of our state; and

29 (7) Make recommendations on how to improve abuse and neglect
30 proceedings including examining the role of the judge, children's division, the
31 juvenile officer, the guardian ad litem, and the foster parents.

32 3. The joint committee shall meet within thirty days after its creation and
33 organize by selecting a chairperson and a vice chairperson, one of whom shall be
34 a member of the senate and the other a member of the house of representatives.
35 The chairperson shall alternate between members of the house and senate every
36 two years after the committee's organization.

37 4. The committee shall meet at least quarterly. The committee may meet
38 at locations other than Jefferson City when the committee deems it necessary.

39 5. The committee shall be staffed by legislative personnel as is deemed
40 necessary to assist the committee in the performance of its duties.

41 6. The members of the committee shall serve without compensation but
42 shall be entitled to reimbursement for actual and necessary expenses incurred in
43 the performance of their official duties.

44 7. It shall be the duty of the committee to compile a full report of its
45 activities for submission to the general assembly. The report shall be submitted
46 not later than the fifteenth of January of each year in which the general assembly
47 convenes in regular session and shall include any recommendations which the
48 committee may have for legislative action as well as any recommendations for
49 administrative or procedural changes in the internal management or organization
50 of state or local government agencies and departments. Copies of the report
51 containing such recommendations shall be sent to the appropriate directors of

52 state or local government agencies or departments included in the report.

53 8. The provisions of this section shall expire on [January 15, 2018.]
54 **January 15, 2023.**

210.110. As used in sections 210.109 to 210.165, and sections 210.180 to
2 210.183, the following terms mean:

3 (1) "Abuse", any physical injury, sexual abuse, or emotional abuse
4 inflicted on a child other than by accidental means by those responsible for the
5 child's care, custody, and control, except that discipline including spanking,
6 administered in a reasonable manner, shall not be construed to be
7 abuse. **Victims of abuse shall also include any victims of sex trafficking**
8 **or severe forms of trafficking as those terms are defined in 22 U.S.C. 78**
9 **Section 7102(9)-(10);**

10 (2) "Assessment and treatment services for children under ten years old",
11 an approach to be developed by the children's division which will recognize and
12 treat the specific needs of at-risk and abused or neglected children under the age
13 of ten. The developmental and medical assessment may be a broad physical,
14 developmental, and mental health screening to be completed within thirty days
15 of a child's entry into custody and every six months thereafter as long as the child
16 remains in care. Screenings may be offered at a centralized location and include,
17 at a minimum, the following:

18 (a) Complete physical to be performed by a pediatrician familiar with the
19 effects of abuse and neglect on young children;

20 (b) Developmental, behavioral, and emotional screening in addition to
21 early periodic screening, diagnosis, and treatment services, including a core set
22 of standardized and recognized instruments as well as interviews with the child
23 and appropriate caregivers. The screening battery may be performed by a
24 licensed mental health professional familiar with the effects of abuse and neglect
25 on young children, who will then serve as the liaison between all service
26 providers in ensuring that needed services are provided. Such treatment services
27 may include in-home services, out-of-home placement, intensive twenty-four-hour
28 treatment services, family counseling, parenting training and other best practices.
29 Children whose screenings indicate an area of concern may complete a
30 comprehensive, in-depth health, psychodiagnostic, or developmental assessment
31 within sixty days of entry into custody;

32 (3) "Central registry", a registry of persons where the division has found
33 probable cause to believe prior to August 28, 2004, or by a preponderance of the

34 evidence after August 28, 2004, or a court has substantiated through court
35 adjudication that the individual has committed child abuse or neglect or the
36 person has pled guilty or has been found guilty of a crime pursuant to section
37 565.020, 565.021, 565.023, 565.024, 565.050, 566.030, 566.060, or 567.050 if the
38 victim is a child less than eighteen years of age, or any other crime pursuant to
39 chapter 566 if the victim is a child less than eighteen years of age and the
40 perpetrator is twenty-one years of age or older, a crime under section 568.020,
41 568.030, 568.045, 568.050, 568.060, 568.080, 568.090, 573.023, 573.025, 573.035,
42 573.037, 573.040, 573.200, or 573.205, or an attempt to commit any such
43 crimes. Any persons placed on the registry prior to August 28, 2004, shall remain
44 on the registry for the duration of time required by section 210.152;

45 (4) "Child", any person, regardless of physical or mental condition, under
46 eighteen years of age;

47 (5) "Children's services providers and agencies", any public, quasi-public,
48 or private entity with the appropriate and relevant training and expertise in
49 delivering services to children and their families as determined by the children's
50 division, and capable of providing direct services and other family services for
51 children in the custody of the children's division or any such entities or agencies
52 that are receiving state moneys for such services;

53 (6) "Director", the director of the Missouri children's division within the
54 department of social services;

55 (7) "Division", the Missouri children's division within the department of
56 social services;

57 (8) "Family assessment and services", an approach to be developed by the
58 children's division which will provide for a prompt assessment of a child who has
59 been reported to the division as a victim of abuse or neglect by a person
60 responsible for that child's care, custody or control and of that child's family,
61 including risk of abuse and neglect and, if necessary, the provision of community-
62 based services to reduce the risk and support the family;

63 (9) "Family support team meeting" or "team meeting", a meeting convened
64 by the division or children's services provider in behalf of the family and/or child
65 for the purpose of determining service and treatment needs, determining the need
66 for placement and developing a plan for reunification or other permanency
67 options, determining the appropriate placement of the child, evaluating case
68 progress, and establishing and revising the case plan;

69 (10) "Investigation", the collection of physical and verbal evidence to

70 determine if a child has been abused or neglected;

71 (11) "Jail or detention center personnel", employees and volunteers
72 working in any premises or institution where incarceration, evaluation, care,
73 treatment or rehabilitation is provided to persons who are being held under
74 custody of the law;

75 (12) "Neglect", failure to provide, by those responsible for the care,
76 custody, and control of the child, the proper or necessary support, education as
77 required by law, nutrition or medical, surgical, or any other care necessary for the
78 child's well-being. **Victims of neglect shall also include any victims of sex**
79 **trafficking or severe forms of trafficking as those terms are defined in**
80 **22 U.S.C. 78 Section 7102(9)-(10);**

81 (13) "Preponderance of the evidence", that degree of evidence that is of
82 greater weight or more convincing than the evidence which is offered in
83 opposition to it or evidence which as a whole shows the fact to be proved to be
84 more probable than not;

85 (14) "Probable cause", available facts when viewed in the light of
86 surrounding circumstances which would cause a reasonable person to believe a
87 child was abused or neglected;

88 (15) "Report", the communication of an allegation of child abuse or neglect
89 to the division pursuant to section 210.115;

90 (16) "Those responsible for the care, custody, and control of the child",
91 [those included but not limited to] **includes, but is not limited to:**

92 (a) The parents or [guardian] **legal guardians** of a child[.];

93 (b) Other members of the child's household[, or];

94 (c) Those exercising supervision over a child for any part of a twenty-four-
95 hour day[. Those responsible for the care, custody and control shall also include];

96 (d) Any [adult] **person** who[.] **has access to the child** based on
97 relationship to the parents of the child[,] **or** members of the child's household or
98 the family[, has access to the child]; **or**

99 (e) **Any person who takes control of the child by deception, force,**
100 **or coercion.**

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

42 **central registry but shall retain and utilize all identifying information**
43 **as otherwise provided in this section;**

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

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

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

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

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

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

73 3. The children's division may reopen a case for review [at the request of
74 the alleged perpetrator, the alleged victim, or the office of the child advocate] if
75 new, specific, and credible evidence is obtained [that the division's decision was
76 based on fraud or misrepresentation of material facts relevant to the division's
77 decision and there is credible evidence that absent such fraud or

78 misrepresentation the division's decision would have been different. If the
79 alleged victim is under the age of eighteen, the request for review may be made
80 by the alleged victim's parent, legal custodian, or legal guardian. All requests to
81 reopen an investigation for review shall be made within a reasonable time and
82 not more than one year after the children's division made its decision. The
83 division shall not reopen a case for review based on any information which the
84 person requesting the review knew, should have known, or could by the exercise
85 of reasonable care have known before the date of the division's final decision in
86 the case, unless the person requesting the review shows by a preponderance of
87 the evidence that he or she could not have provided such information to the
88 division before the date of the division's final decision in the case. Any person,
89 other than the office of the child advocate, who makes a request to reopen a case
90 for review based on facts which the person knows to be false or misleading or who
91 acts in bad faith or with the intent to harass the alleged victim or perpetrator
92 shall not have immunity from any liability, civil or criminal, for providing the
93 information and requesting that the division reopen the investigation. Any
94 person who makes a request to reopen an investigation based on facts which the
95 person knows to be false shall be guilty of a class A misdemeanor. The children's
96 division shall not reopen an investigation under any circumstances while the case
97 is pending before a court of this state nor when a court has entered a final
98 judgment after de novo judicial review pursuant to this section].

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

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

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

Section B. Because immediate action is necessary to prevent any loss of
2 federal funding for child welfare services in Missouri, the repeal and reenactment
3 of sections 210.110 and 210.152 of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and the
6 repeal and reenactment of sections 210.110 and 210.152 of this act shall be in full
7 force and effect upon its passage and approval.

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