

SECOND REGULAR SESSION

HOUSE BILL NO. 1453

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (155).

Read 1st time January 19, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4418L.02I

AN ACT

To repeal sections 192.745, 199.001, 199.003, 199.007, 199.009, 199.029, 199.031, 199.037, 199.039, 199.043, 199.051, and 304.028, RSMo, and to enact in lieu thereof five new sections relating to the head injury advisory council.

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

Section A. Sections 192.745, 199.001, 199.003, 199.007, 199.009, 199.029, 199.031, 199.037, 199.039, 199.043, 199.051, and 304.028, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 192.745, 199.001, 199.003, 199.009, and 304.028, to read as follows:

192.745. 1. The "Missouri Head Injury Advisory Council" [is hereby] established [as created] by executive order of the governor on March 5, 1985, **is transferred to the department of health and senior services by executive order no. 05-09 dated February 2, 2005.** The council shall consist of twenty-five members. The members of the council that are serving on [August 13, 1986] **February 2, 2005**, shall continue serving [on the following basis: the two members of the council who are members of the house of representatives and appointed by the speaker of the house of representatives shall serve for the remainder of their terms; the two members of the council who are members of the senate appointed by the president pro tempore of the senate shall serve for the remainder of their terms; and the remaining twenty-one members shall determine by lot which seven are to have a one-year term, which seven are to have a two-year term, and which seven are to have a three-year term] **to fulfill their current terms.** **Through attrition, the council shall decrease from the present twenty-five members to**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 **eighteen members.** Thereafter, the successors to each of these [twenty-one] members shall be
14 **appointed by the director of the department of health and senior services** to serve a
15 three-year term and [until the member's successor is appointed by the governor with the advice
16 and consent of the senate. In addition, two members who are members of the house of
17 representatives shall be appointed by the speaker of the house and two members who are
18 members of the senate shall be appointed by the president pro tempore of the senate. The
19 members appointed by the governor shall represent] **shall be appointed on the following basis:**
20 **at least four** people with head injuries[,] **or** relatives of persons with head injuries, [proprietary
21 schools as defined in section 173.600, RSMo.] **fourteen persons from** professional groups,
22 health institutions, [or] **community groups**, private industry and state agencies which administer
23 programs regarding mental health, education, public health, public safety, insurance, and
24 Medicaid. The appointment of individuals representing state agencies shall be conditioned on
25 their continued employment with their respective agencies.

26 2. The Missouri head injury advisory council is assigned to the [division of general
27 services in the office of administration] **department of health and senior services.** The [office
28 of administration] **department** shall submit estimates of requirements for appropriations on
29 behalf of the council for the necessary staff and expenses to carry out the duties and
30 responsibilities assigned by the council. [Such staff shall consist of a director and other support
31 staff.]

32 3. Meetings **of the full council** shall be held at least [every ninety days] **twice a year** or
33 at the call of the council chairperson, who shall be elected by the council. **Subcommittees may**
34 **meet on an as-needed basis.**

35 4. [Each member shall, subject to appropriations, be reimbursed for reasonable and
36 necessary expenses actually incurred in the performance of the member's official duties.]
37 **Members of the council shall not receive any compensation for their services, but they**
38 **shall, subject to appropriations, be reimbursed for actual and necessary expenses incurred**
39 **in the performance of their duties from moneys appropriated for such purpose.**

40 5. The council shall adopt written procedures to govern its activities. [Staff and
41 consultants shall be provided for the council from appropriations requested by the commissioner
42 of the office of administration for such purpose.]

43 6. The council, **under the direction of the department**, shall make recommendations
44 to the [governor] **director** for developing and administering a state plan to provide services for
45 head injured persons.

46 7. No member of the council may participate in or seek to influence a decision or vote
47 of the council if the member would be directly involved with the matter or if the member would

48 derive income from it. A violation of the prohibition contained herein shall be grounds for a
49 person to be removed as a member of the council by the [governor] **director**.

50 8. The council shall be advisory and shall:

51 (1) Promote meetings and programs for the discussion of reducing the debilitating effects
52 of head injuries and disseminate information in cooperation with any other department, agency
53 or entity on the prevention, evaluation, care, treatment and rehabilitation of persons affected by
54 head injuries;

55 (2) Study and review current prevention, evaluation, care, treatment and rehabilitation
56 technologies and recommend appropriate preparation, training, retraining and distribution of
57 manpower and resources in the provision of services to head-injured persons through private and
58 public residential facilities, day programs and other specialized services;

59 (3) Recommend [what] specific methods, means and procedures [should be adopted] to
60 improve and upgrade the state's service delivery system for head-injured citizens of this state;

61 (4) Participate in developing and disseminating criteria and standards which may be
62 required for future funding or licensing of facilities, day programs and other specialized services
63 for head-injured persons in this state;

64 (5) Report annually to the [commissioner of administration] **director of the department**
65 **of health and senior services**, the governor, and the general assembly on its activities, and on
66 the results of its studies and the recommendations of the council.

67 9. The [office of administration] **department** may accept on behalf of the council federal
68 funds, gifts and donations from individuals, private organizations and foundations, and any other
69 funds that may become available.

199.001. As used in sections 199.001 to 199.055, the following terms mean:

2 (1) "[Division] **Department**", the [division of injury prevention, head injury
3 rehabilitation and local health services of the] department of health and senior services;

4 (2) "Head injury" [includes head injury, traumatic head injury, and spinal cord injury as
5 defined in section 192.735, RSMo] or "**traumatic head injury**", **a sudden insult or damage**
6 **to the brain or its coverings not of a degenerative nature. Such insult or damage may**
7 **produce an altered state of consciousness and may result in a decrease of one or more of**
8 **the following: mental, cognitive, behavioral, or physical functioning resulting in partial**
9 **or total disability. Head injury or traumatic head injury shall not include cerebral**
10 **vascular accidents, aneurisms, and congenital deficits;**

11 (3) "Injury or trauma", any unintentional or intentional damage to the body resulting
12 from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence
13 of such essentials as heat or oxygen;

14 (4) "Rehabilitation", a comprehensive series of interventions for physical, medical,
15 cognitive and psychological disabilities designed to restore a person to his maximum functional
16 potential.

199.003. 1. The ["Division of Injury Prevention, Head Injury Rehabilitation and Local
2 Health Services" is hereby created and shall be a division of the department of health and senior
3 services. The division] **department** shall have the responsibility, **subject to appropriations**,
4 of ensuring that injury prevention and head injury rehabilitation evaluation, [case management]
5 **service coordination**, treatment, rehabilitation, and community support services are accessible,
6 wherever possible. [The division shall have and exercise supervision of division rehabilitation
7 facilities, residential programs and specialized services operated by the division and oversight
8 of facilities, programs and services funded by the division. The division may also plan for
9 prevention, treatment, rehabilitation and care, including hospice, for persons with other diseases
10 as determined by the general assembly by appropriations. The division shall also have
11 responsibilities for the support, development, and coordination of local health services.]

12 2. The powers, functions and duties of the [division] **department** shall include the
13 following:

14 (1) [Provision of funds for] Planning **and implementing**, in cooperation with the
15 Missouri head injury advisory council [and implementation of], accessible programs to
16 [rehabilitate and care for persons with head injuries, injury prevention and research] **promote**
17 **rehabilitation and community reintegration of persons with head injuries;**

18 (2) Provision of technical assistance and training to community-based programs [and
19 assistance and cooperation to programs of political subdivisions designed to assist in planning
20 and implementing quality services] **assisting persons with head injuries;**

21 (3) Assurance of [program] quality [in compliance with such appropriate standards for
22 residential facilities, day programs, and specialized programs as may be established by the
23 division] **for head injury services funded by the department;**

24 (4) Sponsorship and encouragement of research into the causes, effects, prevention,
25 treatment and rehabilitation of injuries and appropriateness and cost and benefit effectiveness
26 of head injury rehabilitation, residential programs and specialized services;

27 (5) Provision of public information relating to injury prevention and head injury
28 treatment and rehabilitation;

29 (6) Cooperation with nonstate governmental agencies and the private sector [in
30 establishing, conducting, integrating and coordinating] programs and projects relating to injury
31 prevention and head injury treatment and rehabilitation;

32 (7) [Review and oversight of those portions of the department's annual budget which are
33 directed for injury prevention and head injury services;

34 (8) Encouragement of the utilization, support, assistance and dedication of volunteers
35 to assist persons affected by head injuries to be accepted and integrated into normal community
36 activities;

37 (9) Support, development, and coordination of local health services, which shall include
38 but shall not be limited to:

39 (a) Professional resources and staff development;

40 (b) Services assessment and coordination;

41 (c) Standards development, implementation and quality assurance;

42 (d) Provision of basic public health services in areas not served by local public health
43 agencies;

44 (e) Fiscal resources and management;

45 (f) Technical assistance; and

46 (g) Assistance with public health problems, emergencies and conditions] **Promulgation**
47 **of the following rules:**

48 (a) **Rules necessary to prescribe policies or standards which affect charging and**
49 **funding of adult head injury rehabilitation services. Such rules applicable to each**
50 **program or service operated or funded by the department shall be available for public**
51 **inspection and review at such program or service;**

52 (b) **Rules relative to the implementation of participant rights described in sections**
53 **199.001 to 199.055;**

54 (c) **Rules setting forth a reasonable standard means test which shall be applied to**
55 **all programs and services funded by the department in determining eligibility for such**
56 **services; and**

57 (8) **Receipt of federal grants and aids for injury prevention and for persons with**
58 **head injuries and head injury rehabilitation under the terms of the grants and aids, and**
59 **administer or pay such grants and aids out subject to the provisions attached. The director**
60 **shall approve such applications for federal assistance administered through the**
61 **department as may be considered advisable in consultation with the Missouri head injury**
62 **advisory council.**

63 **3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
64 **that is created under the authority delegated in this section shall become effective only if**
65 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
66 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
67 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
68 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**

69 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
70 **adopted after August 28, 2006, shall be invalid and void.**

199.009. 1. The [division] **department** may provide injury prevention, and head injury
2 evaluation, care, treatment, rehabilitation and such related services directly or through contracts
3 from private and public vendors in this state, the quality of the services being equal, appropriate
4 and consistent with professional advice in the least restrictive environment and as close to an
5 individual's home community as possible, with funds appropriated for this purpose.

6 2. If it is determined through a comprehensive evaluation that a person [is suffering from
7 a] **has a traumatic** head injury so as to require the coordination of [provision of services]
8 **service provision**, including other state governmental agencies, nongovernmental and the private
9 sector, and if such person, such person's parent, if the person is a minor, or legal guardian, so
10 requests, the [division] **department** shall, within the limits of available resources and subject
11 to relevant federal and state laws, secure a comprehensive program of any necessary services for
12 such person. Such services [may include, but need not be limited to, the following:

- 13 (1) Assessment and evaluation;
- 14 (2) Case management;
- 15 (3) Counseling;
- 16 (4) Respite care;
- 17 (5) Recreation;
- 18 (6) Rehabilitation;
- 19 (7) Cognitive retraining;
- 20 (8) Prevocational rehabilitation;
- 21 (9) Residential care;
- 22 (10) Homemaker services;
- 23 (11) Day activity programs;
- 24 (12) Supported living;
- 25 (13) Referral to appropriate services;
- 26 (14) Transportation;
- 27 (15) Supported work], **if provided by the department, shall be directed toward**

28 **preparation for education or vocational achievement, independent living, and community**
29 **participation. Long-term needs shall be identified and efforts made to link participants**
30 **with appropriate resources.**

31 3. In securing the comprehensive program of services, the [division] **department** shall
32 involve the patient, [his] **the patient's** family or [his] legal guardian in decisions affecting [his]
33 **the patient's** care, rehabilitation, services or referral. The quality of the services being equal,

34 appropriate and consistent with professional advice, services shall be offered in the least
35 restrictive environment and as close to an individual's home community as possible.

36 **4. In accordance with state and federal law, no service or program operated or**
37 **funded by the department shall deny admission or other services to any person based on**
38 **race, sex, creed, marital status, national origin, handicap, or age.**

304.028. 1. There is hereby created in the state treasury for use by the [Missouri Head
2 Injury Advisory Council] **department of health and senior services** a fund to be known as the
3 "Head Injury Fund". All judgments collected pursuant to this section, federal grants, private
4 donations and any other moneys designated for the head injury fund shall be deposited in the
5 fund. Moneys deposited in the fund shall, upon appropriation by the general assembly to the
6 [office of administration] **department**, be received and expended by the [council] **department**
7 for the purpose of transition and integration of medical, social and educational services or
8 activities for purposes of outreach and short-term supports to enable individuals with traumatic
9 head injury and their families to live in the community[, including counseling and mentoring the
10 families]. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any
11 unexpended balance in the head injury fund at the end of any biennium shall not be transferred
12 to the general revenue fund.

13 2. In all criminal cases including violations of any county ordinance or any violation of
14 criminal or traffic laws of this state, including an infraction, there shall be assessed as costs a
15 surcharge in the amount of two dollars. No such surcharge shall be collected in any proceeding
16 involving a violation of an ordinance or state law when the proceeding or defendant has been
17 dismissed by the court or when costs are to be paid by the state, county or municipality.

18 3. Such surcharge shall be collected and distributed by the clerk of the court as provided
19 in sections 488.010 to 488.020, RSMo. The surcharge collected pursuant to this section shall
20 be paid to the state treasury to the credit of the head injury fund established in this section.

[199.007. The Missouri head injury advisory council, created by section
2 192.745, RSMo, shall act as the advisory body to the division and the division
3 director. Any power or function of the division requiring planning activities shall
4 be undertaken with the direct input and cooperation of the advisory council. The
5 division shall not undertake or duplicate any activity or function of the council
6 under the provisions of section 192.745, RSMo.]

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[199.029. 1. The division shall promulgate rules under the provisions of
2 this section and chapter 536, RSMo, as necessary to prescribe policies or
3 standards which affect charging and funding of residential care rehabilitation
4 programs and specialized services for persons with head injuries available to the

public. The rules applicable to each facility, program or service operated or funded by the division shall be available for public inspection and review at such facility, program or service. These rules shall not apply to facilities, programs or services operated or provided by curators of the University of Missouri.

2. The rules, operating regulations and facility policies shall be compatible with and appropriate to the facility or program mission, population served, size, type of service and other reasonable classifications. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[199.031. 1. The division may receive federal grants and aids for injury prevention and for persons with head injuries and head injury rehabilitation under the terms of the grants and aids and administer or pay them out subject to the provisions attached.

2. The director shall approve such applications for federal assistance administered through the division as may be considered advisable after consultation with the Missouri head injury advisory council.]

[199.037. The director of the division shall promulgate reasonable rules relative to the implementation of patient rights described in sections 199.001 to 199.055. These rules shall not apply to facilities, programs or services operated or provided by the curators of the University of Missouri.]

[199.039. The director of the division shall promulgate rules setting forth a reasonable standard means test which shall be applied to all facilities, programs and services operated or funded by the division in determining the amount to be charged to persons receiving services. Notwithstanding other provisions of sections 199.001 to 199.055, the department shall accept funds from federal reimbursement, third-party reimbursement, private pay or other funding sources.]

[199.043. In accordance with state and federal law, no residential facility, day program or specialized service operated or funded by the division shall deny admission or other services to any person because of his race, sex, creed, marital status, national origin, handicap or age.]

2 [199.051. The division may inspect any facility or program at any time
if a contract has been issued or an application for a contract has been filed.]

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