

FIRST REGULAR SESSION

HOUSE BILL NO. 92

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POLLOCK.

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D. ADAM CRUMBLISS, Chief Clerk

0471L.01I

AN ACT

To repeal sections 191.737, 210.145, and 568.045, RSMo, and to enact in lieu thereof four new sections relating to endangering the welfare of a child or unborn child, with penalty provisions.

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

Section A. Sections 191.737, 210.145, and 568.045, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 191.737, 210.145, 568.045, and
3 568.047, to read as follows:

191.737. 1. Notwithstanding the physician-patient privilege, any physician or health care
2 provider may refer to the department of health and senior services families in which children may
3 have been exposed to a controlled substance listed in section 195.017, RSMo, schedules I, II and
4 III, or alcohol as evidenced by:

5 (1) Medical documentation of signs and symptoms consistent with controlled substances
6 or alcohol exposure in the child at birth; or

7 (2) Results of a confirmed toxicology test for controlled substances performed at birth
8 on the mother or the child; and

9 (3) A written assessment made or approved by a physician, health care provider, or by
10 the division of family services which documents the child as being at risk of abuse or neglect.

11 2. Nothing in this section shall preclude a physician or other mandated reporter from
12 reporting abuse or neglect of a child as required pursuant to the provisions of section 210.115,
13 RSMo.

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.

14 3. Upon notification pursuant to subsection 1 of this section, the department of health
15 and senior services shall offer service coordination services to the family. The department of
16 health and senior services shall coordinate social services, health care, mental health services,
17 and needed education and rehabilitation services. Service coordination services shall be initiated
18 within seventy-two hours of notification. The department of health and senior services shall
19 notify the department of social services and the department of mental health within seventy-two
20 hours of initial notification.

21 4. Any physician or health care provider complying with the provisions of this section,
22 in good faith, shall have immunity from any civil liability that might otherwise result by reason
23 of such actions.

24 5. Referral and associated documentation provided for in this section shall be
25 confidential [and shall not] **except that it may** be used in any criminal prosecution.

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 child abuse or
3 neglect has been alleged;

4 (2) Promoting the preservation and reunification of children and families consistent with
5 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 receiving and
8 maintaining reports. This information system shall have the ability to receive reports over a
9 single, statewide toll-free number. Such information system shall maintain the results of all
10 investigations, family assessments and services, and other relevant information.

11 2. The division shall utilize structured decision-making protocols for classification
12 purposes of all child abuse and neglect reports. The protocols developed by the division shall
13 give priority to ensuring the well-being and safety of the child. All child abuse and neglect
14 reports shall be initiated within twenty-four hours and shall be classified based upon the reported
15 risk and injury to the child. The division shall promulgate rules regarding the structured
16 decision-making protocols to be utilized for all child abuse and neglect reports.

17 3. Upon receipt of a report, the division shall determine if the report merits investigation,
18 including reports which if true would constitute a suspected violation of any of the following:
19 section 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo, if the victim is a child less than
20 eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than
21 eighteen years of age, or other crimes under chapter 566, RSMo, if the victim is a child less than
22 eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050,
23 RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045,
24 **568.047**, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025, 573.035, 573.037, or

25 573.040, RSMo, or an attempt to commit any such crimes. The division shall immediately
26 communicate all reports that merit investigation to its appropriate local office and any relevant
27 information as may be contained in the information system. The local division staff shall
28 determine, through the use of protocols developed by the division, whether an investigation or
29 the family assessment and services approach should be used to respond to the allegation. The
30 protocols developed by the division shall give priority to ensuring the well-being and safety of
31 the child.

32 4. The local office shall contact the appropriate law enforcement agency immediately
33 upon receipt of a report which division personnel determine merits an investigation and provide
34 such agency with a detailed description of the report received. In such cases the local division
35 office shall request the assistance of the local law enforcement agency in all aspects of the
36 investigation of the complaint. The appropriate law enforcement agency shall either assist the
37 division in the investigation or provide the division, within twenty-four hours, an explanation
38 in writing detailing the reasons why it is unable to assist.

39 5. The local office of the division shall cause an investigation or family assessment and
40 services approach to be initiated in accordance with the protocols established in subsection 2 of
41 this section, except in cases where the sole basis for the report is educational neglect. If the
42 report indicates that educational neglect is the only complaint and there is no suspicion of other
43 neglect or abuse, the investigation shall be initiated within seventy-two hours of receipt of the
44 report. If the report indicates the child is in danger of serious physical harm or threat to life, an
45 investigation shall include direct observation of the subject child within twenty-four hours of the
46 receipt of the report. Local law enforcement shall take all necessary steps to facilitate such direct
47 observation. If the parents of the child are not the alleged abusers, a parent of the child must be
48 notified prior to the child being interviewed by the division. If the abuse is alleged to have
49 occurred in a school or child-care facility the division shall not meet with the child in any school
50 building or child-care facility building where abuse of such child is alleged to have occurred.
51 When the child is reported absent from the residence, the location and the well-being of the child
52 shall be verified. For purposes of this subsection, "child-care facility" shall have the same
53 meaning as such term is defined in section 210.201.

54 6. The director of the division shall name at least one chief investigator for each local
55 division office, who shall direct the division response on any case involving a second or
56 subsequent incident regarding the same subject child or perpetrator. The duties of a chief
57 investigator shall include verification of direct observation of the subject child by the division
58 and shall ensure information regarding the status of an investigation is provided to the public
59 school district liaison. The public school district liaison shall develop protocol in conjunction
60 with the chief investigator to ensure information regarding an investigation is shared with

61 appropriate school personnel. The superintendent of each school district shall designate a
62 specific person or persons to act as the public school district liaison. Should the subject child
63 attend a nonpublic school the chief investigator shall notify the school principal of the
64 investigation. Upon notification of an investigation, all information received by the public
65 school district liaison or the school shall be subject to the provisions of the federal Family
66 Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g, and federal rule 34
67 C.F.R., Part 99.

68 7. The investigation shall include but not be limited to the nature, extent, and cause of
69 the abuse or neglect; the identity and age of the person responsible for the abuse or neglect; the
70 names and conditions of other children in the home, if any; the home environment and the
71 relationship of the subject child to the parents or other persons responsible for the child's care;
72 any indication of incidents of physical violence against any other household or family member;
73 and other pertinent data.

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

78 9. Upon completion of the investigation, if the division suspects that the report was made
79 maliciously or for the purpose of harassment, the division shall refer the report and any evidence
80 of malice or harassment to the local prosecuting or circuit attorney.

81 10. Multidisciplinary teams shall be used whenever conducting the investigation as
82 determined by the division in conjunction with local law enforcement. Multidisciplinary teams
83 shall be used in providing protective or preventive social services, including the services of law
84 enforcement, a liaison of the local public school, the juvenile officer, the juvenile court, and
85 other agencies, both public and private.

86 11. For all family support team meetings involving an alleged victim of child abuse or
87 neglect, the parents, legal counsel for the parents, foster parents, the legal guardian or custodian
88 of the child, the guardian ad litem for the child, and the volunteer advocate for the child shall be
89 provided notice and be permitted to attend all such meetings. Family members, other than
90 alleged perpetrators, or other community informal or formal service providers that provide
91 significant support to the child and other individuals may also be invited at the discretion of the
92 parents of the child. In addition, the parents, the legal counsel for the parents, the legal guardian
93 or custodian and the foster parents may request that other individuals, other than alleged
94 perpetrators, be permitted to attend such team meetings. Once a person is provided notice of or
95 attends such team meetings, the division or the convenor of the meeting shall provide such

96 persons with notice of all such subsequent meetings involving the child. Families may determine
97 whether individuals invited at their discretion shall continue to be invited.

98 12. If the appropriate local division personnel determine after an investigation has begun
99 that completing an investigation is not appropriate, the division shall conduct a family
100 assessment and services approach. The division shall provide written notification to local law
101 enforcement prior to terminating any investigative process. The reason for the termination of
102 the investigative process shall be documented in the record of the division and the written
103 notification submitted to local law enforcement. Such notification shall not preclude nor prevent
104 any investigation by law enforcement.

105 13. If the appropriate local division personnel determines to use a family assessment and
106 services approach, the division shall:

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

109 (2) Provide services which are voluntary and time-limited unless it is determined by the
110 division based on the assessment of risk that there will be a high risk of abuse or neglect if the
111 family refuses to accept the services. The division shall identify services for families where it
112 is determined that the child is at high risk of future abuse or neglect. The division shall
113 thoroughly document in the record its attempt to provide voluntary services and the reasons these
114 services are important to reduce the risk of future abuse or neglect to the child. If the family
115 continues to refuse voluntary services or the child needs to be protected, the division may
116 commence an investigation;

117 (3) Commence an immediate investigation if at any time during the family assessment
118 and services approach the division determines that an investigation, as delineated in sections
119 210.109 to 210.183, is required. The division staff who have conducted the assessment may
120 remain involved in the provision of services to the child and family;

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

123 14. Within thirty days of an oral report of abuse or neglect, the local office shall update
124 the information in the information system. The information system shall contain, at a minimum,
125 the determination made by the division as a result of the investigation, identifying information
126 on the subjects of the report, those responsible for the care of the subject child and other relevant
127 dispositional information. The division shall complete all investigations within thirty days,
128 unless good cause for the failure to complete the investigation is documented in the information
129 system. If the investigation is not completed within thirty days, the information system shall be
130 updated at regular intervals and upon the completion of the investigation. The information in

131 the information system shall be updated to reflect any subsequent findings, including any
132 changes to the findings based on an administrative or judicial hearing on the matter.

133 15. A person required to report under section 210.115 to the division and any person
134 making a report of child abuse or neglect made to the division which is not made anonymously
135 shall be informed by the division of his or her right to obtain information concerning the
136 disposition of his or her report. Such person shall receive, from the local office, if requested,
137 information on the general disposition of his or her report. Such person may receive, if
138 requested, findings and information concerning the case. Such release of information shall be
139 at the discretion of the director based upon a review of the reporter's ability to assist in protecting
140 the child or the potential harm to the child or other children within the family. The local office
141 shall respond to the request within forty-five days. The findings shall be made available to the
142 reporter within five days of the outcome of the investigation. If the report is determined to be
143 unsubstantiated, the reporter may request that the report be referred by the division to the office
144 of child advocate for children's protection and services established in sections 37.700 to 37.730,
145 RSMo. Upon request by a reporter under this subsection, the division shall refer an
146 unsubstantiated report of child abuse or neglect to the office of child advocate for children's
147 protection and services.

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

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

153 (2) The court may on its own motion, or shall if requested by a party to the proceeding,
154 make an inquiry not on the record with the children's division to determine if such a report has
155 been made. If a report has been made, the court may stay the custody proceeding until the
156 children's division completes its investigation.

157 17. In any judicial proceeding involving the custody of a child where the court
158 determines that the child is in need of services pursuant to subdivision (d) of subsection 1 of
159 section 211.031, RSMo, and has taken jurisdiction, the child's parent, guardian or custodian shall
160 not be entered into the registry.

161 18. The children's division is hereby granted the authority to promulgate rules and
162 regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo, to
163 carry out the provisions of sections 210.109 to 210.183.

164 19. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
165 is created under the authority delegated in this section shall become effective only if it complies
166 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section

167 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
168 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
169 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
170 grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be
171 invalid and void.

568.045. 1. A person commits the crime of endangering the welfare of a child in the first
2 degree if:

3 (1) The person knowingly acts in a manner that creates a substantial risk to the life, body,
4 or health of a child less than seventeen years old; or

5 (2) The person knowingly engages in sexual conduct with a person under the age of
6 seventeen years over whom the person is a parent, guardian, or otherwise charged with the care
7 and custody;

8 (3) The person knowingly encourages, aids or causes a child less than seventeen years
9 of age to engage in any conduct which violates the provisions of chapter 195, RSMo;

10 (4) Such person enlists the aid, either through payment or coercion, of a person less than
11 seventeen years of age to unlawfully manufacture, compound, produce, prepare, sell, transport,
12 test or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any
13 material used to manufacture, compound, produce, prepare, test or analyze amphetamine or
14 methamphetamine or any of their analogues; or

15 (5) Such person, in the presence of a person less than seventeen years of age or in a
16 residence where a person less than seventeen years of age resides, unlawfully manufactures, or
17 attempts to manufacture compounds, produces, prepares, sells, transports, tests, **uses** or analyzes
18 **heroin, cocaine, lysergic acid diethylamide (LSD)**, amphetamine, or methamphetamine, or any
19 of their analogues.

20 2. Endangering the welfare of a child in the first degree is a class C felony unless the
21 offense is committed as part of a ritual or ceremony, or except on a second or subsequent
22 offense, in which case the crime is a class B felony.

**568.047. 1. A person commits the crime of endangering the welfare of an unborn
2 child as defined in section 188.015, RSMo, if such person ingests, injects, consumes, inhales,
3 or otherwise uses heroin, cocaine, lysergic acid diethylamide (LSD), or methamphetamine
4 while such person is pregnant and such person knows or reasonably should have known
5 that such person was pregnant.**

6 **2. Endangering the welfare of an unborn child for a first offense is a class C felony.
7 For a second or subsequent offense endangering the welfare of an unborn child is a class
8 B felony.**

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