

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 3
94TH GENERAL ASSEMBLY

Reported from the Committee on Health Care Policy May 14, 2007 with recommendation that House Committee Substitute No. 2 for Senate Substitute for Senate Committee Substitute for Senate Bill No. 3 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0580L.13C

AN ACT

To repeal sections 565.184, 630.005, 630.140, 630.165, 630.167, 630.725, and 630.755, RSMo, and to enact in lieu thereof nineteen new sections relating to mental health, with penalty provisions.

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

Section A. Sections 565.184, 630.005, 630.140, 630.165, 630.167, 630.725, and
2 630.755, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as
3 sections 565.184, 565.210, 565.212, 565.214, 565.216, 565.218, 565.220, 630.005, 630.127,
4 630.140, 630.163, 630.165, 630.167, 630.725, 630.755, 630.925, 630.927, 630.950, and 630.975,
5 to read as follows:

565.184. 1. A person commits the crime of elder abuse in the third degree if he:
2 (1) Knowingly causes or attempts to cause physical contact with any person sixty years
3 of age or older or an eligible adult as defined in section 660.250, RSMo, knowing the other
4 person will regard the contact as harmful or provocative; or
5 (2) Purposely engages in conduct involving more than one incident that causes grave
6 emotional distress to a person sixty years of age or older or an eligible adult, as defined in section
7 660.250, RSMo. The course of conduct shall be such as would cause a reasonable person age

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.

8 sixty years of age or older or an eligible adult, as defined in section 660.250, RSMo, to suffer
9 substantial emotional distress; or

10 (3) Purposely or knowingly places a person sixty years of age or older or an eligible
11 adult, as defined in section 660.250, RSMo, in apprehension of immediate physical injury; or

12 (4) Intentionally fails to provide care, goods or services to a person sixty years of age or
13 older or an eligible adult, as defined in section 660.250, RSMo. The [cause] **result** of the
14 conduct shall be such as would cause a reasonable person age sixty or older or an eligible adult,
15 as defined in section 660.250, RSMo, to suffer physical or emotional distress; or

16 (5) Knowingly acts or knowingly fails to act in a manner which results in a grave risk
17 to the life, body or health of a person sixty years of age or older or an eligible adult, as defined
18 in section 660.250, RSMo.

19 2. Elder abuse in the third degree is a class A misdemeanor.

**565.210. 1. A person commits the crime of vulnerable person abuse in the first
2 degree if he or she attempts to kill or knowingly causes or attempts to cause serious
3 physical injury to, a vulnerable person, as defined in section 630.005, RSMo.**

4 **2. Vulnerable person abuse in the first degree is a class A felony.**

**565.212. 1. A person commits the crime of vulnerable person abuse in the second
2 degree if he or she:**

3 **(1) Knowingly causes or attempts to cause physical injury to a vulnerable person,
4 as defined in section 630.005, RSMo, by means of a deadly weapon or dangerous
5 instrument; or**

6 **(2) Recklessly causes serious physical injury to any vulnerable person, as defined
7 in section 630.005, RSMo.**

8 **2. Vulnerable person abuse in the second degree is a class B felony.**

**565.214. 1. A person commits the crime of vulnerable person abuse in the third
2 degree if he or she:**

3 **(1) Knowingly causes or attempts to cause physical contact with any vulnerable
4 person as defined in section 630.005, RSMo, knowing the other person will regard the
5 contact as harmful or offensive; or**

6 **(2) Purposely engages in conduct involving more than one incident that causes
7 grave emotional distress to a vulnerable person, as defined in section 630.005, RSMo. The
8 result of the conduct shall be such as would cause a vulnerable person, as defined in section
9 630.005, RSMo, to suffer substantial emotional distress; or**

10 **(3) Purposely or knowingly places a vulnerable person, as defined in section
11 630.005, RSMo, in apprehension of immediate physical injury; or**

12 **(4) Intentionally fails to provide care, goods or services to a vulnerable person, as**
13 **defined in section 630.005, RSMo. The result of the conduct shall be such as would cause**
14 **a vulnerable person, as defined in section 630.005, RSMo, to suffer physical or emotional**
15 **distress; or**

16 **(5) Knowingly acts or knowingly fails to act with malice in a manner that results**
17 **in a grave risk to the life, body or health of a vulnerable person, as defined in section**
18 **630.005, RSMo; or**

19 **(6) Is a person who is a vendor, provider, agent, or employee of a department**
20 **operated, funded, licensed, or certified program and engages in sexual contact, as defined**
21 **by subdivision (3) of section 566.010, RSMo, or sexual intercourse, as defined by**
22 **subdivision (4) of section 566.010, RSMo, with a vulnerable person.**

23 **2. Vulnerable person abuse in the third degree is a class A misdemeanor.**

24 **3. Actions done in good faith and without gross negligence that are designed to**
25 **protect the safety of the individual and the safety of others, or are provided within accepted**
26 **standards of care and treatment, shall not be considered as abuse of a vulnerable person**
27 **as defined in this section.**

565.216. The department of mental health shall investigate incidents and reports
2 **of vulnerable person abuse using the procedures established in sections 630.163 to 630.167,**
3 **RSMo, and, upon substantiation of the report of vulnerable person abuse, shall promptly**
4 **report the incident to the appropriate law enforcement agency and prosecutor. If the**
5 **department is unable to substantiate whether abuse occurred due to the failure of the**
6 **operator or any of the operator's agents or employees to cooperate with the investigation,**
7 **the incident shall be promptly reported to appropriate law enforcement agencies.**

565.218. 1. When any physician, physician assistant, dentist, chiropractor,
2 **optometrist, podiatrist, intern, resident, nurse, nurse practitioner, medical examiner, social**
3 **worker, licensed professional counselor, certified substance abuse counselor, psychologist,**
4 **physical therapist, pharmacist, other health practitioner, minister, Christian Science**
5 **practitioner, facility administrator, nurse's aide or orderly in a residential facility, day**
6 **program or specialized service operated, funded or licensed by the department or in a**
7 **mental health facility or mental health program in which people may be admitted on a**
8 **voluntary basis or are civilly detained pursuant to chapter 632, RSMo; or employee of the**
9 **departments of social services, mental health, or health and senior services; or home health**
10 **agency or home health agency employee; hospital and clinic personnel engaged in**
11 **examination, care, or treatment of persons; in-home services owner, provider, operator,**
12 **or employee; law enforcement officer; long-term care facility administrator or employee;**
13 **mental health professional; peace officer; probation or parole officer; or other nonfamilial**

14 person with responsibility for the care of a vulnerable person, as defined by section
15 630.005, RSMo, has reasonable cause to suspect that such a person has been subjected to
16 abuse or neglect or observes such a person being subjected to conditions or circumstances
17 that would reasonably result in abuse or neglect, he or she shall immediately report or
18 cause a report to be made to the department in accordance with section 630.163, RSMo.
19 Any other person who becomes aware of circumstances which may reasonably be expected
20 to be the result of or result in abuse or neglect may report to the department.

21 2. Any person who knowingly fails to make a report as required in subsection 1 of
22 this section is guilty of a class A misdemeanor and shall be subject to a fine up to one
23 thousand dollars. Penalties collected for violations of this section shall be transferred to
24 the state school moneys fund as established in section 166.051, RSMo, and distributed to
25 the public schools of this state in the manner provided in section 163.031, RSMo. Such
26 penalties shall not be considered charitable for tax purposes.

27 3. Every person who has been previously convicted of or pled guilty to failing to
28 make a report as required in subsection 1 of this section and who is subsequently convicted
29 of failing to make a report under subsection 2 of this section is guilty of a class D felony and
30 shall be subject to a fine up to five thousand dollars. Penalties collected for violation of this
31 subsection shall be transferred to the state school moneys fund as established in section
32 166.051, RSMo, and distributed to the public schools of this state in the manner provided
33 in section 163.031, RSMo. Such penalties shall not be considered charitable for tax
34 purposes.

35 4. Any person who knowingly files a false report of vulnerable person abuse or
36 neglect is guilty of a class A misdemeanor and shall be subject to a fine up to one thousand
37 dollars. Penalties collected for violations of this subsection shall be transferred to the state
38 school moneys fund as established in section 166.051, RSMo, and distributed to the public
39 schools of this state in the manner provided in section 163.031, RSMo. Such penalties shall
40 not be considered charitable for tax purposes.

41 5. Every person who has been previously convicted of or pled guilty to making a
42 false report to the department and who is subsequently convicted of making a false report
43 under subsection 4 of this section is guilty of a class D felony and shall be subject to a fine
44 up to five thousand dollars. Penalties collected for violations of this subsection shall be
45 transferred to the state school moneys fund as established in section 166.051, RSMo, and
46 distributed to the public schools of this state in the manner provided in section 163.031,
47 RSMo. Such penalties shall not considered charitable for tax purposes.

48 **6. Evidence of prior convictions of false reporting shall be heard by the court, out**
49 **of the hearing of the jury, prior to the submission of the case to the jury, and the court**
50 **shall determine the existence of the prior convictions.**

51 **7. Any residential facility, day program or specialized service operated, funded or**
52 **licensed by the department that prevents or discourages a patient, resident or client,**
53 **employee or other person from reporting that a patient, resident or client of a facility,**
54 **program or service has been abused or neglected shall be subject to loss of their license**
55 **issued pursuant to sections 630.705 to 630.760, and civil fines of up to five thousand dollars**
56 **for each attempt to prevent or discourage reporting.**

565.220. Any person, official or institution complying with the provisions of section
2 **565.218, in the making of a report, or in cooperating with the department in any of its**
3 **activities pursuant to sections 565.216 and 565.218, except any person, official, or**
4 **institution violating section 565.210, 565.212, or 565.214 shall be immune from any civil or**
5 **criminal liability for making such a report, or in cooperating with the department, unless**
6 **such person acted negligently, recklessly, in bad faith, or with malicious purpose.**

 630.005. As used in this chapter and chapters 631, 632, and 633, RSMo, unless the
2 context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than transportation
4 to clients of the department on behalf of a division of the department;

5 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results in intoxication
6 or in a psychological or physiological dependency from continued use, which dependency
7 induces a mental, emotional or physical impairment and which causes socially dysfunctional
8 behavior;

9 (3) "Chemical restraint", medication administered with the primary intent of restraining
10 a patient who presents a likelihood of serious physical injury to himself or others, and not
11 prescribed to treat a person's medical condition;

12 (4) "Client", any person who is placed by the department in a facility or program licensed
13 and funded by the department or who is a recipient of services from a regional center, as defined
14 in section 633.005, RSMo;

15 (5) "Commission", the state mental health commission;

16 (6) "Consumer", a person:

17 (a) Who qualifies to receive department services; or

18 (b) Who is a parent, child or sibling of a person who receives department services; or

19 (c) Who has a personal interest in services provided by the department. A person who
20 provides services to persons affected by mental retardation, developmental disabilities, mental
21 disorders, mental illness, or alcohol or drug abuse shall not be considered a consumer;

22 (7) "Day program", a place conducted or maintained by any person who advertises or
23 holds himself out as providing prevention, evaluation, treatment, habilitation or rehabilitation
24 for persons affected by mental disorders, mental illness, mental retardation, developmental
25 disabilities or alcohol or drug abuse for less than the full twenty-four hours comprising each daily
26 period;

27 (8) "Department", the department of mental health of the state of Missouri;

28 (9) "Developmental disability", a disability:

29 (a) Which is attributable to:

30 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or a learning
31 disability related to a brain dysfunction; or

32 b. Any other mental or physical impairment or combination of mental or physical
33 impairments; and

34 (b) Is manifested before the person attains age twenty-two; and

35 (c) Is likely to continue indefinitely; and

36 (d) Results in substantial functional limitations in two or more of the following areas of
37 major life activities:

38 a. Self-care;

39 b. Receptive and expressive language development and use;

40 c. Learning;

41 d. Self-direction;

42 e. Capacity for independent living or economic self-sufficiency;

43 f. Mobility; and

44 (e) Reflects the person's need for a combination and sequence of special,
45 interdisciplinary, or generic care, habilitation or other services which may be of lifelong or
46 extended duration and are individually planned and coordinated;

47 (10) "Director", the director of the department of mental health, or his designee;

48 (11) "Domiciled in Missouri", a permanent connection between an individual and the
49 state of Missouri, which is more than mere residence in the state; it may be established by the
50 individual being physically present in Missouri with the intention to abandon his previous
51 domicile and to remain in Missouri permanently or indefinitely;

52 (12) "Drug abuse", the use of any drug without compelling medical reason, which use
53 results in a temporary mental, emotional or physical impairment and causes socially
54 dysfunctional behavior, or in psychological or physiological dependency resulting from
55 continued use, which dependency induces a mental, emotional or physical impairment and causes
56 socially dysfunctional behavior;

57 (13) "Habilitation", a process of treatment, training, care or specialized attention which
58 seeks to enhance and maximize the mentally retarded or developmentally disabled person's
59 abilities to cope with the environment and to live as normally as possible;

60 (14) "Habilitation center", a residential facility operated by the department and serving
61 only persons who are mentally retarded, including developmentally disabled;

62 (15) "Head of the facility", the chief administrative officer, or his designee, of any
63 residential facility;

64 (16) "Head of the program", the chief administrative officer, or his designee, of any day
65 program;

66 (17) "Individualized habilitation plan", a document which sets forth habilitation goals
67 and objectives for mentally retarded or developmentally disabled residents and clients, and which
68 details the habilitation program as required by law, rules and funding sources;

69 (18) "Individualized rehabilitation plan", a document which sets forth the care, treatment
70 and rehabilitation goals and objectives for patients and clients affected by alcohol or drug abuse,
71 and which details the rehabilitation program as required by law, rules and funding sources;

72 (19) "Individualized treatment plan", a document which sets forth the care, treatment and
73 rehabilitation goals and objectives for mentally disordered or mentally ill patients and clients,
74 and which details the treatment program as required by law, rules and funding sources;

75 (20) "Investigator", an employee or contract agent of the department of mental health
76 who is performing an investigation regarding an allegation of abuse or neglect or an investigation
77 at the request of the director of the department of mental health or his designee;

78 (21) "Least restrictive environment", a reasonably available setting or mental health
79 program where care, treatment, habilitation or rehabilitation is particularly suited to the level and
80 quality of services necessary to implement a person's individualized treatment, habilitation or
81 rehabilitation plan and to enable the person to maximize his functioning potential to participate
82 as freely as feasible in normal living activities, giving due consideration to potentially harmful
83 effects on the person and the safety of other facility or program clients and public safety. For
84 some mentally disordered or mentally retarded persons, the least restrictive environment may be
85 a facility operated by the department, a private facility, a supported community living situation,
86 or an alternative community program designed for persons who are civilly detained for outpatient
87 treatment or who are conditionally released pursuant to chapter 632, RSMo;

88 (22) "Mental disorder", any organic, mental or emotional impairment which has
89 substantial adverse effects on a person's cognitive, volitional or emotional function and which
90 constitutes a substantial impairment in a person's ability to participate in activities of normal
91 living;

92 (23) "Mental illness", a state of impaired mental processes, which impairment results in
93 a distortion of a person's capacity to recognize reality due to hallucinations, delusions, faulty
94 perceptions or alterations of mood, and interferes with an individual's ability to reason,
95 understand or exercise conscious control over his actions. The term "mental illness" does not
96 include the following conditions unless they are accompanied by a mental illness as otherwise
97 defined in this subdivision:

98 (a) Mental retardation, developmental disability or narcolepsy;

99 (b) Simple intoxication caused by substances such as alcohol or drugs;

100 (c) Dependence upon or addiction to any substances such as alcohol or drugs;

101 (d) Any other disorders such as senility, which are not of an actively psychotic nature;

102 (24) "Mental retardation", significantly subaverage general intellectual functioning
103 which:

104 (a) Originates before age eighteen; and

105 (b) Is associated with a significant impairment in adaptive behavior;

106 (25) "Minor", any person under the age of eighteen years;

107 (26) "Patient", an individual under observation, care, treatment or rehabilitation by any
108 hospital or other mental health facility or mental health program pursuant to the provisions of
109 chapter 632, RSMo;

110 (27) "Psychosurgery",

111 (a) Surgery on the normal brain tissue of an individual not suffering from physical
112 disease for the purpose of changing or controlling behavior; or

113 (b) Surgery on diseased brain tissue of an individual if the sole object of the surgery is
114 to control, change or affect behavioral disturbances, except seizure disorders;

115 (28) "Rehabilitation", a process of restoration of a person's ability to attain or maintain
116 normal or optimum health or constructive activity through care, treatment, training, counseling
117 or specialized attention;

118 (29) "Residence", the place where the patient has last generally lodged prior to admission
119 or, in case of a minor, where his family has so lodged; except, that admission or detention in any
120 facility of the department shall not be deemed an absence from the place of residence and shall
121 not constitute a change in residence;

122 (30) "Resident", a person receiving residential services from a facility, other than mental
123 health facility, operated, funded or licensed by the department;

124 (31) "Residential facility", any premises where residential prevention, evaluation, care,
125 treatment, habilitation or rehabilitation is provided for persons affected by mental disorders,
126 mental illness, mental retardation, developmental disabilities or alcohol or drug abuse; except
127 the person's dwelling;

128 (32) "Specialized service", an entity which provides prevention, evaluation,
129 transportation, care, treatment, habilitation or rehabilitation services to persons affected by
130 mental disorders, mental illness, mental retardation, developmental disabilities or alcohol or drug
131 abuse;

132 (33) "Vendor", a person or entity under contract with the department, other than as a
133 department employee, who provides services to patients, residents or clients;

134 (34) "**Vulnerable person**", any person in the custody, care, or control of the
135 department that is receiving services from an operated, funded, licensed, or certified
136 program.

630.127. 1. The department of mental health shall develop rules, guidelines, and
2 **protocols for an initial notification to a parent or guardian of a patient, resident, or client**
3 **when first entering the care and custody of the department, or when first entering a facility**
4 **licensed, certified, or funded by the department. Such notification shall notify the parent**
5 **or guardian, or a consumer who is his or her own guardian, of the possibility of a person**
6 **being placed in the facility with the patient, resident, or client, who falls in one of the**
7 **following categories:**

8 (1) **Individuals who are required to register as a sexual offender, under sections**
9 **589.400 to 589.425, RSMo; or**

10 (2) **Individuals who have been determined to lack capacity to understand the**
11 **proceedings against him or her or to assist in his or her own defense under section 552.020,**
12 **RSMo, for offenses the person would have otherwise been required to register as a sexual**
13 **offender under sections 589.400 to 589.425, RSMo.**

14 **2. Such rules, guidelines and protocols developed under subsection 1 of this section**
15 **shall include the process and mechanisms for assessing risk, for planning and providing**
16 **care and safety, and for the provision of services and supports necessary to mitigate risk**
17 **for persons residing in a state facility or facility licensed, certified, or funded by the**
18 **department. Such protocols shall also provide a mechanism for the parent or guardian,**
19 **or the consumer who is his or her own guardian, to raise any concerns and to seek**
20 **consultation about the placement.**

21 **3. The department of mental health shall develop rules, guidelines, and protocols**
22 **for notifying a parent or guardian of a patient, resident, or client, or a consumer who is his**
23 **or her own guardian, residing in a state facility or facility licensed, certified, or funded by**
24 **the department, that a person required to register as a sexual offender under sections**
25 **589.400 to 589.425, RSMo, is residing in or has been placed in the same state facility, or**
26 **facility licensed, certified, or funded by the department as the patient, resident, or client.**
27 **Such protocols shall provide a mechanism for the parent or guardian, or the consumer who**

28 is his or her own guardian, to raise any concerns and to seek consultation prior to
29 placement of the person required to register as a sexual offender.

30 **4. The department of mental health shall develop rules, guidelines, and protocols**
31 **to obtain consent from the parent or guardian of a patient, resident, or client, or a**
32 **consumer who is his or her own guardian and who falls under the category in subdivision**
33 **(2) of subsection 1 of this section to disclose his or her name and criminal charges to other**
34 **parents or guardians of a patient, resident, or client, or to a consumer who is his or her**
35 **own guardian residing in the same facility. Such request for disclosure shall inform all**
36 **parties of the steps to be taken in the event consent to disclose is given or denied. Refusal**
37 **to grant consent under this subsection by a parent or guardian of a patient, resident, or**
38 **client, or a consumer who is his or her own guardian, of a facility licensed, certified, or**
39 **funded by the department, shall not prevent placement.**

40 **5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
41 **that is created under the authority delegated in this section shall become effective only if**
42 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
43 **applicable, section 536.028, RSMo.**

630.140. 1. Information and records compiled, obtained, prepared or maintained by the
2 residential facility, day program operated, funded or licensed by the department or otherwise,
3 specialized service, or by any mental health facility or mental health program in which people
4 may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to
5 either voluntary or involuntary patients, residents or clients shall be confidential.

6 2. The facilities or programs shall disclose information and records including medication
7 given, dosage levels, and individual ordering such medication to the following upon their
8 request:

- 9 (1) The parent of a minor patient, resident or client;
- 10 (2) The guardian or other person having legal custody of the patient, resident or client;
- 11 (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an
12 alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as
13 evidenced by court orders of the attorney's appointment;
- 14 (4) An attorney or personal physician as authorized by the patient, resident or client;
- 15 (5) Law enforcement officers and agencies, information about patients, residents or
16 clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out
17 the responsibilities of their office, and all such law enforcement officers shall be obligated to
18 keep such information confidential;
- 19 (6) The entity or agency authorized to implement a system to protect and advocate the
20 rights of persons with developmental disabilities under the provisions of 42 U.S.C. Sections

21 15042 to 15044. The entity or agency shall be able to obtain access to the records of a person
22 with developmental disabilities who is a client of the entity or agency if such person has
23 authorized the entity or agency to have such access; and the records of any person with
24 developmental disabilities who, by reason of mental or physical condition is unable to authorize
25 the entity or agency to have such access, if such person does not have a legal guardian,
26 conservator or other legal representative, and a complaint has been received by the entity or
27 agency with respect to such person or there is probable cause to believe that such person has been
28 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall
29 meet all requirements for confidentiality as set out in this section;

30 (7) The entity or agency authorized to implement a system to protect and advocate the
31 rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to
32 obtain access to the records of a patient, resident or client who by reason of mental or physical
33 condition is unable to authorize the system to have such access, who does not have a legal
34 guardian, conservator or other legal representative and with respect to whom a complaint has
35 been received by the system or there is probable cause to believe that such individual has been
36 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall
37 meet all requirements for confidentiality as set out in this section. The provisions of this
38 subdivision shall apply to a person who has a significant mental illness or impairment as
39 determined by a mental health professional qualified under the laws and regulations of the state;

40 (8) To mental health coordinators, but only to the extent necessary to carry out their
41 duties under chapter 632, RSMo.

42 3. The facilities or services may disclose information and records under any of the
43 following:

44 (1) As authorized by the patient, resident or client;

45 (2) To persons or agencies responsible for providing health care services to such patients,
46 residents or clients;

47 (3) To the extent necessary for a recipient to make a claim or for a claim to be made on
48 behalf of a recipient for aid or insurance;

49 (4) To qualified personnel for the purpose of conducting scientific research, management
50 audits, financial audits, program evaluations or similar studies; provided, that such personnel
51 shall not identify, directly or indirectly, any individual patient, resident or client in any report of
52 such research, audit or evaluation, or otherwise disclose patient, resident or client identities in
53 any manner;

54 (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo,
55 552, RSMo, or 632, RSMo;

56 (6) To law enforcement officers or public health officers, but only to the extent necessary
57 to carry out the responsibilities of their office, and all such law enforcement and public health
58 officers shall be obligated to keep such information confidential;

59 (7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

60 (8) To the attorney representing petitioners, but only to the extent necessary to carry out
61 their duties under chapter 632, RSMo;

62 (9) To the department of social services or the department of health and senior services
63 as necessary to report or have investigated abuse, neglect, or rights violations of patients,
64 residents, or clients;

65 (10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986,
66 but only to the extent necessary to carry out their statutory responsibilities. The county board
67 shall not identify, directly or indirectly, any individual patient, resident or client;

68 (11) To parents, legal guardians, treatment professionals, law enforcement officers, and
69 other individuals who by having such information could mitigate the likelihood of a suicide. The
70 facility treatment team shall have determined that the consumer's safety is at some level of risk.

71 4. The facility or program shall document the dates, nature, purposes and recipients of
72 any records disclosed under this section and sections 630.145 and 630.150.

73 5. The records and files maintained in any court proceeding under chapter 632, RSMo,
74 shall be confidential and available only to the patient, the patient's attorney, guardian, or, in the
75 case of a minor, to a parent or other person having legal custody of the patient, and to the
76 petitioner and the petitioner's attorney, **and to the Missouri state highway patrol for reporting**
77 **to the National Instant Criminal Background Check System (NICS)**. In addition, the court
78 may order the release or use of such records or files only upon good cause shown, and the court
79 may impose such restrictions as the court deems appropriate.

80 6. Nothing contained in this chapter shall limit the rights of discovery in judicial or
81 administrative procedures as otherwise provided for by statute or rule.

82 7. The fact of admission of a voluntary or involuntary patient to a mental health facility
83 under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this
84 section.

**630.163. 1. Any person having reasonable cause to suspect that a vulnerable person
2 presents a likelihood of suffering serious physical harm or is the victim of abuse or neglect
3 shall report such information to the department. Reports of vulnerable person abuse
4 received by the departments of health and senior services and social services shall be
5 forwarded to the department.**

6 2. The report shall be made orally or in writing. It shall include, if known:

7 (1) The name, age, and address of the vulnerable person;

8 (2) **The name and address of any person responsible for the vulnerable person's**
9 **care;**

10 (3) **The nature and extent of the vulnerable person's condition; and**

11 (4) **Other relevant information.**

12 **3. The department shall have primary responsibility for investigating reported**
13 **incidents of abuse and neglect of vulnerable persons.**

14 **4. Reports regarding persons determined not to be vulnerable persons as defined**
15 **in section 630.005 shall be referred to the appropriate state or local authorities.**

16 **5. The department shall collaborate with the departments of health and senior**
17 **services and social services to maintain a statewide toll free phone number for receipt of**
18 **reports.**

 630.165. 1. When any physician, **physician assistant**, dentist, chiropractor, optometrist,
2 podiatrist, intern, **resident**, nurse, **nurse practitioner**, medical examiner, social worker, **licensed**
3 **professional counselor, certified substance abuse counselor**, psychologist, **other health**
4 **practitioner**, minister, Christian Science practitioner, peace officer, pharmacist, physical
5 therapist, facility administrator, nurse's aide or orderly in a residential facility, day program or
6 specialized service operated, funded or licensed by the department or in a mental health facility
7 or mental health program in which people may be admitted on a voluntary basis or are civilly
8 detained pursuant to chapter 632, RSMo, or employee of the [department] **departments of social**
9 **services, mental health, or health and senior services; or home health agency or home**
10 **health agency employee; hospital and clinic personnel engaged in examination, care, or**
11 **treatment of persons; in-home services owner, provider, operator, or employee; law**
12 **enforcement officer, long-term care facility administrator or employee; mental health**
13 **professional, probation or parole officer, or other nonfamilial person with responsibility**
14 **for the care of a patient, resident, or client of a facility, program, or service** has reasonable
15 cause to [believe] **suspect** that a patient, resident or client of a facility, program or service has
16 been [abused or neglected, he or she shall immediately report or cause a report to be made to the
17 department or the department of health and senior services, if such facility or program is licensed
18 pursuant to chapter 197, RSMo] **subjected to abuse or neglect or observes such person being**
19 **subjected to conditions or circumstances that would reasonably result in abuse or neglect,**
20 **he or she shall immediately report or cause a report to be made to the department in**
21 **accordance with section 630.163.**

22 2. [The report shall contain the name and address of the residential facility, day program
23 or specialized service; the name of the patient, resident or client; information regarding the
24 nature of the abuse or neglect; the name of the complainant, and any other information which
25 might be helpful in an investigation] **Any person who knowingly fails to make a report as**

26 required in subsection 1 of this section is guilty of a class A misdemeanor and shall be
27 subject to a fine up to one thousand dollars. Penalties collected for violations of this section
28 shall be transferred to the state school moneys fund as established in section 166.051,
29 RSMo, and distributed to the public schools of this state in the manner provided in section
30 163.031, RSMo. Such penalties shall not considered charitable for tax purposes.

31 3. [Any person required in subsection 1 of this section to report or cause a report to be
32 made to the department who fails to do so within a reasonable time after the act of abuse or
33 neglect is guilty of an infraction] Every person who has been previously convicted of or pled
34 guilty to failing to make a report as required in subsection 1 of this section and who is
35 subsequently convicted of failing to make a report under subsection 2 of this section is
36 guilty of a class D felony and shall be subject to a fine up to five thousand dollars.
37 Penalties collected for violation of this subsection shall be transferred to the state school
38 moneys fund as established in section 166.051, RSMo, and distributed to the public schools
39 of this state in the manner provided in section 163.031, RSMo. Such penalties shall not
40 considered charitable for tax purposes.

41 4. [In addition to those persons required to report under subsection 1 of this section, any
42 other person having reasonable cause to believe that a resident has been abused or neglected may
43 report such information to the department] Any person who knowingly files a false report of
44 vulnerable person abuse or neglect is guilty of a class A misdemeanor and shall be subject
45 to a fine up to one thousand dollars. Penalties collected for violations of this subsection
46 shall be transferred to the state school moneys fund as established in section 166.051,
47 RSMo, and distributed to the public schools of this state in the manner provided in section
48 163.031, RSMo. Such penalties shall not considered charitable for tax purposes.

49 5. [Any person who knowingly files a false report of abuse or neglect is guilty of a class
50 A misdemeanor] Every person who has been previously convicted of or pled guilty to
51 making a false report to the department and who is subsequently convicted of making a
52 false report under subsection 4 of this section is guilty of a class D felony and shall be
53 subject to a fine up to five thousand dollars. Penalties collected for violations of this
54 subsection shall be transferred to the state school moneys fund as established in section
55 166.051, RSMo, and distributed to the public schools of this state in the manner provided
56 in section 163.031, RSMo. Such penalties shall not considered charitable for tax purposes.

57 6. [Any person having a prior conviction of filing false reports and who subsequently
58 files a false report of abuse or neglect pursuant to this section or section 565.188, RSMo, is
59 guilty of a class D felony] Evidence of prior convictions of false reporting shall be heard by
60 the court, out of the hearing of the jury, prior to the submission of the case to the jury, and
61 the court shall determine the existence of the prior convictions.

62 **7. Any residential facility, day program, or specialized service operated, funded,**
63 **or licensed by the department that prevents or discourages a patient, resident, or client,**
64 **employee, or other person from reporting that a patient, resident, or client of a facility,**
65 **program, or service has been abused or neglected shall be subject to loss of their license**
66 **issued pursuant to sections 630.705 to 630.760 and civil fines of up to five thousand dollars**
67 **for each attempt to prevent or discourage reporting.**

630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors
2 or the department of health and senior services, if such facility or program is licensed pursuant
3 to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

4 2. If the investigation indicates possible abuse or neglect of a patient, resident or client,
5 the investigator shall refer the complaint together with the investigator's report to the department
6 director for appropriate action. If, during the investigation or at its completion, the department
7 has reasonable cause to believe that immediate removal from a facility not operated or funded
8 by the department is necessary to protect the residents from abuse or neglect, the department or
9 the local prosecuting attorney may, or the attorney general upon request of the department shall,
10 file a petition for temporary care and protection of the residents in a circuit court of competent
11 jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to
12 issue an ex parte order granting the department authority for the temporary care and protection
13 of the resident for a period not to exceed thirty days.

14 3. (1) **Except as otherwise provided in this section,** reports referred to in section
15 630.165 and the investigative reports referred to in this section shall be confidential, shall not
16 be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo,
17 or chapter 610, RSMo[; except that complete copies of all such reports shall be open and
18 available]. **Investigative reports pertaining to abuse and neglect shall remain confidential**
19 **until a final report is complete, subject to the conditions contained in this section. Final**
20 **reports of substantiated abuse or neglect issued on or after the effective date of this section**
21 **are open and shall be available for release in accordance with chapter 610, RSMo. The**
22 **names and all other identifying information in such final substantiated reports, including**
23 **diagnosis and treatment information about the patient, resident, or client who is the subject**
24 **of such report, shall be confidential and may only be released to the patient, resident, or**
25 **client who has not been adjudged incapacitated under chapter 475, RSMo, the custodial**
26 **parent or guardian parent, or other guardian of the patient, resident or client. The names**
27 **and other descriptive information of the complainant, witnesses, or other persons for**
28 **whom findings are not made against in the final substantiated report shall be confidential**
29 **and not deemed a public record. Final reports of unsubstantiated allegations of abuse and**
30 **neglect shall remain closed records and shall only be released to the parents or other guardian**

31 of the patient, resident, or client who is the subject of such report, **patient, resident, or client**
32 **and the department vendor, provider, agent, or facility where the patient, resident, or**
33 **client was receiving department services at the time of the unsubstantiated allegations of**
34 **abuse and neglect**, but the names and any other descriptive information of the complainant or
35 **any** other person mentioned in the reports shall not be disclosed unless such complainant or
36 person specifically consents to such disclosure. **Requests for final reports of substantiated**
37 **or unsubstantiated abuse or neglect from a patient, resident or client who has not been**
38 **adjudged incapacitated under chapter 475, RSMo, may be denied or withheld if the**
39 **director of the department or his or her designee determines that such release would**
40 **jeopardize the person's therapeutic care, treatment, habilitation, or rehabilitation, or the**
41 **safety of others and provided that the reasons for such denial or withholding are submitted**
42 **in writing to the patient, resident or client who has not been adjudged incapacitated under**
43 **chapter 475, RSMo.** All reports referred to in this section shall be admissible in any judicial
44 proceedings or hearing in accordance with section 36.390, RSMo, or any administrative hearing
45 before the director of the department of mental health, or the director's designee. All such reports
46 may be disclosed by the department of mental health to law enforcement officers and public
47 health officers, but only to the extent necessary to carry out the responsibilities of their offices,
48 and to the department of social services, and the department of health and senior services, and
49 to boards appointed pursuant to sections 205.968 to 205.990, RSMo, that are providing services
50 to the patient, resident or client as necessary to report or have investigated abuse, neglect, or
51 rights violations of patients, residents or clients provided that all such law enforcement officers,
52 public health officers, department of social services' officers, department of health and senior
53 services' officers, and boards shall be obligated to keep such information confidential;

54 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,
55 reports and minutes of committees of health care professionals as defined in section 537.035,
56 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the
57 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health
58 services are privileged and shall not be subject to the discovery, subpoena or other means of legal
59 compulsion for their release to any person or entity or be admissible into evidence into any
60 judicial or administrative action for failure to provide adequate or appropriate care. Such
61 committees may exist, either within department facilities or its agents, contractors, or vendors,
62 as applicable. Except as otherwise provided in this section, no person who was in attendance at
63 any investigation or committee proceeding shall be permitted or required to disclose any
64 information acquired in connection with or in the course of such proceeding or to disclose any
65 opinion, recommendation or evaluation of the committee or board or any member thereof;
66 provided, however, that information otherwise discoverable or admissible from original sources

67 is not to be construed as immune from discovery or use in any proceeding merely because it was
68 presented during proceedings before any committee or in the course of any investigation, nor is
69 any member, employee or agent of such committee or other person appearing before it to be
70 prevented from testifying as to matters within their personal knowledge and in accordance with
71 the other provisions of this section, but such witness cannot be questioned about the testimony
72 or other proceedings before any investigation or before any committee;

73 (3) Nothing in this section shall limit authority otherwise provided by law of a health
74 care licensing board of the state of Missouri to obtain information by subpoena or other
75 authorized process from investigation committees or to require disclosure of otherwise
76 confidential information relating to matters and investigations within the jurisdiction of such
77 health care licensing boards; provided, however, that such information, once obtained by such
78 board and associated persons, shall be governed in accordance with the provisions of this
79 subsection;

80 (4) Nothing in this section shall limit authority otherwise provided by law in
81 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the
82 entity or agency authorized to implement a system to protect and advocate the rights of persons
83 with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and
84 the entity or agency authorized to implement a system to protect and advocate the rights of
85 persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this
86 section shall serve to negate assurances that have been given by the governor of Missouri to the
87 U.S. Administration on Developmental Disabilities, Office of Human Development Services,
88 Department of Health and Human Services concerning access to records by the agency
89 designated as the protection and advocacy system for the state of Missouri. However, such
90 information, once obtained by such entity or agency, shall be governed in accordance with the
91 provisions of this subsection.

92 4. Anyone who makes a report pursuant to this section or who testifies in any
93 administrative or judicial proceeding arising from the report shall be immune from any civil
94 liability for making such a report or for testifying unless such person acted in bad faith or with
95 malicious purpose.

96 5. Within five working days after a report required to be made pursuant to this section
97 is received, the person making the report shall be notified in writing of its receipt and of the
98 initiation of the investigation.

99 6. No person who directs or exercises any authority in a residential facility, day program
100 or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client
101 or employee because he or she or any member of his or her family has made a report of any

102 violation or suspected violation of laws, ordinances or regulations applying to the facility which
103 he or she has reasonable cause to believe has been committed or has occurred.

104 7. Any person who is discharged as a result of an administrative substantiation of
105 allegations contained in a report of abuse or neglect may, after exhausting administrative
106 remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county
107 in which such person resides within ninety days of such final administrative decision. The court
108 may accept an appeal up to twenty-four months after the party filing the appeal received notice
109 of the department's determination, upon a showing that:

110 (1) Good cause exists for the untimely commencement of the request for the review;

111 (2) If the opportunity to appeal is not granted it will adversely affect the party's
112 opportunity for employment; and

113 (3) There is no other adequate remedy at law.

630.725. 1. The department shall revoke a license or deny an application for a license
2 in any case in which it finds a substantial failure to comply with the standards established under
3 its rules or the requirements established under sections 630.705 to 630.760.

4 2. Any person aggrieved by the action of the department to deny or revoke a license
5 under the provisions of sections 630.705 to 630.760 may seek a determination of the department
6 director's decision by the administrative hearing commission pursuant to the provisions of
7 section 621.045, RSMo. It shall not be a condition to such determination that the person
8 aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the
9 department.

10 3. The administrative hearing commission may stay the revocation of such license,
11 pending the commission's finding and determination in the cause, upon such conditions as the
12 commission deems necessary and appropriate including the posting of bond or other security
13 except that the commission shall not grant a stay or if a stay has already been entered shall set
14 aside its stay, if upon application of the department the commission finds reason to believe that
15 continued operation of a residential facility or day program pending the commission's final
16 determination would present an imminent danger to the health, safety or welfare of any resident
17 or a substantial probability that death or serious physical harm would result. In any case in which
18 the department has refused to issue a license, the commission shall have no authority to stay or
19 to require the issuance of a license pending final determination by the commission.

20 4. The administrative hearing commission shall make the final decision as to the
21 issuance or revocation of a license. Any person aggrieved by a final decision of the
22 administrative hearing commission, including the department, may seek judicial review of such
23 decision by filing a petition for review in the court of appeals for the district in which the facility

24 or program is located. Review shall be had, except as modified herein, in accordance with the
25 provisions of sections 621.189 and 621.193, RSMo.

26 **5. The department of mental health shall notify the department of health and senior**
27 **services within ten days of revoking a license under this section. If the department of**
28 **health and senior services has not already done so, the department of health and senior**
29 **services shall within thirty days of notification from the department of mental health,**
30 **initiate an investigation of the facility to determine whether licensure action under sections**
31 **198.022 or 198.036, RSMo, is appropriate.**

630.755. 1. An action may be brought by the department, or by the attorney general on
2 his own volition or at the request of the department or any other appropriate state agency, to
3 temporarily or permanently enjoin or restrain any violation of sections 630.705 to 630.760, to
4 enjoin the acceptance of new residents until substantial compliance with sections 630.705 to
5 630.760 is achieved, or to enjoin any specific action or practice of the residential facility or day
6 program. Any action brought under the provisions of this section shall be placed at the head of
7 the docket by the court and the court shall hold a hearing on any action brought under the
8 provisions of this section no less than fifteen days after the filing of the action.

9 2. Any facility or program which has received a notice of noncompliance as provided
10 by sections 630.745 to 630.750 is liable to the state for civil penalties of up to [one hundred] **ten**
11 **thousand** dollars for each day that noncompliance continues after the notice of noncompliance
12 is received. The attorney general shall, upon the request of the department, bring an action in
13 a circuit court of competent jurisdiction to recover the civil penalty. The court shall have the
14 authority to determine the amount of civil penalty to be assessed **within the limits set out in this**
15 **section. Appeals may be taken from the judgment of the circuit court as in other civil**
16 **cases.**

17 **3. The imposition of any remedy provided for in sections 630.705 to 630.760 shall**
18 **not bar the imposition of any other remedy.**

19 **4. Penalties collected for violations of this section shall be transferred to the state**
20 **schools moneys established under section 166.051, RSMo. Such penalties shall not be**
21 **considered a charitable contribution for tax purposes.**

22 **5. To recover any civil penalty, the moving party shall prove by a preponderance**
23 **of the evidence that the violation occurred.**

630.925. 1. The director of the department shall establish a mental health fatality
2 **review panel to review deaths of all adults in the care and custody of the department. The**
3 **panel shall be formed and shall operate according to the rules, guidelines, and protocols**
4 **provided by the department of mental health.**

5 **2. The panel shall include, but shall not be limited to, the following:**

- 6 (1) A prosecuting or circuit attorney;
- 7 (2) A coroner or medical examiner;
- 8 (3) Law enforcement personnel;
- 9 (4) A representative from the departments of mental health, social services, health
10 and senior services, and public safety;
- 11 (5) A representative of the Missouri Protection and Advocacy.

12 **3. The director of the department of mental health shall organize the panel and**
13 **shall call the first organizational meeting of the panel. The panel shall elect a chairman**
14 **who shall convene the panel to meet at least quarterly to review all suspicious deaths of**
15 **patients, residents, or clients who are in the care and custody of the department of mental**
16 **health, which meet guidelines for review as set forth by the department of mental health.**
17 **In addition, the panel may review at its own discretion any death reported to it by the**
18 **medical examiner, coroner, or a parent or legal representative of a client in the care and**
19 **custody of the department, even if it does not meet criteria for review as set forth by the**
20 **department. The panel shall issue a final report, which shall be a public record, of each**
21 **investigation to the department of mental health. The final report shall include a**
22 **completed summary report form. The form shall be developed by the director of the**
23 **department of mental health. The department of mental health shall analyze the mental**
24 **health fatality review panel reports and periodically prepare epidemiological reports which**
25 **describe the incidence, causes, location, and other factors. The department of mental**
26 **health shall make recommendations and develop programs to prevent patient, resident, or**
27 **client injuries and deaths.**

28 **4. For purposes of this section, "suspicious death" shall include but not be limited**
29 **to when the following occurs:**

- 30 (1) A crime is involved;
- 31 (2) An accident has occurred;
- 32 (3) A medical prognosis has not been ascertained; or
- 33 (4) A person has died unexpectedly.

34 **5. The mental health fatality review panel shall enjoy such official immunity as**
35 **exists at common law.**

630.927. 1. The director of the department of mental health shall promulgate rules,
2 **guidelines, and protocols for the mental health fatality review panel established pursuant**
3 **to section 630.925.**

4 **2. The director shall promulgate guidelines and protocols for coroner and medical**
5 **examiners to use to help them to identify suspicious deaths of patients, residents, or clients**
6 **in the care and custody of the department of mental health.**

7 **3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
8 **that is created under the authority delegated in this section shall become effective only if**
9 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
10 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
11 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
12 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
13 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
14 **adopted after August 28, 2007, shall be invalid and void.**

15 **4. All meetings conducted, all reports and records made and maintained pursuant**
16 **to sections 630.925 and 630.927 by the department of mental health, or other appropriate**
17 **persons, officials, or state mental health fatality review panel shall be confidential and shall**
18 **not be open to the general public except for the annual report pursuant to section 630.925.**

630.950. Any department employee or employee of a residential facility, day
2 **program, or specialized service operated, funded, or licensed by the department who**
3 **reports on or discusses employee job performance for the purposes of making employment**
4 **decisions that affect the safety of consumers and who does so in good faith and without**
5 **malice shall not be subject to an action for civil damages as a result thereof, and no cause**
6 **of action shall arise against him or her as a result of his or her conduct pursuant to this**
7 **section. The attorney general shall defend such persons in any such action or proceeding.**

630.975. 1. The director of the department of mental health shall promulgate rules,
2 **guidelines and protocols for hospitals and physicians to use to help them to identify**
3 **suspicious deaths of patients, residents, or clients in the care and custody of the department**
4 **of mental health.**

5 **2. Any hospital, physician, medical professional, mental health professional, or**
6 **department of mental health facility shall disclose upon request all records, medical or**
7 **social, of any client in the care and custody of the department of mental health who has**
8 **died to the mental health fatality review panel established under section 630.925 to**
9 **investigate the person's death. Any legally recognized privileged communication, except**
10 **that between attorney and client, shall not apply to situations involving the death of a client**
11 **in the care and custody of the department of mental health.**

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