

FIRST REGULAR SESSION

HOUSE BILL NO. 934

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRANZ.

Read 1st time February 21, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2079L.011

AN ACT

To repeal sections 210.152, 210.153, and 210.183, RSMo, and to enact in lieu thereof two new sections relating to child abuse and neglect investigations.

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

Section A. Sections 210.152, 210.153, and 210.183, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 210.152 and 210.183, to read as follows:

210.152. 1. All identifying information, including telephone reports reported pursuant to section 210.145, relating to reports of abuse or neglect received by the division shall be retained by the division and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying information shall be retained by the division;

(2) (a) For investigation reports initiated against a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report by a person required to report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(b) For investigation reports, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report, identifying

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.

15 information shall be expunged by the division within forty-five days from the conclusion of the
16 investigation;

17 (c) For investigation reports initiated by a person required to report under section
18 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying
19 information shall be retained for five years from the conclusion of the investigation. For all other
20 investigation reports where insufficient evidence of abuse or neglect is found by the division,
21 identifying information shall be retained for two years from the conclusion of the investigation.
22 Such reports shall include any exculpatory evidence known by the division, including
23 exculpatory evidence obtained after the closing of the case. At the end of such time period, the
24 identifying information shall be removed from the records of the division and destroyed;

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

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

30 2. Within ninety days after receipt of a report of abuse or neglect that is investigated, the
31 alleged perpetrator named in the report and the parents of the child named in the report, if the
32 alleged perpetrator is not a parent, shall be notified in writing **mailed to his or her last known**
33 **address** of any determination made by the division based on the investigation. The notice shall
34 advise either:

35 (1) That the division has determined by a probable cause finding prior to August 28,
36 2004, or by a preponderance of the evidence after August 28, 2004, that abuse or neglect exists
37 and that the division shall retain all identifying information regarding the abuse or neglect; that
38 such information shall remain confidential and will not be released except to law enforcement
39 agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged
40 perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's
41 determination through a review by [the child abuse and neglect review board] **the director of**
42 **the department or the director's designee** as provided in subsection [3] **6** of this section; or

43 (2) That the division has not made a probable cause finding or determined by a
44 preponderance of the evidence that abuse or neglect exists.

45 3. **If no reply has been received within sixty days of mailing the notice, the**
46 **department may include the name of such person in the central registry.**

47 4. Any person named in an investigation as a perpetrator who is aggrieved by a
48 determination of abuse or neglect by the division as provided in this section may seek an
49 administrative review [by the child abuse and neglect review board pursuant to the provisions
50 of section 210.153]. **If the person so notified wishes to challenge the allegation, such person**

51 **may file an application for a hearing with the department. The department shall set the**
52 **matter for hearing, or the department shall notify the applicant that, after review, the**
53 **allegation has been held to be unfounded and the person's name will not be listed in the**
54 **central registry.** Such request for review shall be made within sixty days of notification of the
55 division's decision under this section. In those cases where criminal charges arising out of facts
56 of the investigation are pending, the request for review shall be made within sixty days from the
57 court's final disposition or dismissal of the charges. **Findings of child abuse and neglect by**
58 **the division which are substantiated by court adjudication shall not be granted an**
59 **administrative hearing and the person's name shall be included in the central registry.**

60 **5. If a person's name is included in the central registry without notice by the**
61 **department, such person may file a request with the department for removal of the name**
62 **or for a hearing. Within thirty days after receipt of the request, the department shall either**
63 **remove the name from the list or grant a hearing.**

64 [4.] **6. In any such action for administrative review, the [child abuse and neglect review**
65 **board] director of the department or the director's designee shall sustain the division's**
66 **determination if such determination was supported by evidence of probable cause prior to August**
67 **28, 2004, or is supported by a preponderance of the evidence after August 28, 2004, and is not**
68 **against the weight of such evidence. The child abuse and neglect review board hearing shall be**
69 **closed to all persons except the parties, their attorneys and those persons providing testimony on**
70 **behalf of the parties. Any hearing shall be conducted in the county of the person's residence**
71 **by the director of the department or the director's designee. The provisions of chapter 536,**
72 **RSMo, for a contested case, except those provisions or amendments which are in conflict**
73 **with this section, shall apply to and govern the proceedings contained in this section and**
74 **the rights and duties of the parties involved. The person appealing such an action shall be**
75 **entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to**
76 **the allegations.**

77 **7. Upon the record made at the hearing, the director of the department or the**
78 **director's designee shall determine all questions presented and shall determine whether the**
79 **person shall be listed in the central registry. The director of the department or the**
80 **director's designee shall clearly state the reasons for his or her decision and shall include**
81 **a statement of findings of fact and conclusions of law pertinent to the questions in issue.**

82 [5.] **8. If the alleged perpetrator is aggrieved by the decision of the [child abuse and**
83 **neglect review board] director of the department or the director's designee, the alleged**
84 **perpetrator may seek [de novo] judicial review [in the circuit court in the county in which the**
85 **alleged perpetrator resides and in circuits with split venue, in the venue in which the alleged**
86 **perpetrator resides, or in Cole County. If the alleged perpetrator is not a resident of the state,**

87 proper venue shall be in Cole County] **under section 536.100, RSMo.** The case may be
88 assigned to the family court division where such a division has been established. [The request
89 for a judicial review shall be made within sixty days of notification of the decision of the child
90 abuse and neglect review board decision. In reviewing such decisions, the circuit court shall
91 provide the alleged perpetrator the opportunity to appear and present testimony. The alleged
92 perpetrator may subpoena any witnesses except the alleged victim or the reporter. However, the
93 circuit court shall have the discretion to allow the parties to submit the case upon a stipulated
94 record.] **If the person fails to appeal the director's findings, those findings shall constitute**
95 **a final determination that the person shall be placed in the central registry.**

96 [6.] **9.** In any such action for administrative review, the [child abuse and neglect review
97 board] **director of the department or the director's designee** shall notify the child or the
98 parent, guardian or legal representative of the child that a review has been requested.

210.183. 1. At the time of the initial investigation of a report of child abuse or neglect,
2 the division employee conducting the investigation shall provide the alleged perpetrator with a
3 written description of the investigation process. Such written notice shall be given substantially
4 in the following form:

5 "The investigation is being undertaken by the Children's Division pursuant to the
6 requirements of chapter 210 of the Revised Missouri Statutes in response to a report of child
7 abuse or neglect.

8 The identity of the person who reported the incident of abuse or neglect is confidential
9 and may not even be known to the Division since the report could have been made anonymously.

10 This investigation is required by law to be conducted in order to enable the Children's
11 Division to identify incidents of abuse or neglect in order to provide protective or preventive
12 social services to families who are in need of such services.

13 The division shall make every reasonable attempt to complete the investigation within
14 thirty days. Within ninety days you will receive a letter from the Division which will inform you
15 of one of the following:

16 (1) That the Division has found insufficient evidence of abuse or neglect; or

17 (2) That there appears to be by a preponderance of the evidence reason to suspect the
18 existence of child abuse or neglect in the judgment of the Division and that the Division will
19 contact the family to offer social services.

20 If the Division finds by a preponderance of the evidence reason to believe child abuse or
21 neglect has occurred or the case is substantiated by court adjudication, a record of the report and
22 information gathered during the investigation will remain on file with the Division.

23 If you disagree with the determination of the Division and feel that there is insufficient
24 reason to believe by a preponderance of the evidence that abuse or neglect has occurred, you

25 have a right to request an administrative review at which time you may hire an attorney to
26 represent you. If you request an administrative review on the issue, you will be notified of the
27 date and time of your administrative review hearing by the [child abuse and neglect review
28 board] **director of the department or the director's designee**. If the Division's decision is
29 reversed by the [child abuse and neglect review board] **director of the department or the**
30 **director's designee**, the Division records concerning the report and investigation will be updated
31 to reflect such finding. If the [child abuse and neglect review board] **director of the department**
32 **or the director's designee** upholds the Division's decision, an appeal may be filed in circuit
33 court [within sixty days of the child abuse and neglect review board's decision] **under section**
34 **536.100, RSMo."**

35 2. If the division uses the family assessment approach, the division shall at the time of
36 the initial contact provide the parent of the child with the following information:

- 37 (1) The purpose of the contact with the family;
38 (2) The name of the person responding and his or her office telephone number;
39 (3) The assessment process to be followed during the division's intervention with the
40 family including the possible services available and expectations of the family.

2 [210.153. 1. There is hereby created in the department of social services
3 the "Child Abuse and Neglect Review Board", which shall provide an
4 independent review of child abuse and neglect determinations in instances in
5 which the alleged perpetrator is aggrieved by the decision of the children's
6 division. The division may establish more than one board to assure timely review
7 of the determination.

8 2. The board shall consist of nine members, who shall be appointed by
9 the governor with the advice and consent of the senate, and shall include:

- 10 (1) A physician, nurse or other medical professional;
11 (2) A licensed child or family psychologist, counselor or social worker;
12 (3) An attorney who has acted as a guardian ad litem or other attorney
13 who has represented a subject of a child abuse and neglect report;
14 (4) A representative from law enforcement or a juvenile office.

15 3. Other members of the board may be selected from:

- 16 (1) A person from another profession or field who has an interest in child
17 abuse or neglect;
18 (2) A college or university professor or elementary or secondary teacher;
19 (3) A child advocate;
20 (4) A parent, foster parent or grandparent.

21 4. The following persons may participate in a child abuse and neglect
22 review board review:

- 23 (1) Appropriate children's division staff and legal counsel for the
department;

24 (2) The alleged perpetrator, who may be represented pro se or be
25 represented by legal counsel. The alleged perpetrator's presence is not required
26 for the review to be conducted. The alleged perpetrator may submit a written
27 statement for the board's consideration in lieu of personal appearance; and

28 (3) Witnesses providing information on behalf of the child, the alleged
29 perpetrator or the department. Witnesses shall only be allowed to attend that
30 portion of the review in which they are presenting information.

31 5. The members of the board shall serve without compensation, but shall
32 receive reimbursement for reasonable and necessary expenses actually incurred
33 in the performance of their duties.

34 6. All records and information compiled, obtained, prepared or
35 maintained by the child abuse and neglect review board in the course of any
36 review shall be confidential information.

37 7. The department shall promulgate rules and regulations governing the
38 operation of the child abuse and neglect review board except as otherwise
39 provided for in this section. These rules and regulations shall, at a minimum,
40 describe the length of terms, the selection of the chairperson, confidentiality,
41 notification of parties and time frames for the completion of the review.

42 8. Findings of probable cause to suspect prior to August 28, 2004, or
43 findings by a preponderance of the evidence after August 28, 2004, of child abuse
44 and neglect by the division which are substantiated by court adjudication shall not
45 be heard by the child abuse and neglect review board.]

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