

SECOND REGULAR SESSION

# HOUSE BILL NO. 1795

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES POLLOCK (Sponsor), SMITH (150), WELLS, EMERY, FAITH, WALLACE, LOEHNER, PORTWOOD, DENISON, FRANZ, SANDER, WOOD, BROWN (30), NIEVES, CUNNINGHAM (86), DAVIS, KELLY, MAY, SATER, ONDER, FUNDERBURK, PEARCE, JONES (89), SCHAD, COOPER (155), FLOOK, RUZICKA, STREAM, WRIGHT AND COX (Co-sponsors).

Read 1st time January 23, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4545L.011

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### AN ACT

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

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

Section A. Sections 210.145 and 568.045, RSMo, are repealed and three new sections  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

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

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

13 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 meaning  
53 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 a child involved in a pending investigation dies, the investigation shall remain open  
130 until the division's investigation surrounding the death is completed. If the investigation is not  
131 completed within thirty days, the information system shall be updated at regular intervals and  
132 upon the completion of the investigation. The information in the information system shall be  
133 updated to reflect any subsequent findings, including any changes to the findings based on an  
134 administrative or judicial hearing on the matter.

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

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

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

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

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

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

166           19. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
167 is created under the authority delegated in this section shall become effective only if it complies  
168 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
169 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
170 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
171 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the  
172 grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be  
173 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.

23       3. Any health care provider who has reason to believe that a pregnant woman has  
24 used any of the drugs listed in subdivision (4) or (5) of subsection 1 of this section may  
25 make a report to the appropriate law enforcement agency.

      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.

9       3. Any health care provider who has reason to believe that a pregnant woman has  
10 used any of the drugs listed in subsection 1 of this section may make a report to the  
11 appropriate law enforcement agency.

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