

FIRST REGULAR SESSION

HOUSE BILL NO. 1012

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CORCORAN (Sponsor),
SPRENG AND SCHIEFFER (Co-sponsors).

2322L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 198, RSMo, by adding thereto one new section relating to background checks for long-term care residents.

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

Section A. Chapter 198, RSMo, is amended by adding thereto one new section, to be known as section 198.084, to read as follows:

- 198.084. 1. Every long-term care facility licensed under this chapter shall, within twenty-four hours after admission, request a criminal history background check for all persons eighteen years of age or older seeking admission to the facility. The facility shall initiate a fingerprint-based background check, unless such background check is waived by the department of health and senior services based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by department rule. A waiver issued under this section shall be valid only while the resident is immobile or while the criteria supporting the waiver exists.**
- 2. By January 1, 2010, every long-term care facility licensed in this state shall request a criminal history background check for all persons who are residents of a long-term care facility on the effective date of this section, unless such background check is waived by the department of health and senior services based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by department rule.**

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.

16 A waiver issued under this section shall be valid only while the resident is immobile or
17 while the criteria supporting the waiver exists.

18 3. Each facility shall provide for or arrange for any fingerprint-based background
19 checks required under this section to be taken on the premises of the facility. The costs
20 associated with such background checks shall be paid for by the resident. If a fingerprint-
21 based background check is required, the facility shall arrange for such check to be
22 conducted in a manner that is respectful of the resident's dignity and that minimizes any
23 emotional or physical hardship to the resident.

24 4. For any fingerprint-based background check required under this section, the
25 facility shall obtain two sets of fingerprints from the resident. One set of fingerprints shall
26 be used by the highway patrol to search the criminal history repository and the second set
27 shall be forwarded to the Federal Bureau of Investigation for searching the federal
28 criminal history files.

29 5. If the results of a resident's criminal history background check reveal that the
30 resident is a sexual offender, the facility shall immediately electronically forward the
31 resident's name and criminal history information to the department of health and senior
32 services. The department shall keep a continuing record of all residents determined to be
33 sexual offenders and shall report the number of sexual offender residents annually to the
34 general assembly.

35 6. (1) Upon receipt of a report from a facility under subsection 5 of this section, the
36 department shall immediately commence a criminal history analysis, which shall be
37 completed as soon as practicable, but not later than fourteen days after receiving a report.

38 (2) The criminal history analysis shall include, but not be limited to, all of the
39 following:

40 (a) Consultation with the sexual offender's assigned parole or probation officer, if
41 applicable;

42 (b) Consultation with the relevant prosecuting attorney's office;

43 (c) A review of the statement of facts, police reports, and victim impact statements,
44 if available;

45 (d) An interview with the sexual offender;

46 (e) Consultation with the facility administrator or medical director, or both,
47 regarding the physical condition of the sexual offender;

48 (f) Consideration of the entire criminal history of the sexual offender, including the
49 date of the sexual offender's last conviction relative to the date of admission to a long-term
50 care facility; and

51 (g) If the resident is a registered sexual offender, a review of any and all sexual
52 offender evaluations shall be conducted on such sexual offender. If there is no sexual
53 offender evaluation available, the department shall provide for a sexual offender
54 evaluation to be conducted on the resident. If the registered sexual offender is under
55 supervision by the department of corrections or a county probation department, the sexual
56 offender evaluation shall be arranged by and at the expense of the supervising agency.

57 (3) The department shall prepare a criminal history analysis report based on the
58 analysis conducted under subdivision (2) of this subsection. The report shall include a
59 summary of the risk analysis and shall detail whether and to what extent the resident's
60 criminal history necessitates the implementation of security measures within the long-term
61 care facility. If the resident is a registered sexual offender or if the department's criminal
62 history analysis reveals that the resident poses a significant risk of harm to others within
63 the facility, the resident shall be required to have his or her own room within the facility.

64 (4) The department's criminal history analysis report shall promptly be provided
65 to the following:

- 66 (a) The long-term care facility within which the sexual offender resides;
- 67 (b) The chief of police of the municipality in which the facility is located; and
- 68 (c) The state ombudsman for long-term care residents.

69 (5) If, based on the criminal history analysis report, a facility determines that the
70 facility cannot manage the sexual offender resident safely within the facility, the facility
71 shall take appropriate actions to transfer or discharge the sexual offender resident.

72 (6) Except for willful and wanton misconduct, any person authorized to participate
73 in the development of a criminal history analysis or criminal history analysis report is
74 immune from criminal or civil liability for any acts or omissions as the result of his or her
75 good faith effort to comply with this section.

76 7. Every facility shall provide to every prospective and current resident and such
77 resident's guardian, and to every facility employee, a written notice, prescribed by the
78 department, advising the resident, guardian, or employee of his or her right to ask whether
79 any residents of the facility are sexual offenders. The notice shall also be prominently
80 posted within every licenced facility. The notice shall include a statement that information
81 regarding registered sexual offenders may be obtained from the Missouri state highway
82 patrol web site and that information regarding persons serving terms of parole or
83 mandatory supervised release may be obtained from the Missouri department of
84 corrections web site.

85 8. The department may promulgate rules that are necessary to implement the
86 provisions of this section. Any rule or portion of a rule, as that term is defined in section

87 **536.010, RSMo, that is created under the authority delegated in this section shall become**
88 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
89 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
90 **nonseverable and if any of the powers vested with the general assembly pursuant to**
91 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
92 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
93 **rule proposed or adopted after August 28, 2009, shall be invalid and void.**

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