

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 229
97TH GENERAL ASSEMBLY

1110H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the mental health employment disqualification registry.

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

Section A. Section 630.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 630.170, to read as follows:

630.170. 1. A person who is listed on the department of mental health disqualification registry pursuant to this section, who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, or who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any crime pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632.

2. A person who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to **any felony offense as defined in chapter 195**; any felony offense against persons as defined in chapter 565; any felony [sexual] offense as defined in chapter 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, **568.175**, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, [or] 569.160, **570.030, 570.040, 570.090, 570.145, 570.223, 575.230, or 576.080**, or of an equivalent felony offense **in another state, or an equivalent federal felony offense, or an equivalent offense under the Uniform Code of**

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.

18 **Military Justice**, or who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo
19 contendere to any violation of subsection 3 of section 198.070, or has been [convicted] **found**
20 **guilty** of or [pled] **pleaded** guilty or nolo contendere to any offense requiring registration under
21 section 589.400, **or any employee hired after January 1, 2014, who has been found guilty**
22 **of or pleaded guilty or nolo contendere to a violation of section 577.010 or section 577.012**
23 **and who is alleged and found by the court to be an aggravated or chronic offender under**
24 **section 577.023**, shall be disqualified from holding any direct-care position in any public or
25 private facility, day program, residential facility or specialized service operated, licensed,
26 certified, accredited, in possession of deemed status, or funded by the department or any mental
27 health facility or mental health program in which people are admitted on a voluntary basis or are
28 civilly detained pursuant to chapter 632.

29 3. A person who has received a suspended imposition of sentence or a suspended
30 execution of sentence following a plea of guilty to any of the disqualifying crimes listed in
31 subsection 1 or 2 of this section shall remain disqualified.

32 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section
33 may seek an exception to the disqualification from the director of the department or the director's
34 designee, **especially if the person is in recovery and the disqualifying felony offense was**
35 **alcohol or drug related**. The request shall be written and may not be made more than once
36 every six months. The request may be granted by the director or designee if in the judgment of
37 the director or designee a clear showing has been made by written submission only, that the
38 person will not commit any additional acts for which the person had originally been disqualified
39 for or any other acts that would be harmful to a patient, resident or client of a facility, program
40 or service. The director or designee may grant an exception subject to any conditions deemed
41 appropriate and failure to comply with such terms may result in the person again being
42 disqualified. Any person placed on the disqualification registry prior to August 28, 2012, may
43 be removed from the registry by the director or designee if in the judgment of the director or
44 designee a clear showing has been made, by written submission only, that the person will not
45 commit any additional acts for which the person had originally been disqualified for or any other
46 acts that would be harmful to a patient, resident, or client of a facility, program, or service.
47 Decisions by the director or designee pursuant to the provisions of this subsection shall not be
48 subject to appeal. The right to request an exception pursuant to this subsection shall not apply
49 to persons who are disqualified due to being listed on the department of social services or
50 department of health and senior services employee disqualification list pursuant to section
51 660.315, nor to persons disqualified from employment due to any crime pursuant to the
52 provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

53 5. An applicant for a position in any public or private facility, day program, residential

54 facility, or specialized service operated, licensed, certified, accredited, in possession of deemed
55 status, or funded by the department or any mental health facility or mental health program in
56 which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632
57 shall:

58 (1) Sign a consent form as required by section 43.540 to provide written consent for a
59 criminal record review;

60 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
61 "criminal history" includes any suspended imposition of sentence, any suspended execution of
62 sentence, or any period of probation or parole; and

63 (3) Disclose if the applicant is listed on the employee disqualification list as provided
64 in section 660.315, or the department of mental health disqualification registry as provided for
65 in this section.

66 6. Any person who has received a good cause waiver issued by the department of health
67 and senior services or its predecessor under subsection [9] 10 of section 660.317 shall not require
68 an additional exception under this section in order to be employed in a long-term care facility
69 licensed under chapter 198.

70 7. Any public or private residential facility, day program, or specialized service operated,
71 licensed, certified, accredited, in possession of deemed status, or funded by the department or
72 any mental health facility or mental health program in which people are admitted on a voluntary
73 basis or are civilly detained pursuant to chapter 632 shall, not later than two working days after
74 hiring any person for a full-time, part-time, or temporary position that will have contact with
75 clients, residents, or patients:

76 (1) Request a criminal background check as provided in section 43.540;

77 (2) Make an inquiry to the department of social services and department of health and
78 senior services to determine whether the person is listed on the employee disqualification list as
79 provided in section 660.315; and

80 (3) Make an inquiry to the department of mental health to determine whether the person
81 is listed on the disqualification registry as provided in this section.

82 8. An applicant who knowingly fails to disclose his or her criminal history as required
83 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
84 A misdemeanor if the provider hires a person to hold a direct-care position knowing that such
85 person has been disqualified pursuant to the provisions of subsection 2 of this section. A
86 provider is guilty of a class A misdemeanor if the provider hires a person to hold any position
87 knowing that such person has been disqualified pursuant to the provisions of subsection 1 of this
88 section.

89 9. Any public or private residential facility, day program, or specialized service operated,
90 licensed, certified, accredited, in possession of deemed status or funded by the department or any
91 mental health facility or mental health program in which people are admitted on a voluntary basis
92 or are civilly detained pursuant to chapter 632 that declines to employ or discharges a person
93 who is disqualified pursuant to the provisions of subsection 1 or 2 of this section shall be
94 immune from suit by that person or anyone else acting for or in behalf of that person for the
95 failure to employ or for the discharge of the person due to disqualification.

96 10. Any employer who is required to discharge an employee because the employee was
97 placed on a disqualification registry maintained by the department of mental health after the date
98 of hire shall not be charged for unemployment insurance benefits based on wages paid to the
99 employee for work prior to the date of discharge pursuant to section 288.100.

100 11. The department shall maintain a disqualification registry and place on the registry
101 the names of any persons who have been finally determined by the department to be disqualified
102 based upon administrative substantiations made against them for abuse or neglect pursuant to
103 department rule or regulation. Such list shall reflect that the person is barred from holding any
104 position in any public or private facility, day program, residential facility, or specialized service
105 operated, licensed, certified, accredited, in possession of deemed status, or funded by the
106 department, or any mental health facility or mental health program in which persons are admitted
107 on a voluntary basis or are civilly detained pursuant to chapter 632. The length of time the
108 person's name shall appear on the disqualification registry shall be determined by the director or
109 the director's designee, based upon the criteria contained in subsection 13 of this section.

110 12. Persons notified that their name will be placed on the disqualification registry may
111 appeal such determination pursuant to department rule or regulation. If the person appeals, the
112 hearing tribunal shall not modify the length of time the person's name shall appear on the
113 disqualification registry if the hearing tribunal upholds all of the administrative substantiations
114 made by the director or the director's designee. If the hearing tribunal overturns part of the
115 administrative substantiations made by the director or the director's designee, the hearing tribunal
116 may consider modifying the length of time the person's name shall appear on the disqualification
117 registry based upon testimony and evidence received during the hearing.

118 13. The length of time the person's name shall appear on the disqualification registry
119 shall be determined by the director or the director's designee based upon the following:

- 120 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
121 (2) The degree of actual or potential injury or harm to the patient, resident, or client;
122 (3) The degree of actual or potential danger to the health, safety, or welfare of the patient,
123 resident, or client;

124 (4) The degree of misappropriation or conversion of patient, resident, or client funds or
125 property;

126 (5) Whether the person has previously been listed on the department's disqualification
127 registry;

128 (6) Any mitigating circumstances; and

129 (7) Any aggravating circumstances.

130 14. The department shall provide the disqualification registry maintained pursuant to this
131 section to other state and federal agencies upon request. The department may provide the
132 disqualification registry maintained pursuant to this section to any public or private facility, day
133 program, residential facility, or specialized service operated, licensed, certified, accredited, in
134 possession of deemed status, or funded by the department or to any mental health facility or
135 mental health program in which people are admitted on a voluntary or involuntary basis or are
136 civilly detained pursuant to chapter 632. The department may also provide the disqualification
137 registry to a recognized school of nursing, medicine, or other health profession for the purpose
138 of determining whether students scheduled to participate in clinical rotations are included in the
139 employee disqualification registry.

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