

SECOND REGULAR SESSION

# HOUSE BILL NO. 1691

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BARNES.

5476L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 160.261, RSMo, and to enact in lieu thereof one new section relating to the reporting of student abuse, with penalty provisions.

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

Section A. Section 160.261, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 160.261, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to all teachers at the attendance center and, in addition, to other school district employees with a need to know. For the purposes of this chapter or chapter 167, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As

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 used in this section, the phrase "act of school violence" or "violent behavior" means the exertion  
19 of physical force by a student with the intent to do serious physical injury as defined in  
20 subdivision (6) of section 565.002 to another person while on school property, including a school  
21 bus in service on behalf of the district, or while involved in school activities. The policy shall  
22 at a minimum require school administrators to report, as soon as reasonably practical, to the  
23 appropriate law enforcement agency any of the following crimes, or any act which if committed  
24 by an adult would be one of the following crimes:

- 25 (1) First degree murder under section 565.020;
- 26 (2) Second degree murder under section 565.021;
- 27 (3) Kidnapping under section 565.110;
- 28 (4) First degree assault under section 565.050;
- 29 (5) Rape in the first degree under section 566.030;
- 30 (6) Sodomy in the first degree under section 566.060;
- 31 (7) Burglary in the first degree under section 569.160;
- 32 (8) Burglary in the second degree under section 569.170;
- 33 (9) Robbery in the first degree under section 569.020;
- 34 (10) Distribution of drugs under section 195.211;
- 35 (11) Distribution of drugs to a minor under section 195.212;
- 36 (12) Arson in the first degree under section 569.040;
- 37 (13) Voluntary manslaughter under section 565.023;
- 38 (14) Involuntary manslaughter under section 565.024;
- 39 (15) Second degree assault under section 565.060;
- 40 (16) Rape in the second degree under section 566.031;
- 41 (17) Felonious restraint under section 565.120;
- 42 (18) Property damage in the first degree under section 569.100;
- 43 (19) The possession of a weapon under chapter 571;
- 44 (20) Child molestation in the first degree pursuant to section 566.067;
- 45 (21) Sodomy in the second degree pursuant to section 566.061;
- 46 (22) Sexual misconduct involving a child pursuant to section 566.083;
- 47 (23) Sexual abuse in the first degree pursuant to section 566.100;
- 48 (24) Harassment under section 565.090; or
- 49 (25) Stalking under section 565.225;

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51 committed on school property, including but not limited to actions on any school bus in service  
52 on behalf of the district or while involved in school activities. The policy shall require that any  
53 portion of a student's individualized education program that is related to demonstrated or

54 potentially violent behavior shall be provided to any teacher and other school district employees  
55 who are directly responsible for the student's education or who otherwise interact with the  
56 student on an educational basis while acting within the scope of their assigned duties. The policy  
57 shall also contain the consequences of failure to obey standards of conduct set by the local board  
58 of education, and the importance of the standards to the maintenance of an atmosphere where  
59 orderly learning is possible and encouraged.

60 3. The policy shall provide that any student who is on suspension for any of the offenses  
61 listed in subsection 2 of this section or any act of violence or drug-related activity defined by  
62 school district policy as a serious violation of school discipline pursuant to subsection 9 of this  
63 section shall have as a condition of his or her suspension the requirement that such student is not  
64 allowed, while on such suspension, to be within one thousand feet of any school property in the  
65 school district where such student attended school or any activity of that district, regardless of  
66 whether or not the activity takes place on district property unless:

67 (1) Such student is under the direct supervision of the student's parent, legal guardian,  
68 or custodian and the superintendent or the superintendent's designee has authorized the student  
69 to be on school property;

70 (2) Such student is under the direct supervision of another adult designated by the  
71 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
72 which suspended the student and the superintendent or the superintendent's designee has  
73 authorized the student to be on school property;

74 (3) Such student is enrolled in and attending an alternative school that is located within  
75 one thousand feet of a public school in the school district where such student attended school;  
76 or

77 (4) Such student resides within one thousand feet of any public school in the school  
78 district where such student attended school in which case such student may be on the property  
79 of his or her residence without direct adult supervision.

80 4. Any student who violates the condition of suspension required pursuant to subsection  
81 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of  
82 sections 167.161, 167.164, and 167.171. In making this determination consideration shall be  
83 given to whether the student poses a threat to the safety of any child or school employee and  
84 whether such student's unsupervised presence within one thousand feet of the school is disruptive  
85 to the educational process or undermines the effectiveness of the school's disciplinary policy.  
86 Removal of any pupil who is a student with a disability is subject to state and federal procedural  
87 rights. This section shall not limit a school district's ability to:

88 (1) Prohibit all students who are suspended from being on school property or attending  
89 an activity while on suspension;

90 (2) Discipline students for off-campus conduct that negatively affects the educational  
91 environment to the extent allowed by law.

92 5. The policy shall provide for a suspension for a period of not less than one year, or  
93 expulsion, for a student who is determined to have brought a weapon to school, including but  
94 not limited to the school playground or the school parking lot, brought a weapon on a school bus  
95 or brought a weapon to a school activity whether on or off of the school property in violation of  
96 district policy, except that:

97 (1) The superintendent or, in a school district with no high school, the principal of the  
98 school which such child attends may modify such suspension on a case-by-case basis; and

99 (2) This section shall not prevent the school district from providing educational services  
100 in an alternative setting to a student suspended under the provisions of this section.

101 6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
102 under 18 U.S.C. 921 and the following items, as defined in section 571.010: a blackjack, a  
103 concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
104 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
105 knife; except that this section shall not be construed to prohibit a school board from adopting a  
106 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
107 educational purposes so long as the firearm is unloaded. The local board of education shall  
108 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
109 subsection but may also include other weapons.

110 7. All school district personnel responsible for the care and supervision of students are  
111 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any  
112 property of the school, on any school bus going to or returning from school, during  
113 school-sponsored activities, or during intermission or recess periods.

114 8. Teachers and other authorized district personnel in public schools responsible for the  
115 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable  
116 care by the school district, shall not be civilly liable when acting in conformity with the  
117 established policies developed by each board, including but not limited to policies of student  
118 discipline or when reporting to his or her supervisor or other person as mandated by state law  
119 acts of school violence or threatened acts of school violence, within the course and scope of the  
120 duties of the teacher, authorized district personnel or volunteer, when such individual is acting  
121 in conformity with the established policies developed by the board. Nothing in this section shall  
122 be construed to create a new cause of action against such school district, or to relieve the school  
123 district from liability for the negligent acts of such persons.

124 9. Each school board shall define in its discipline policy acts of violence and any other  
125 acts that constitute a serious violation of that policy. "Acts of violence" as defined by school

boards shall include but not be limited to exertion of physical force by a student with the intent to do serious bodily harm to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. School districts shall for each student enrolled in the school district compile and maintain records of any serious violation of the district's discipline policy. Such records shall be made available to teachers and other school district employees with a need to know while acting within the scope of their assigned duties, and shall be provided as required in section 167.020 to any school district in which the student subsequently attempts to enroll.

10. Spanking, when administered by certificated personnel and in the presence of a witness who is an employee of the school district, or the use of reasonable force to protect persons or property, when administered by personnel of a school district in a reasonable manner in accordance with the local board of education's written policy of discipline, is not abuse within the meaning of chapter 210. [The provisions of sections 210.110 to 210.165 notwithstanding, the children's division shall not have jurisdiction over or investigate any report of alleged child abuse arising out of or related to the use of reasonable force to protect persons or property when administered by personnel of a school district or any spanking administered in a reasonable manner by any certificated school personnel in the presence of a witness who is an employee of the school district pursuant to a written policy of discipline established by the board of education of the school district, as long as no allegation of sexual misconduct arises from the spanking or use of force.]

11. If a student reports alleged sexual [misconduct] **abuse** on the part of a teacher or other school employee to a person employed in a school facility who is required to report such [misconduct] **abuse** to the children's division under section 210.115, such person and the superintendent of the school district shall report the allegation to the children's division as set forth in section 210.115. [Reports made to the children's division under this subsection shall be investigated by the division in accordance with the provisions of sections 210.145 to 210.153 and shall not be investigated by the school district under subsections 12 to 20 of this section for purposes of determining whether the allegations should or should not be substantiated.] The district may investigate the allegations for the purpose of making any decision regarding the employment of the accused employee.

12. [Upon receipt of any reports of child abuse by the children's division other than reports provided under subsection 11 of this section, pursuant to sections 210.110 to 210.165 which allegedly involve personnel of a school district, the children's division shall notify the superintendent of schools of the district or, if the person named in the alleged incident is the superintendent of schools, the president of the school board of the school district where the alleged incident occurred.

13. If, after an initial investigation, the superintendent of schools or the president of the school board finds that the report involves an alleged incident of child abuse other than the administration of a spanking by certificated school personnel or the use of reasonable force to protect persons or property when administered by school personnel pursuant to a written policy of discipline or that the report was made for the sole purpose of harassing a public school employee, the superintendent of schools or the president of the school board shall immediately refer the matter back to the children's division and take no further action. In all matters referred back to the children's division, the division shall treat the report in the same manner as other reports of alleged child abuse received by the division.

14. If the report pertains to an alleged incident which arose out of or is related to a spanking administered by certificated personnel or the use of reasonable force to protect persons or property when administered by personnel of a school district pursuant to a written policy of discipline or a report made for the sole purpose of harassing a public school employee, a notification of the reported child abuse shall be sent by the superintendent of schools or the president of the school board to the law enforcement in the county in which the alleged incident occurred.

15. The report shall be jointly investigated by the law enforcement officer and the superintendent of schools or, if the subject of the report is the superintendent of schools, by a law enforcement officer and the president of the school board or such president's designee.

16. The investigation shall begin no later than forty-eight hours after notification from the children's division is received, and shall consist of, but need not be limited to, interviewing and recording statements of the child and the child's parents or guardian within two working days after the start of the investigation, of the school district personnel allegedly involved in the report, and of any witnesses to the alleged incident.

17. The law enforcement officer and the investigating school district personnel shall issue separate reports of their findings and recommendations after the conclusion of the investigation to the school board of the school district within seven days after receiving notice from the children's division.

18. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated.

19. The school board shall consider the separate reports referred to in subsection 17 of this section and shall issue its findings and conclusions and the action to be taken, if any, within seven days after receiving the last of the two reports. The findings and conclusions shall be made in substantially the following form:

(1) The report of the alleged child abuse is unsubstantiated. The law enforcement officer and the investigating school board personnel agree that there was not a preponderance of evidence to substantiate that abuse occurred;

(2) The report of the alleged child abuse is substantiated. The law enforcement officer and the investigating school district personnel agree that the preponderance of evidence is sufficient to support a finding that the alleged incident of child abuse did occur;

(3) The issue involved in the alleged incident of child abuse is unresolved. The law enforcement officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

20. The findings and conclusions of the school board under subsection 19 of this section shall be sent to the children's division. If the findings and conclusions of the school board are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the children's division central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the children's division shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school district and shall include the information in the division's central registry. If the findings and conclusions of the school board are that the issue involved in the alleged incident of child abuse is unresolved, the children's division shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school board, however, the incident and the names of the parties allegedly involved shall not be entered into the central registry of the children's division unless and until the alleged child abuse is substantiated by a court of competent jurisdiction.

21.] Any superintendent of schools, president of a school board or such person's designee or law enforcement officer who knowingly falsifies any report of any matter pursuant to this section or who knowingly withholds any information relative to any investigation or report pursuant to this section is guilty of a class A misdemeanor.

[22.] **13.** In order to ensure the safety of all students, should a student be expelled for bringing a weapon to school, violent behavior, or for an act of school violence, that student shall not, for the purposes of the accreditation process of the Missouri school improvement plan, be considered a dropout or be included in the calculation of that district's educational persistence ratio.

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