

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 177

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0132H.01P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.152 and 610.021, RSMo, and to enact in lieu thereof four new sections relating to public access to records.

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

Section A. Sections 210.152 and 610.021, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 37.717, 210.152, 479.162, and 610.021, to read as follows:

37.717. 1. The office shall create a safety reporting system in which employees of the children's division may report information regarding the safety of those served by the children's division and the safety of such division's employees.

2. The identity of any individual who reports to or participates in the reporting system under subsection 1 of this section shall:

(1) Be sealed from inspection by the public or any other entity or individual who is otherwise provided access to the department of social services' confidential records;

(2) Not be subject to discovery or introduction into evidence in any civil proceeding; and

(3) Be disclosed only as necessary to carry out the purpose of the reporting system under subsection 1 of this section.

3. Any criminal act reported into the reporting system under subsection 1 of this section shall be disclosed by the office of child advocate to the appropriate law enforcement agency or prosecuting or city attorney.

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 **4. Any investigation conducted as a result of a report made under this section shall**
16 **be conducted by an unbiased and disinterested investigator.**

210.152. 1. All information, including telephone reports reported pursuant to section
2 210.145, relating to reports of abuse or neglect received by the division shall be retained by the
3 division or removed from the records of the division as follows:

4 (1) For investigation reports contained in the central registry, the report and all
5 information shall be retained by the division;

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

12 (b) For investigation reports, where insufficient evidence of abuse or neglect is found
13 by the division and where the division determines the allegation of abuse or neglect was made
14 maliciously, for purposes of harassment, or in retaliation for the filing of a report, identifying
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 ten 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 five 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 (d) For investigation reports where the identification of the specific perpetrator or
26 perpetrators cannot be substantiated and the division has specific evidence to determine that a
27 child was abused or neglected, the division shall retain the report and all information but shall
28 not place an unknown perpetrator on the central registry. The division shall retain all
29 information. The division shall retain and disclose information and findings in the same manner
30 as the division retains and discloses family assessments. If the division made a finding of abuse
31 or neglect against an unknown perpetrator prior to August 28, 2017, the division shall remove
32 the unknown perpetrator from the central registry but shall retain and utilize all information as
33 otherwise provided in this section;

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

36 (4) For reports in which the division is unable to locate the child alleged to have been
37 abused or neglected, information shall be retained for eighteen years from the date of the report
38 and then shall be removed from the records by the division.

39 2. Within ninety days, or within one hundred twenty days in cases involving sexual
40 abuse, or until the division's investigation is complete in cases involving a child fatality or near-
41 fatality, after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator
42 named in the report and the parents of the child named in the report, if the alleged perpetrator is
43 not a parent, shall be notified in writing of any determination made by the division based on the
44 investigation. The notice shall advise either:

45 (1) That the division has determined by a probable cause finding prior to August 28,
46 2004, or by a preponderance of the evidence after August 28, 2004, that abuse or neglect exists
47 and that the division shall retain all information regarding the abuse or neglect; that such
48 information shall remain confidential and will not be released except to law enforcement
49 agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged
50 perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's
51 determination through a review by the child abuse and neglect review board as provided in
52 subsection 4 of this section;

53 (2) That the division has not made a probable cause finding or determined by a
54 preponderance of the evidence that abuse or neglect exists; or

55 (3) The division has been unable to determine the identity of the perpetrator of the abuse
56 or neglect. The notice shall also inform the child's parents and legal guardian that the division
57 shall retain, utilize, and disclose all information and findings as provided in family assessment
58 and services cases.

59 3. The children's division may reopen a case for review if new, specific, and credible
60 evidence is obtained.

61 4. Any person named in an investigation as a perpetrator who is aggrieved by a
62 determination of abuse or neglect by the division as provided in this section may seek an
63 administrative review by the child abuse and neglect review board pursuant to the provisions of
64 section 210.153. Such request for review shall be made within sixty days of notification of the
65 division's decision under this section. In those cases where criminal charges arising out of facts
66 of the investigation are pending, the request for review shall be made within sixty days from the
67 court's final disposition or dismissal of the charges. **Nothing in this section shall preclude the**
68 **office of child advocate from releasing findings regarding the professional performance of**
69 **any individual member of the multidisciplinary team as described in section 660.520.**

70 5. In any such action for administrative review, the child abuse and neglect review board
71 shall sustain the division's determination if such determination was supported by evidence of
72 probable cause prior to August 28, 2004, or is supported by a preponderance of the evidence after
73 August 28, 2004, and is not against the weight of such evidence. The child abuse and neglect
74 review board hearing shall be closed to all persons except the parties, their attorneys and those
75 persons providing testimony on behalf of the parties.

76 6. If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect
77 review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the
78 county in which the alleged perpetrator resides and in circuits with split venue, in the venue in
79 which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a
80 resident of the state, proper venue shall be in Cole County. The case may be assigned to the
81 family court division where such a division has been established. The request for a judicial
82 review shall be made within sixty days of notification of the decision of the child abuse and
83 neglect review board decision. In reviewing such decisions, the circuit court shall provide the
84 alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may
85 subpoena any witnesses except the alleged victim or the reporter. However, the circuit court
86 shall have the discretion to allow the parties to submit the case upon a stipulated record.

87 7. In any such action for administrative review, the child abuse and neglect review board
88 shall notify the child or the parent, guardian or legal representative of the child that a review has
89 been requested.

**479.162. Notwithstanding any provision of law, supreme court rule, or court
2 operating rule, in a proceeding for a municipal ordinance violation or any other proceeding
3 before a municipal court if the charge carries the possibility of fifteen days or more in jail
4 or confinement, a defendant shall not be charged any fee for obtaining a police report, a
5 probable cause statement, or any video relevant to the traffic stop or arrest. Such police
6 report, probable cause statement, or video shall be provided by the prosecutor upon
7 written request by the defendant for discovery.**

610.021. Except to the extent disclosure is otherwise required by law, a public
2 governmental body is authorized to close meetings, records and votes, to the extent they relate
3 to the following:

4 (1) Legal actions, causes of action or litigation involving a public governmental body
5 and any confidential or privileged communications between a public governmental body or its
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating
7 to legal actions, causes of action or litigation involving a public governmental body or any agent
8 or entity representing its interests or acting on its behalf or with its authority, including any
9 insurance company acting on behalf of a public government body as its insured, shall be made

10 public upon final disposition of the matter voted upon or upon the signing by the parties of the
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the
13 action clearly outweighs the public policy considerations of section 610.011, however, the
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote
16 shall be announced or become public immediately following the action on the motion to
17 authorize institution of such a legal action. Legal work product shall be considered a closed
18 record;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where public
20 knowledge of the transaction might adversely affect the legal consideration therefor. However,
21 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
22 of real estate by a public governmental body shall be made public upon execution of the lease,
23 purchase or sale of the real estate;

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public
25 governmental body when personal information about the employee is discussed or recorded.
26 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,
27 promote or discipline an employee of a public governmental body shall be made available with
28 a record of how each member voted to the public within seventy-two hours of the close of the
29 meeting where such action occurs; provided, however, that any employee so affected shall be
30 entitled to prompt notice of such decision during the seventy-two-hour period before such
31 decision is made available to the public. As used in this subdivision, the term "personal
32 information" means information relating to the performance or merit of individual employees;

33 (4) The state militia or national guard or any part thereof;

34 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
35 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
36 treatment;

37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
38 records of individual test or examination scores; however, personally identifiable student records
39 maintained by public educational institutions shall be open for inspection by the parents,
40 guardian or other custodian of students under the age of eighteen years and by the parents,
41 guardian or other custodian and the student if the student is over the age of eighteen years;

42 (7) Testing and examination materials, before the test or examination is given or, if it
43 is to be given again, before so given again;

44 (8) Welfare cases of identifiable individuals;

- 45 (9) Preparation, including any discussions or work product, on behalf of a public
46 governmental body or its representatives for negotiations with employee groups;
- 47 (10) Software codes for electronic data processing and documentation thereof;
- 48 (11) Specifications for competitive bidding, until either the specifications are officially
49 approved by the public governmental body or the specifications are published for bid;
- 50 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals
51 and related documents or any documents related to a negotiated contract until a contract is
52 executed, or all proposals are rejected;
- 53 (13) Individually identifiable personnel records, performance ratings or records
54 pertaining to employees or applicants for employment, except that this exemption shall not apply
55 to the names, positions, salaries and lengths of service of officers and employees of public
56 agencies once they are employed as such, and the names of private sources donating or
57 contributing money to the salary of a chancellor or president at all public colleges and
58 universities in the state of Missouri and the amount of money contributed by the source;
- 59 (14) Records which are protected from disclosure by law;
- 60 (15) Meetings and public records relating to scientific and technological innovations in
61 which the owner has a proprietary interest;
- 62 (16) Records relating to municipal hotlines established for the reporting of abuse and
63 wrongdoing;
- 64 (17) Confidential or privileged communications between a public governmental body
65 and its auditor, including all auditor work product; however, all final audit reports issued by the
66 auditor are to be considered open records pursuant to this chapter;
- 67 (18) Operational guidelines, policies and specific response plans developed, adopted, or
68 maintained by any public agency responsible for law enforcement, public safety, first response,
69 or public health for use in responding to or preventing any critical incident which is or appears
70 to be terrorist in nature and which has the potential to endanger individual or public safety or
71 health. Financial records related to the procurement of or expenditures relating to operational
72 guidelines, policies or plans purchased with public funds shall be open. When seeking to close
73 information pursuant to this exception, the public governmental body shall affirmatively state
74 in writing that disclosure would impair the public governmental body's ability to protect the
75 security or safety of persons or real property, and shall in the same writing state that the public
76 interest in nondisclosure outweighs the public interest in disclosure of the records;
- 77 (19) Existing or proposed security systems **or procedures** and structural plans of real
78 property owned or leased by a public governmental body **including, but not limited to,**
79 **evacuation and lockdown procedures for the buildings on such real property,** and
80 information that is voluntarily submitted by a nonpublic entity owning or operating an

81 infrastructure to any public governmental body for use by that body to devise plans for protection
82 of that infrastructure **including, but not limited to, software or surveillance companies that**
83 **secure access to such buildings**, the public disclosure of which would threaten public safety:

84 (a) Records related to the procurement of or expenditures relating to security systems
85 purchased with public funds shall be open;

86 (b) When seeking to close information pursuant to this exception, the public
87 governmental body shall affirmatively state in writing that disclosure would impair the public
88 governmental body's ability to protect the security or safety of persons or real property, and shall
89 in the same writing state that the public interest in nondisclosure outweighs the public interest
90 in disclosure of the records;

91 (c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the
92 receiving agency within ninety days of submission to determine if retention of the document is
93 necessary in furtherance of a state security interest. If retention is not necessary, the documents
94 shall be returned to the nonpublic governmental body or destroyed;

95 (20) The portion of a record that identifies security systems or access codes or
96 authorization codes for security systems of real property;

97 (21) Records that identify the configuration of components or the operation of a
98 computer, computer system, computer network, or telecommunications network, and would
99 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
100 network, or telecommunications network of a public governmental body. This exception shall
101 not be used to limit or deny access to otherwise public records in a file, document, data file or
102 database containing public records. Records related to the procurement of or expenditures
103 relating to such computer, computer system, computer network, or telecommunications network,
104 including the amount of moneys paid by, or on behalf of, a public governmental body for such
105 computer, computer system, computer network, or telecommunications network shall be open;

106 (22) Credit card numbers, personal identification numbers, digital certificates, physical
107 and virtual keys, access codes or authorization codes that are used to protect the security of
108 electronic transactions between a public governmental body and a person or entity doing business
109 with a public governmental body. Nothing in this section shall be deemed to close the record
110 of a person or entity using a credit card held in the name of a public governmental body or any
111 record of a transaction made by a person using a credit card or other method of payment for
112 which reimbursement is made by a public governmental body;

113 (23) Records submitted by an individual, corporation, or other business entity to a public
114 institution of higher education in connection with a proposal to license intellectual property or
115 perform sponsored research and which contains sales projections or other business plan
116 information the disclosure of which may endanger the competitiveness of a business; ~~and~~

117 (24) Records relating to foster home or kinship placements of children in foster care
118 under section 210.498; and

119 (25) Individually identifiable customer usage and billing records for customers of
120 a municipally owned utility unless the records are requested by the customer or authorized
121 for release by the customer, except that a municipally owned utility shall make available
122 to the public the customer's name, billing address, location of service, and dates of service
123 provided for any commercial service account.

124 (26) Email addresses and telephone numbers submitted to a public governmental
125 body by individuals or entities for the sole purpose of receiving electronic or other
126 communications limited to newsletters, notifications, advisories, alerts, and periodic
127 reports.

✓