

FIRST REGULAR SESSION

# HOUSE BILL NO. 562

## 102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAULS.

0907H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 210.152 and 610.021, RSMo, and to enact in lieu thereof three 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Section A. Sections 210.152 and 610.021, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 37.717, 210.152, and 610.021, to read as follows: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.**

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

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.

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

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

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

(b) For investigation reports, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment, or in retaliation for the filing of a report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(c) For investigation reports initiated by a person required to report under section 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for ten years from the conclusion of the investigation. For all other investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for five years from the conclusion of the investigation. Such reports shall include any exculpatory evidence known by the division, including exculpatory evidence obtained after the closing of the case. At the end of such time period, the identifying information shall be removed from the records of the division and destroyed;

(d) For investigation reports where the identification of the specific perpetrator or perpetrators cannot be substantiated and the division has specific evidence to determine that a child was abused or neglected, the division shall retain the report and all information but shall not place an unknown perpetrator on the central registry. The division shall retain all information. The division shall retain and disclose information and findings in the same manner as the division retains and discloses family assessments. If the division made a finding of abuse or neglect against an unknown perpetrator prior to August 28, 2017, the division shall remove the unknown perpetrator from the central registry but shall retain and utilize all information as otherwise provided in this section;

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

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

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

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

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

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

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

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

72 5. In any such action for administrative review, the child abuse and neglect review  
73 board shall sustain the division's determination if such determination was supported by

74 evidence of probable cause prior to August 28, 2004, or is supported by a preponderance of  
75 the evidence after August 28, 2004, and is not against the weight of such evidence. The child  
76 abuse and neglect review board hearing shall be closed to all persons except the parties, their  
77 attorneys and those persons providing testimony on behalf of the parties.

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

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

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  
6 its representatives and its attorneys. However, any minutes, vote or settlement agreement  
7 relating to legal actions, causes of action or litigation involving a public governmental body  
8 or any agent or entity representing its interests or acting on its behalf or with its authority,  
9 including any insurance company acting on behalf of a public government body as its insured,  
10 shall be made public upon final disposition of the matter voted upon or upon the signing by  
11 the parties of the settlement agreement, unless, prior to final disposition, the settlement  
12 agreement is ordered closed by a court after a written finding that the adverse impact to a  
13 plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of  
14 section 610.011, however, the amount of any moneys paid by, or on behalf of, the public  
15 governmental body shall be disclosed; provided, however, in matters involving the exercise of  
16 the power of eminent domain, the vote shall be announced or become public immediately  
17 following the action on the motion to authorize institution of such a legal action. Legal work  
18 product shall be considered a closed record;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where  
20 public knowledge of the transaction might adversely affect the legal consideration therefor.  
21 However, any minutes, vote or public record approving a contract relating to the leasing,  
22 purchase or sale of real estate by a public governmental body shall be made public upon  
23 execution of the lease, 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,  
27 fire, promote or discipline an employee of a public governmental body shall be made  
28 available with a record of how each member voted to the public within seventy-two hours of  
29 the close of the meeting where such action occurs; provided, however, that any employee so  
30 affected shall be entitled to prompt notice of such decision during the seventy-two-hour  
31 period before such decision is made available to the public. As used in this subdivision, the  
32 term "personal information" means information relating to the performance or merit of  
33 individual employees;

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

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

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

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

46 (8) Welfare cases of identifiable individuals;

47 (9) Preparation, including any discussions or work product, on behalf of a public  
48 governmental body or its representatives for negotiations with employee groups;

49 (10) Software codes for electronic data processing and documentation thereof;

50 (11) Specifications for competitive bidding, until either the specifications are  
51 officially approved by the public governmental body or the specifications are published for  
52 bid;

53 (12) Sealed bids and related documents, until the bids are opened; and sealed  
54 proposals and related documents or any documents related to a negotiated contract until a  
55 contract is executed, or all proposals are rejected;

56 (13) Individually identifiable personnel records, performance ratings or records  
57 pertaining to employees or applicants for employment, except that this exemption shall not  
58 apply to the names, positions, salaries and lengths of service of officers and employees of  
59 public agencies once they are employed as such, and the names of private sources donating or  
60 contributing money to the salary of a chancellor or president at all public colleges and  
61 universities in the state of Missouri and the amount of money contributed by the source;

62 (14) Records which are protected from disclosure by law;

63 (15) Meetings and public records relating to scientific and technological innovations  
64 in which the owner has a proprietary interest;

65 (16) Records relating to municipal hotlines established for the reporting of abuse and  
66 wrongdoing;

67 (17) Confidential or privileged communications between a public governmental body  
68 and its auditor, including all auditor work product; however, all final audit reports issued by  
69 the auditor are to be considered open records pursuant to this chapter;

70 (18) Operational guidelines, policies and specific response plans developed, adopted,  
71 or maintained by any public agency responsible for law enforcement, public safety, first  
72 response, or public health for use in responding to or preventing any critical incident which is  
73 or appears to be terrorist in nature and which has the potential to endanger individual or  
74 public safety or health. Financial records related to the procurement of or expenditures  
75 relating to operational guidelines, policies or plans purchased with public funds shall be open.  
76 When seeking to close information pursuant to this exception, the public governmental body  
77 shall affirmatively state in writing that disclosure would impair the public governmental  
78 body's ability to protect the security or safety of persons or real property, and shall in the same  
79 writing state that the public interest in nondisclosure outweighs the public interest in  
80 disclosure of the records;

81 (19) Existing or proposed security systems **or procedures** and structural plans of real  
82 property owned or leased by a public governmental body **including, but not limited to,**  
83 **evacuation and lockdown procedures for the buildings on such real property,** and  
84 information that is voluntarily submitted by a nonpublic entity owning or operating an  
85 infrastructure to any public governmental body for use by that body to devise plans for  
86 protection of that infrastructure **including, but not limited to, software or surveillance**  
87 **companies that secure access to such buildings,** the public disclosure of which would  
88 threaten public safety:

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

91 (b) When seeking to close information pursuant to this exception, the public  
92 governmental body shall affirmatively state in writing that disclosure would impair the public

93 governmental body's ability to protect the security or safety of persons or real property, and  
94 shall in the same writing state that the public interest in nondisclosure outweighs the public  
95 interest in disclosure of the records;

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

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

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

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

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

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

126 (25) Individually identifiable customer usage and billing records for customers of a  
127 municipally owned utility, unless the records are requested by the customer or authorized for  
128 release by the customer, except that a municipally owned utility shall make available to the

129 public the customer's name, billing address, location of service, and dates of service provided  
130 for any commercial service account; **and**

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

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