

FIRST REGULAR SESSION

# HOUSE BILL NO. 737

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHMIDT.

1974H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal sections 210.560, 211.221, 568.060, and 578.421, RSMo, and to enact in lieu thereof four new sections relating to the protection of children, with penalty provisions.

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

Section A. Sections 210.560, 211.221, 568.060, and 578.421, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 210.560, 211.221, 568.060, and 578.421, to read as follows:

210.560. 1. As used in this section, the following terms shall mean:

(1) "Child", any child placed in the legal custody of the division under chapter 211;

(2) "Division", the children's division of the department of social services of the state of Missouri;

(3) "Money", any legal tender, note, draft, certificate of deposit, stocks, bond or check;

(4) "Unmet needs", needs for which the division is not required by law to provide financial support, such as:

(a) Tuition, tutoring, and training, including application fees, books, equipment, and testing;

(b) Transportation to and from work, training, education, or to maintain family connections;

(c) Housing expenses if the child is preparing to leave the custody of the division for reasons relating to the child's age; and

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           **(d) Technology, special clothing needs, instruments, books, and other equipment**  
16 **relating to the child's hobbies and interests;**

17           **(5)** "Vested right", a legal right that is more than a mere expectancy and may be  
18 reduced to a present monetary value.

19           2. The child, the child's parents, any fiduciary or any representative payee holding or  
20 receiving money that are vested rights solely for or on behalf of a child are jointly and  
21 severally liable for funds expended by the division to or on behalf of the child. The liability  
22 of any person, except a parent of the child, shall be limited to the money received in his or her  
23 fiduciary or representative capacity. The Missouri state government shall not require a trustee  
24 or a financial institution acting as a trustee to exercise any discretionary powers in the  
25 operation of a trust.

26           3. **(1)** The division may accept an appointment to serve as representative payee or  
27 fiduciary, or in a similar capacity for payments to a child under any public or private benefit  
28 arrangement. Money so received shall be governed by this section to the extent that laws and  
29 regulations governing payment of such benefits provide otherwise.

30           **(2) In the case of benefits administered by the Railroad Retirement Board, the**  
31 **Social Security Administration, or the Veterans Administration, the division shall**  
32 **determine whether the child is receiving or otherwise eligible to receive such benefits**  
33 **within sixty days after the child is placed in the division's custody. If the division**  
34 **determines that the child is eligible or may be eligible for the benefits, the division shall**  
35 **apply for the benefits on behalf of the child. If the child is already receiving the benefits**  
36 **before being placed in the division's custody or if the division applies for the benefits on**  
37 **behalf of the child, the division shall identify, in consultation with the child and the**  
38 **child's legal representative, a representative payee in accordance with 20 CFR 404.2021**  
39 **and 20 CFR 416.621 and shall apply to become the representative payee only if no other**  
40 **suitable candidate is available. The division shall annually review if someone other than**  
41 **the division is available, if in the best interests of the child, to apply to assume the role of**  
42 **representative payee.**

43           **(3) The division shall annually review cases of children in the division's custody**  
44 **to determine whether a child may have become eligible for benefits after the division's**  
45 **initial assessment.**

46           4. Any money received by the division on behalf of a child shall be accounted for in  
47 the name of the child. Any money in the account of a child ~~may~~ **shall not** be expended by  
48 the division for care or services for the child **including, but not limited to, foster care**  
49 **maintenance expenses, as defined in 42 U.S.C. Section 675(4)(A), and any special**  
50 **allowances or expenses established by the division for the care of children in the**  
51 **division's custody, for a child of a similar age; provided, however, that the division may**

52 **use the benefits administered by the Railroad Retirement Board, the Social Security**  
53 **Administration, or the Veterans Administration for the child's unmet needs beyond**  
54 **what the division is obligated, required, or agrees to pay.** The division shall by rule  
55 adopted under chapter 536 establish procedures for the accounting of the money and the  
56 protection of the money against theft, loss or misappropriation.

57 5. The division shall deposit money with a financial institution. Any earnings  
58 attributable to the money in the account of a child shall be credited to that child's account.  
59 The division shall receive bids from banking corporations, associations or trust companies  
60 which desire to be selected as depositories of children's moneys for the division. **The child's**  
61 **account shall be established in a manner consistent with federal and state asset and**  
62 **resource limits and may include a special-needs trust, a pooled special-needs trust, an**  
63 **ABLE account as defined in section 209.600, or any other trust account determined not**  
64 **to interfere with asset limitations for any state or federal benefit program for which the**  
65 **child may be eligible.**

66 6. The division may accept funds which a parent, guardian or other person wishes to  
67 provide for the use or benefit of the child. The use and deposit of such funds shall be  
68 governed by this section and any additional directions given by the provider of the funds.

69 7. Each child for whose benefit funds have been received by the division and the  
70 guardian ad litem of such child shall be furnished annually with a statement listing all  
71 transactions involving the funds which have been deposited on the child's behalf, to include  
72 each receipt and disbursement.

73 8. The division shall use all proper diligence to dispose of the balance of money  
74 accumulated in the child's account when the child is released from the care and custody of the  
75 division or the child dies. When the child is deceased the balance shall be disposed of as  
76 provided by law for descent and distribution. If, after the division has diligently used such  
77 methods and means as considered reasonable to refund such funds, there shall remain any  
78 money, the owner of which is unknown to the division, or if known, cannot be located by the  
79 division, in each and every such instance such money shall escheat and vest in the state of  
80 Missouri, and the director and officials of the division shall pay the same to the state director  
81 of the department of revenue, taking a receipt therefor, who shall deposit the money in the  
82 state treasury to be credited to a fund to be designated as "escheat".

83 9. Within five years after money has been paid into the state treasury, any person who  
84 appears and claims the money may file a petition in the circuit court of Cole County,  
85 Missouri, stating the nature of the claim and praying that such money be paid to him. A copy  
86 of the petition shall be served upon the director of the department of revenue who shall file an  
87 answer to the same. The court shall proceed to examine the claim and the allegations and  
88 proof, and if it finds that such person is entitled to any money so paid into the state treasury, it

89 shall order the commissioner of administration to issue a warrant on the state treasurer for the  
90 amount of such claim, but without interest or costs. A certified copy of the order shall be  
91 sufficient voucher for issuing a warrant; provided, that either party may appeal from the  
92 decision of the court in the same manner as provided by law in other civil actions.

93 10. All moneys paid into the state treasury under the provisions of this section after  
94 remaining there unclaimed for five years shall escheat and vest absolutely in the state and be  
95 credited to the state treasury, and all persons shall be forever barred and precluded from  
96 setting up title or claim to any such funds.

97 11. Nothing in this section shall be deemed to apply to funds regularly due the state of  
98 Missouri for the support and maintenance of children in the care and custody of the division  
99 or collected by the state of Missouri as reimbursement for state funds expended on behalf of  
100 the child.

211.221. In placing a child in or committing a child to the custody of an individual or  
2 of a private agency or institution the court, **children's division, or any child-placing agency**  
3 **contracting with the state to provide foster care services** shall whenever practicable select  
4 either a person, or an agency or institution governed by persons of the same religious faith as  
5 that of the parents of such child, or in case of a difference in the religious faith of the parents,  
6 then of the religious faith of the child or if the religious faith of the child is not ascertainable,  
7 then of the faith of either of the parents.

568.060. 1. As used in this section, the following terms shall mean:

2 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any  
3 person eighteen years of age or older. For purposes of this section, abuse shall not include  
4 injury inflicted on a child by accidental means by a person with care, custody, or control of  
5 the child, or discipline of a child by a person with care, custody, or control of the child,  
6 including spanking, in a reasonable manner;

7 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by  
8 any means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting,  
9 or kicking;

10 (3) "Mental injury", an injury to the intellectual or psychological capacity or the  
11 emotional condition of a child as evidenced by an observable and substantial impairment of  
12 the ability of the child to function within his or her normal range of performance or behavior;

13 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and  
14 control of a child under the age of eighteen years, the care reasonable and necessary to  
15 maintain the physical and mental health of the child, when such failure presents a substantial  
16 probability that death or physical injury or sexual injury would result;

17 (5) "Physical injury", physical pain, illness, or any impairment of physical condition,  
18 including but not limited to bruising, lacerations, hematomas, welts, or permanent or  
19 temporary disfigurement and impairment of any bodily function or organ;

20 (6) "Serious emotional injury", an injury that creates a substantial risk of temporary or  
21 permanent medical or psychological damage, manifested by impairment of a behavioral,  
22 cognitive, or physical condition. Serious emotional injury shall be established by testimony  
23 of qualified experts upon the reasonable expectation of probable harm to a reasonable degree  
24 of medical or psychological certainty;

25 (7) "Serious physical injury", a physical injury that creates a substantial risk of death  
26 or that causes serious disfigurement or protracted loss or impairment of the function of any  
27 part of the body.

28 2. A person commits the offense of abuse or neglect of a child if such person  
29 knowingly causes a child who is less than eighteen years of age:

30 (1) To suffer physical or mental injury as a result of abuse or neglect; or

31 (2) To be placed in a situation in which the child may suffer physical or mental injury  
32 as the result of abuse or neglect.

33 3. A person commits the offense of abuse or neglect of a child if such person  
34 recklessly causes a child who is less than eighteen years of age to suffer from abusive head  
35 trauma.

36 4. A person does not commit the offense of abuse or neglect of a child by virtue of the  
37 sole fact that the person delivers or allows the delivery of a child to a provider of emergency  
38 services.

39 **5. (1) A person does not commit the offense of abuse or neglect of a child by**  
40 **virtue of the sole fact that the person allows the child to engage in independent activities**  
41 **without adult supervision and the person is a parent to the child or is responsible for the**  
42 **child's care, provided that the:**

43 (a) **Independent activities are appropriate based on the child's age, maturity,**  
44 **and physical and mental abilities; and**

45 (b) **Lack of adult supervision does not constitute conduct that is so grossly**  
46 **negligent as to endanger the health or safety of the child.**

47 (2) **As used in this subsection, "independent activities" shall include traveling to**  
48 **or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining**  
49 **at home for a reasonable period of time without adult supervision.**

50 ~~5.]~~ 6. The offense of abuse or neglect of a child is:

51 (1) A class D felony, without eligibility for probation, parole, or conditional release  
52 until the defendant has served no less than one year of such sentence, unless the person has  
53 previously been found guilty of a violation of this section or of a violation of the law of any

54 other jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child  
55 is a serious emotional injury or a serious physical injury, in which case abuse or neglect of a  
56 child is a class B felony, without eligibility for probation or parole until the defendant has  
57 served not less than five years of such sentence; or

58 (2) A class A felony if the child dies as a result of injuries sustained from conduct  
59 chargeable under the provisions of this section.

60 ~~[6-]~~ 7. Notwithstanding subsection ~~[5]~~ 6 of this section to the contrary, the offense of  
61 abuse or neglect of a child is a class A felony, without eligibility for probation, parole, or  
62 conditional release until the defendant has served not less than fifteen years of such sentence,  
63 if:

64 (1) The injury is a serious emotional injury or a serious physical injury;

65 (2) The child is less than fourteen years of age; and

66 (3) The injury is the result of sexual abuse or sexual abuse in the first degree as  
67 defined under section 566.100 or sexual exploitation of a minor as defined under section  
68 573.023.

69 ~~[7-]~~ 8. The circuit or prosecuting attorney may refer a person who is suspected of  
70 abuse or neglect of a child to an appropriate public or private agency for treatment or  
71 counseling so long as the agency has consented to taking such referrals. Nothing in this  
72 subsection shall limit the discretion of the circuit or prosecuting attorney to prosecute a  
73 person who has been referred for treatment or counseling pursuant to this subsection.

74 ~~[8-]~~ 9. Nothing in this section shall be construed to alter the requirement that every  
75 element of any crime referred to herein must be proven beyond a reasonable doubt.

76 ~~[9-]~~ 10. Discipline, including spanking administered in a reasonable manner, shall not  
77 be construed to be abuse under this section.

578.421. 1. Sections 578.421 to 578.437 shall be known and may be cited as the  
2 "Missouri Criminal Street Gangs Prevention Act".

3 2. As used in sections 578.421 to 578.437, the following terms mean:

4 (1) "Criminal street gang", any ongoing organization, association, or group of three or  
5 more persons, whether formal or informal, having as one of its motivating activities the  
6 commission of one or more of the criminal acts enumerated in subdivision (2) of this  
7 subsection, whose members individually or collectively engage in or have engaged in a  
8 pattern of criminal gang activity;

9 (2) "Pattern of criminal street gang activity", the commission, attempted commission,  
10 or solicitation of two or more of the following offenses, provided at least one of those  
11 offenses occurred after August 28, 1993, and the last of those offenses occurred within three  
12 years after a prior offense, and the offenses are committed on separate occasions, or by two or  
13 more persons:

- 14 (a) Assault with a deadly weapon or by means of force likely to cause serious  
15 physical injury, as provided in sections 565.050 and 565.052;
- 16 (b) Robbery, arson and those offenses under chapter 569 which are related to robbery  
17 and arson;
- 18 (c) Murder or manslaughter, as provided in sections 565.020 to 565.024;
- 19 (d) Any violation of the provisions of chapter 579 which involves the distribution,  
20 delivery or manufacture of a substance prohibited by chapter 579;
- 21 (e) Unlawful use of a weapon which is a felony pursuant to section 571.030;
- 22 (f) Tampering with witnesses and victims, as provided in section 575.270;
- 23 (g) Promoting online sexual solicitation, as provided in section 566.103;
- 24 (h) Sexual trafficking of a child in the first degree, as provided in section 566.210;
- 25 (i) Sexual trafficking of a child in the second degree, as provided in section 566.211;
- 26 (j) Patronizing prostitution, as provided in subsection 4 of section 567.030;
- 27 (k) Promoting prostitution in the first degree, as provided in section 567.050;
- 28 (l) Promoting prostitution in the second degree, as provided in section 567.060;
- 29 (m) Abuse or neglect of a child, as provided in subsection ~~[6]~~ 7 of section 568.060;
- 30 (n) Sexual exploitation of a minor, as provided in section 573.023;
- 31 (o) Child used in sexual performance, as provided in section 573.200;
- 32 (p) Promoting sexual performance by a child, as provided in section 573.205; or
- 33 (q) Any dangerous felony, as defined in section 556.061.

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