

FIRST REGULAR SESSION

# HOUSE BILL NO. 101

97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WHITE.

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D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 210.152 and 210.183, RSMo, and to enact in lieu thereof two new sections relating to child abuse with penalty provisions.

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

Section A. Sections 210.152 and 210.183, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 210.152 and 210.183, to read as follows:

210.152. 1. All identifying 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 and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying 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;

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.

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

27 (4) For reports in which the division is unable to locate the child alleged to have been  
28 abused or neglected, identifying information shall be retained for ten years from the date of the  
29 report and then shall be removed from the records of the division.

30 2. **Unless good cause for the failure to complete the investigation is documented in**  
31 **the information system as required in subsection 14 of section 210.145,** within ninety days  
32 after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in  
33 the report and the parents of the child named in the report, if the alleged perpetrator is not a  
34 parent, shall be notified in writing of any determination made by the division based on the  
35 investigation. The notice shall advise either:

36 (1) That the division has determined by a probable cause finding prior to August 28,  
37 2004, or by a preponderance of the evidence after August 28, 2004, that abuse or neglect exists  
38 and that the division shall retain all identifying information regarding the abuse or neglect; that  
39 such information shall remain confidential and will not be released except to law enforcement  
40 agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged  
41 perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's  
42 determination through a review by the child abuse and neglect review board as provided in  
43 subsection 4 of this section; or

44 (2) That the division has not made a probable cause finding or determined by a  
45 preponderance of the evidence that abuse or neglect exists.

46 3. The children's division may reopen a case for review at the request of the alleged  
47 perpetrator, the alleged victim, or the office of the child advocate if new, specific, and credible  
48 evidence is obtained that the division's decision was based on fraud or misrepresentation of  
49 material facts relevant to the division's decision and there is credible evidence that absent such  
50 fraud or misrepresentation the division's decision would have been different. If the alleged  
51 victim is under the age of eighteen, the request for review may be made by the alleged victim's  
52 parent, legal custodian, or legal guardian. All requests to reopen an investigation for review shall

53 be made within a reasonable time and not more than one year after the children's division made  
54 its decision. The division shall not reopen a case for review based on any information which the  
55 person requesting the review knew, should have known, or could by the exercise of reasonable  
56 care have known before the date of the division's final decision in the case, unless the person  
57 requesting the review shows by a preponderance of the evidence that he or she could not have  
58 provided such information to the division before the date of the division's final decision in the  
59 case. Any person, other than the office of the child advocate, who makes a request to reopen a  
60 case for review based on facts which the person knows to be false or misleading or who acts in  
61 bad faith or with the intent to harass the alleged victim or perpetrator shall not have immunity  
62 from any liability, civil or criminal, for providing the information and requesting that the division  
63 reopen the investigation. Any person who makes a request to reopen an investigation based on  
64 facts which the person knows to be false shall be guilty of a class A misdemeanor. The  
65 children's division shall not reopen an investigation under any circumstances while the case is  
66 pending before a court of this state nor when a court has entered a final judgment after de novo  
67 judicial review pursuant to this section.

68         4. Any person named in an investigation as a perpetrator who is aggrieved by a  
69 determination of abuse or neglect by the division as provided in this section may seek an  
70 administrative review by the child abuse and neglect review board pursuant to the provisions of  
71 section 210.153. Such request for review shall be made within sixty days of notification of the  
72 division's decision under this section. In those cases where criminal charges arising out of facts  
73 of the investigation are pending, the request for review shall be made within sixty days from the  
74 court's final disposition or dismissal of the charges.

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

81         6. If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect  
82 review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the  
83 county in which the alleged perpetrator resides and in circuits with split venue, in the venue in  
84 which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a  
85 resident of the state, proper venue shall be in Cole County. The case may be assigned to the  
86 family court division where such a division has been established. The request for a judicial  
87 review shall be made within sixty days of notification of the decision of the child abuse and  
88 neglect review board decision. In reviewing such decisions, the circuit court shall provide the

89 alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may  
90 subpoena any witnesses except the alleged victim or the reporter. However, the circuit court  
91 shall have the discretion to allow the parties to submit the case upon a stipulated record.

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

210.183. 1. At the time of the initial investigation of a report of child abuse or neglect,  
2 the division employee conducting the investigation shall provide the alleged perpetrator with a  
3 written description of the investigation process. Such written notice shall be given substantially  
4 in the following form:

5 "The investigation is being undertaken by the Children's Division pursuant to the  
6 requirements of chapter 210 of the Revised Missouri Statutes in response to a report of child  
7 abuse or neglect.

8 The identity of the person who reported the incident of abuse or neglect is confidential  
9 and may not even be known to the Division since the report could have been made anonymously.

10 This investigation is required by law to be conducted in order to enable the Children's  
11 Division to identify incidents of abuse or neglect in order to provide protective or preventive  
12 social services to families who are in need of such services.

13 The Division shall make every reasonable attempt to complete the investigation within  
14 thirty days, **unless good cause for the failure to complete the investigation is documented in**  
15 **the information system as required in subsection 14 of section 210.145**, except if a child  
16 involved in the pending investigation dies, the investigation shall remain open until the division's  
17 investigation surrounding the death is completed. Otherwise, within ninety days, **unless good**  
18 **cause for the failure to complete the investigation is documented in the information system**  
19 **as required in subsection 14 of section 210.145**, you will receive a letter from the Division  
20 which will inform you of one of the following:

21 (1) That the Division has found insufficient evidence of abuse or neglect; or  
22 (2) That there appears to be by a preponderance of the evidence reason to suspect the existence  
23 of child abuse or neglect in the judgment of the Division and that the Division will contact the  
24 family to offer social services.

25 If the Division finds by a preponderance of the evidence reason to believe child abuse or  
26 neglect has occurred or the case is substantiated by court adjudication, a record of the report and  
27 information gathered during the investigation will remain on file with the Division.

28 If you disagree with the determination of the Division and feel that there is insufficient  
29 reason to believe by a preponderance of the evidence that abuse or neglect has occurred, you  
30 have a right to request an administrative review at which time you may hire an attorney to

31 represent you. If you request an administrative review on the issue, you will be notified of the  
32 date and time of your administrative review hearing by the child abuse and neglect review board.  
33 If the Division's decision is reversed by the child abuse and neglect review board, the Division  
34 records concerning the report and investigation will be updated to reflect such finding. If the  
35 child abuse and neglect review board upholds the Division's decision, an appeal may be filed in  
36 circuit court within sixty days of the child abuse and neglect review board's decision."

37         2. If the division uses the family assessment approach, the division shall at the time of  
38 the initial contact provide the parent of the child with the following information:

39             (1) The purpose of the contact with the family;

40             (2) The name of the person responding and his or her office telephone number;

41             (3) The assessment process to be followed during the division's intervention with the  
42 family including the possible services available and expectations of the family.

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