

FIRST REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 981 & 665
91ST GENERAL ASSEMBLY

Taken up for Perfection April 26, 2001.

House Substitute for House Committee Substitute for House Bill Nos. 981 & 665 ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

2282L.05P

AN ACT

To repeal sections 160.261 and 287.780, RSMo 2000, relating to immunities, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 160.261 and 287.780, RSMo 2000, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 160.261, 287.780 and 537.605, to read
3 as follows:

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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2. The policy shall require school administrators to report acts of school violence to teachers and other school district employees with a need to know. For the purposes of this [act] **chapter or chapter 167, RSMo**, "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 used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002, RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following felonies, or any act which if committed by an adult would be one of the following felonies:

- (1) First degree murder under section 565.020, RSMo;
- (2) Second degree murder under section 565.021, RSMo;
- (3) Kidnapping under section 565.110, RSMo;
- (4) First degree assault under section 565.050, RSMo;
- (5) Forcible rape under section 566.030, RSMo;
- (6) Forcible sodomy under section 566.060, RSMo;
- (7) Burglary in the first degree under section 569.160, RSMo;
- (8) Burglary in the second degree under section 569.170, RSMo;
- (9) Robbery in the first degree under section 569.020, RSMo;
- (10) Distribution of drugs under section 195.211, RSMo;
- (11) Distribution of drugs to a minor under section 195.212, RSMo;
- (12) Arson in the first degree under section 569.040, RSMo;
- (13) Voluntary manslaughter under section 565.023, RSMo;
- (14) Involuntary manslaughter under section 565.024, RSMo;
- (15) Second degree assault under section 565.060, RSMo;
- (16) Sexual assault under section 566.040, RSMo;
- (17) Felonious restraint under section 565.120, RSMo;
- (18) Property damage in the first degree under section 569.100, RSMo;
- (19) The possession of a weapon under chapter 571, RSMo;
- (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or
- (23) Sexual abuse pursuant to section 566.100, RSMo;

49 committed on school property, including but not limited to actions on any school bus in service
50 on behalf of the district or while involved in school activities. The policy shall require that any
51 portion of a student's individualized education program that is related to demonstrated or
52 potentially violent behavior shall be provided to any teacher and other school district employees
53 who are directly responsible for the student's education or who otherwise interact with the
54 student on an educational basis while acting within the scope of their assigned duties. The policy
55 shall also contain the consequences of failure to obey standards of conduct set by the local board
56 of education, and the importance of the standards to the maintenance of an atmosphere where
57 orderly learning is possible and encouraged.

58 3. The policy shall provide for a suspension for a period of not less than one year, or
59 expulsion, for a student who is determined to have brought a weapon to school, including but
60 not limited to the school playground or the school parking lot, brought a weapon on a school bus
61 or brought a weapon to a school activity whether on or off of the school property in violation of
62 district policy, except that:

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

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

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

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

80 6. Teachers and other authorized district personnel in public schools responsible for the
81 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable
82 care by the school district, shall not be civilly liable when acting in conformity with the
83 established policy of discipline developed by each board under this section, **or when reporting**
84 **to his or her supervisor or other person as mandated by state law, acts of school violence**

85 **or threatened acts of school violence, within the course and scope of the duties of the**
86 **teacher, authorized district personnel or volunteer, when such individual is acting in**
87 **conformity with the established policies developed by the board. Nothing in this section**
88 **shall be construed to create a new cause of action against such school district, or to relieve**
89 **the school district from liability for the negligent acts of such persons.**

90 7. Each school board shall define in its discipline policy acts of violence and any other
91 acts that constitute a serious violation of that policy. Acts of violence as defined by school
92 boards shall include but not be limited to exertion of physical force by a student with the intent
93 to do serious bodily harm to another person while on school property, including a school bus in
94 service on behalf of the district, or while involved in school activities. School districts shall for
95 each student enrolled in the school district compile and maintain records of any serious violation
96 of the district's discipline policy. Such records shall be made available to teachers and other
97 school district employees with a need to know while acting within the scope of their assigned
98 duties, and shall be provided as required in section 167.020, RSMo, to any school district in
99 which the student subsequently attempts to enroll.

100 8. Spanking, when administered by certificated personnel of a school district in a
101 reasonable manner in accordance with the local board of education's written policy of discipline,
102 is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to
103 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over
104 or investigate any report of alleged child abuse arising out of or related to any spanking
105 administered in a reasonable manner by any certificated school personnel pursuant to a written
106 policy of discipline established by the board of education of the school district. Upon receipt of
107 any reports of child abuse by the division of family services pursuant to sections 210.110 to
108 210.165, RSMo, which allegedly involves personnel of a school district, the division of family
109 services shall notify the superintendent of schools of the district or, if the person named in the
110 alleged incident is the superintendent of schools, the president of the school board of the school
111 district where the alleged incident occurred. If, after an initial investigation, the superintendent
112 of schools or the president of the school board finds that the report involves an alleged incident
113 of child abuse other than the administration of a spanking by certificated school personnel
114 pursuant to a written policy of discipline or a report made for the sole purpose of harassing a
115 public school employee, the superintendent of schools or the president of the school board shall
116 immediately refer the matter back to the division of family services and take no further action.
117 In all matters referred back to the division of family services, the division of family services shall
118 treat the report in the same manner as other reports of alleged child abuse received by the
119 division. If the report pertains to an alleged incident which arose out of or is related to a
120 spanking administered by certificated 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 juvenile officer of the county in which the alleged incident occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement officer designated by the juvenile officer and the superintendent of schools or, if the subject of the report is the superintendent of schools, by the juvenile officer or a law enforcement officer designated by the juvenile officer and the president of the school board or such president's designee. The investigation shall begin no later than forty-eight hours after notification from the division of family services 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. The juvenile officer or a law enforcement officer designated by the juvenile 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 division of family services. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school board shall consider the separate reports 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 juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school board personnel agree that the evidence shows that no abuse occurred;

(2) The report of the alleged child abuse is substantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel agree that the 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 juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

9. The findings and conclusions of the school board shall be sent to the division of family services. 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 division of family services' central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the division of family services shall report the incident to the prosecuting attorney of the appropriate

157 county along with the findings and conclusions of the school district and shall include the
158 information in the division's central registry. If the findings and conclusions of the school board
159 are that the issue involved in the alleged incident of child abuse is unresolved, the division of
160 family services shall report the incident to the prosecuting attorney of the appropriate county
161 along with the findings and conclusions of the school board, however, the incident and the names
162 of the parties allegedly involved shall not be entered into the central registry of the division of
163 family services unless and until the alleged child abuse is substantiated by a court of competent
164 jurisdiction.

165 10. Any superintendent of schools, president of a school board or such person's designee
166 or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or
167 who knowingly withholds any information relative to any investigation or report pursuant to this
168 section is guilty of a class A misdemeanor.

287.780. No employer or agent, **including the state or any agency, department or**
2 **division thereof**, shall discharge or in any way discriminate against any employee for exercising
3 any of [his] **the employee's** rights under this chapter. Any employee who has been discharged
4 or discriminated against shall have a civil action for damages against [his] **the employee's**
5 employer. **For purposes of this section, the state waives its sovereign immunity and submits**
6 **to suit for claims up to the limits established in section 537.610, RSMo.**

537.605. The state of Missouri, in its capacity as an employer, shall be subject to the
2 **provisions the federal Family and Medical Leave Act, 29 U.S.C. Section 2601, et seq., and**
3 **shall be liable for any violation of such act. The state of Missouri waives its sovereign**
4 **immunity, and immunity from suit pursuant to the Eleventh Amendment to the**
5 **Constitution of the United States for purposes of enforcement of such act; except that no**
6 **judgment entered against the state of Missouri shall exceed the liability limits established**
7 **in section 537.610.**