

SECOND REGULAR SESSION

# HOUSE BILL NO. 2109

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LAWSON AND SHIELDS (Co-sponsors).

Read 1<sup>st</sup> time March 5, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4943L.011

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### AN ACT

To repeal sections 630.140, 630.167, 630.170, and 660.317, RSMo, and to enact in lieu thereof four new sections relating to disclosure of mental health information.

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

Section A. Sections 630.140, 630.167, 630.170, and 660.317, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 630.140, 630.167, 630.170,  
3 and 660.317, to read as follows:

630.140. 1. Information and records compiled, obtained, prepared or maintained by the  
2 residential facility, day program operated, funded or licensed by the department or otherwise,  
3 specialized service, or by any mental health facility or mental health program in which people  
4 may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to  
5 either voluntary or involuntary patients, residents or clients shall be confidential.

6 2. The facilities or programs shall disclose information and records including medication  
7 given, dosage levels, and individual ordering such medication to the following upon their  
8 request:

- 9 (1) The parent of a minor patient, resident or client;  
10 (2) The guardian or other person having legal custody of the patient, resident or client;  
11 (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an  
12 alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as  
13 evidenced by court orders of the attorney's appointment;  
14 (4) An attorney or personal physician as authorized by the patient, resident or client;  
15 (5) Law enforcement officers and agencies, information about patients, residents or

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

16 clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out  
17 the responsibilities of their office, and all such law enforcement officers shall be obligated to  
18 keep such information confidential;

19 (6) The entity or agency authorized to implement a system to protect and advocate the  
20 rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042. The  
21 entity or agency shall be able to obtain access to the records of a person with developmental  
22 disabilities who is a client of the entity or agency if such person has authorized the entity or  
23 agency to have such access; and the records of any person with developmental disabilities who,  
24 by reason of mental or physical condition is unable to authorize the entity or agency to have such  
25 access, if such person does not have a legal guardian, conservator or other legal representative,  
26 and a complaint has been received by the entity or agency with respect to such person or there  
27 is probable cause to believe that such person has been subject to abuse or neglect. The entity or  
28 agency obtaining access to a person's records shall meet all requirements for confidentiality as  
29 set out in this section;

30 (7) The entity or agency authorized to implement a system to protect and advocate the  
31 rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to  
32 obtain access to the records of a patient, resident or client who by reason of mental or physical  
33 condition is unable to authorize the system to have such access, who does not have a legal  
34 guardian, conservator or other legal representative and with respect to whom a complaint has  
35 been received by the system or there is probable cause to believe that such individual has been  
36 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall  
37 meet all requirements for confidentiality as set out in this section. The provisions of this  
38 subdivision shall apply to a person who has a significant mental illness or impairment as  
39 determined by a mental health professional qualified under the laws and regulations of the state;

40 (8) To mental health coordinators, but only to the extent necessary to carry out their  
41 duties under chapter 632, RSMo.

42 3. The facilities or services may disclose information and records under any of the  
43 following:

44 (1) As authorized by the patient, resident or client;

45 (2) To persons or agencies responsible for providing health care services to such patients,  
46 residents or clients;

47 (3) To the extent necessary for a recipient to make a claim or for a claim to be made on  
48 behalf of a recipient for aid or insurance;

49 (4) To qualified personnel for the purpose of conducting scientific research, management  
50 audits, financial audits, program evaluations or similar studies; provided, that such personnel  
51 shall not identify, directly or indirectly, any individual patient, resident or client in any report of

52 such research, audit or evaluation, or otherwise disclose patient, resident or client identities in  
53 any manner;

54 (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo,  
55 552, RSMo, or 632, RSMo;

56 (6) To law enforcement officers or public health officers, but only to the extent necessary  
57 to carry out the responsibilities of their office, and all such law enforcement and public health  
58 officers shall be obligated to keep such information confidential;

59 (7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

60 (8) To the attorney representing petitioners, but only to the extent necessary to carry out  
61 their duties under chapter 632, RSMo;

62 (9) To the department of social services **or the department of health and senior**  
63 **services** as necessary to report or have investigated abuse, neglect, or rights violations of  
64 patients, residents, or clients;

65 (10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986,  
66 but only to the extent necessary to carry out their statutory responsibilities. The county board  
67 shall not identify, directly or indirectly, any individual patient, resident or client.

68 4. The facility or program shall document the dates, nature, purposes and recipients of  
69 any records disclosed under this section and sections 630.145 and 630.150.

70 5. The records and files maintained in any court proceeding under chapter 632, RSMo,  
71 shall be confidential and available only to the patient, his attorney, guardian, or, in the case of  
72 a minor, to a parent or other person having legal custody of the patient, and to the petitioner and  
73 his attorney. In addition, the court may order the release or use of such records or files only upon  
74 good cause shown, and the court may impose such restrictions as the court deems appropriate

75 6. Nothing contained in this chapter shall limit the rights of discovery in judicial or  
76 administrative procedures as otherwise provided for by statute or rule.

77 7. The fact of admission of a voluntary or involuntary patient to a mental health facility  
78 under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this  
79 section.

630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors  
2 or the department of health and senior services, if such facility or program is licensed pursuant  
3 to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

4 2. If the investigation indicates possible abuse or neglect of a patient, resident or client,  
5 the investigator shall refer the complaint together with the investigator's report to the department  
6 director for appropriate action. If, during the investigation or at its completion, the department  
7 has reasonable cause to believe that immediate removal from a facility not operated or funded  
8 by the department is necessary to protect the residents from abuse or neglect, the department or

9 the local prosecuting attorney may, or the attorney general upon request of the department shall,  
10 file a petition for temporary care and protection of the residents in a circuit court of competent  
11 jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to  
12 issue an ex parte order granting the department authority for the temporary care and protection  
13 of the resident for a period not to exceed thirty days.

14 3. (1) Reports referred to in section 630.165 and the investigative reports referred to in  
15 this section shall be confidential, shall not be deemed a public record, and shall not be subject  
16 to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that: complete copies  
17 all such reports shall be open and available to the parents or other guardian of the patient,  
18 resident, or client who is the subject of such report, except that the names and any other  
19 descriptive information of the complainant or other person mentioned in the reports shall not be  
20 disclosed unless such complainant or person specifically consents to such disclosure. All reports  
21 referred to in this section shall be admissible in any judicial proceedings or hearing in accordance  
22 with section 36.390, RSMo, or any administrative hearing before the director of the department  
23 of mental health, or the director's designee. All such reports may be disclosed by the department  
24 of mental health to law enforcement officers and public health officers, but only to the extent  
25 necessary to carry out the responsibilities of their offices, and to the department of social  
26 services, **to the department of health and senior services**, and to boards appointed pursuant  
27 to sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or  
28 client as necessary to report or have investigated abuse, neglect, or rights violations of patients,  
29 residents or clients provided that all such law enforcement officers, public health officers,  
30 department of social services' officers, **department of health and senior services' officers**, and  
31 boards shall be obligated to keep such information confidential;

32 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,  
33 reports and minutes of committees of health care professionals as defined in section 537.035,  
34 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the  
35 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health  
36 services are privileged and shall not be subject to the discovery, subpoena or other means of legal  
37 compulsion for their release to any person or entity or be admissible into evidence into any  
38 judicial or administrative action for failure to provide adequate or appropriate care. Such  
39 committees may exist, either within department facilities or its agents, contractors, or vendors,  
40 as applicable. Except as otherwise provided in this section, no person who was in attendance at  
41 any investigation or committee proceeding shall be permitted or required to disclose any  
42 information acquired in connection with or in the course of such proceeding or to disclose any  
43 opinion, recommendation or evaluation of the committee or board or any member thereof;  
44 provided, however, that information otherwise discoverable or admissible from original sources

45 is not to be construed as immune from discovery or use in any proceeding merely because it was  
46 presented during proceedings before any committee or in the course of any investigation, nor is  
47 any member, employee or agent of such committee or other person appearing before it to be  
48 prevented from testifying as to matters within their personal knowledge and in accordance with  
49 the other provisions of this section, but such witness cannot be questioned about the testimony  
50 or other proceedings before any investigation or before any committee;

51 (3) Nothing in this section shall limit authority otherwise provided by law of a health  
52 care licensing board of the state of Missouri to obtain information by subpoena or other  
53 authorized process from investigation committees or to require disclosure of otherwise  
54 confidential information relating to matters and investigations within the jurisdiction of such  
55 health care licensing boards; provided, however, that such information, once obtained by such  
56 board and associated persons, shall be governed in accordance with the provisions of this  
57 subsection;

58 (4) Nothing in this section shall limit authority otherwise provided by law in  
59 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the  
60 entity or agency authorized to implement a system to protect and advocate the rights of persons  
61 with developmental disabilities under the provisions of 42 U.S.C. 6042 and the entity or agency  
62 authorized to implement a system to protect and advocate the rights of persons with mental  
63 illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve  
64 to negate assurances that have been given by the governor of Missouri to the U.S.  
65 Administration on Developmental Disabilities, Office of Human Development Services,  
66 Department of Health and Human Services concerning access to records by the agency  
67 designated as the protection and advocacy system for the state of Missouri. However, such  
68 information, once obtained by such entity or agency, shall be governed in accordance with the  
69 provisions of this subsection.

70 4. Anyone who makes a report pursuant to this section or who testifies in any  
71 administrative or judicial proceeding arising from the report shall be immune from any civil  
72 liability for making such a report or for testifying unless such person acted in bad faith or with  
73 malicious purpose.

74 5. Within five working days after a report required to be made pursuant to this section  
75 is received, the person making the report shall be notified in writing of its receipt and of the  
76 initiation of the investigation.

77 6. No person who directs or exercises any authority in a residential facility, day program  
78 or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client  
79 or employee because he or she or any member of his or her family has made a report of any  
80 violation or suspected violation of laws, ordinances or regulations applying to the facility which

81 he or she has reasonable cause to believe has been committed or has occurred.

82 7. Any person who is discharged as a result of an administrative substantiation of  
83 allegations contained in a report of abuse or neglect may, after exhausting administrative  
84 remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county  
85 in which such person resides within ninety days of such final administrative decision. The court  
86 may accept an appeal up to twenty-four months after the party filing the appeal received notice  
87 of the department's determination, upon a showing that:

88 (1) Good cause exists for the untimely commencement of the request for the review;

89 (2) If the opportunity to appeal is not granted it will adversely affect the party's  
90 opportunity for employment; and

91 (3) There is no other adequate remedy at law.

630.170. 1. A person **listed on the department of mental health disqualification**  
2 **registry pursuant to this section, a person listed on the department of social services or the**  
3 **department of health and senior services employee disqualification list pursuant to section**  
4 **660.315, RSMo, a person convicted of, or who entered a plea of guilty or nolo contendere**  
5 **to, any crime pursuant to section 630.155 or 630.160 shall be disqualified from holding any**  
6 position in any public or private facility or day program operated, funded or licensed by the  
7 department or in any mental health facility or mental health program in which people are  
8 admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632,  
9 RSMo.

10 2. A person convicted of, **or who entered a plea of guilty or nolo contendere to, any**  
11 felony offense against persons as defined in chapter 565, RSMo; of any felony sexual offense as  
12 defined in chapter 566, RSMo; of any felony offense defined in section **568.020, 568.045,**  
13 **568.050, 568.060, 569.020, 569.025, 569.030, 569.035, 569.040 [or], 569.050, 560.070, or**  
14 **569.160, RSMo, or of an equivalent felony offense, or any violation of subsection 3 of section**  
15 **198.070, RSMo, shall be disqualified from holding any direct-care position in any public or**  
16 private facility, day program, residential facility or specialized service operated, funded or  
17 licensed by the department or any mental health facility or mental health program in which  
18 people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

19 3. **Any person who receives a suspended imposition of sentence (SIS) or a**  
20 **suspended execution of sentence (SES) following a plea of guilty to any of the disqualifying**  
21 **offenses listed in subsection 1 or 2 of this section shall remain disqualified.**

22 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section  
23 may appeal the disqualification to the director of the department or the director's designee. The  
24 request shall be written and may not be made more than once every twelve months. The request  
25 may be granted by the director or designee if in the judgment of the director or designee a clear

26 showing has been made by written submission only, that the person will not commit any  
27 additional acts for which the person had originally been disqualified for or any other acts that  
28 would be harmful to a patient, resident or client of a facility, program or service. The director  
29 or designee may grant the appeal subject to any conditions deemed appropriate and failure to  
30 comply with such terms may result in the person again being disqualified. Decisions by the  
31 director or designee pursuant to the provisions of this subsection shall not be subject to appeal.  
32 The right to appeal pursuant to this subsection shall not apply to persons [convicted of] **listed**  
33 **on the department of social services or the department of health and senior services**  
34 **employee disqualification list pursuant to section 660.315, RSMo, or persons disqualified**  
35 **from employment for** any crime pursuant to the provisions of chapter 566 [or 568], RSMo, or  
36 section 565.020 [or], 565.021, **568.020, 568.060, 569.025, or 569.070, RSMo.**

37 **5. An applicant for a direct care position in any public or private facility, day**  
38 **program, residential facility, or specialized service operated, funded, or licensed by the**  
39 **department or any mental health facility or mental health program in which persons are**  
40 **admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo, shall:**

41 **(1) Sign a consent form required by section 43.540, RSMo, to provide written**  
42 **consent for a criminal record review;**

43 **(2) Disclose the applicant's criminal history. For purposes of this subdivision,**  
44 **"criminal history" includes any conviction or plea of guilty to a misdemeanor or felony**  
45 **offense and shall include any suspended imposition of sentence, suspended execution of**  
46 **sentence, or period of probation or parole; and**

47 **(3) Disclose if the applicant is listed on the employee disqualification list pursuant**  
48 **to section 660.315, RSMo, or the department of mental health disqualification registry**  
49 **pursuant to this section.**

50 **6. Any person who receives a good cause waiver issued by the department of health**  
51 **and senior services pursuant to subsection 9 of section 660.317, RSMo, shall not require**  
52 **an additional exception pursuant to this section to be employed in a long-term care facility**  
53 **licensed pursuant to chapter 198, RSMo.**

54 **7. Any public or private residential facility, day program, or specialized service**  
55 **licensed, certified, or funded by the department shall, no later than two business days after**  
56 **the hiring of a person for a full-time, part-time, or temporary position to have contact with**  
57 **clients, residents, or patients, shall:**

58 **(1) Request a criminal background check pursuant to section 43.540, RSMo;**

59 **(2) Make an inquiry to the department of social services and the department of**  
60 **health and senior services on whether the person is listed on the employee disqualification**  
61 **list pursuant to section 660.315, RSMo; and**

62           **(3) Make an inquiry to the department of mental health on whether the person is**  
63 **listed on the disqualification registry pursuant to this section.**

64           [4.] 8. The department may maintain a disqualification registry and place on the registry  
65 the names of any persons who have been finally determined by the department to be disqualified  
66 pursuant to this section, or who have had administrative substantiations made against them for  
67 abuse or neglect pursuant to department rule. Such list shall reflect that the person is barred from  
68 holding any position in any public or private facility or day program operated, funded or licensed  
69 by the department, or any mental health facility or mental health program in which persons are  
70 admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

                660.317. 1. For the purposes of this section, the term "provider" means any person,  
2 corporation or association who:

3           (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4           (2) Provides in-home services under contract with the department;

5           (3) Employs nurses or nursing assistants for temporary or intermittent placement in  
6 health care facilities; or

7           (4) Is an entity licensed pursuant to chapter 197, RSMo[;

8           (5) Is a public or private facility, day program, residential facility or specialized service  
9 operated, funded or licensed by the department of mental health].

10           2. For the purpose of this section "patient or resident" has the same meaning as such term  
11 is defined in section 43.540, RSMo.

12           3. Beginning August 28, 1997, not later than two working days of hiring any person for  
13 a full-time, part-time or temporary position to have contact with any patient or resident the  
14 provider shall, or in the case of temporary employees hired through an employment agency, the  
15 employment agency shall prior to sending a temporary employee to a provider:

16           (1) Request a criminal background check as provided in section 43.540, RSMo.  
17 Completion of an inquiry to the highway patrol for criminal records that are available for  
18 disclosure to a provider for the purpose of conducting an employee criminal records background  
19 check shall be deemed to fulfill the provider's duty to conduct employee criminal background  
20 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection  
21 shall not be construed to exempt a provider from further inquiry pursuant to common law  
22 requirements governing due diligence; and

23           (2) Make an inquiry to the department of social services, whether the person is listed on  
24 the employee disqualification list as provided in section 660.315.

25           4. When the provider requests a criminal background check pursuant to section 43.530,  
26 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost  
27 of such record check.



28           5. An applicant for a position to have contact with patients or residents of a provider  
29 shall:

30           (1) Sign a consent form as required by section 43.540, RSMo, so the provider may  
31 request a criminal records review;

32           (2) Disclose the applicant's criminal history. For the purposes of this subdivision  
33 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge  
34 and shall include any suspended imposition of sentence, any suspended execution of sentence  
35 or any period of probation or parole; and

36           (3) Disclose if the applicant is listed on the employee disqualification list as provided  
37 in section 660.315.

38           6. An applicant who knowingly fails to disclose his criminal history as required in  
39 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class  
40 A misdemeanor if the provider knowingly hires a person to have contact with patients or  
41 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or  
42 any other state or has been found guilty of a crime, which if committed in Missouri would be a  
43 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection  
44 3 of section 198.070, RSMo, or section 568.020, RSMo.

45           7. The highway patrol shall examine whether protocols can be developed to allow a  
46 provider to request a statewide fingerprint criminal records review check through local law  
47 enforcement agencies.

48           8. A provider may use a private investigatory agency rather than the highway patrol to  
49 do a criminal history records review check, and alternatively, the applicant pays the private  
50 investigatory agency such fees as the provider and such agency shall agree.

51           9. The department of social services shall promulgate rules and regulations to waive the  
52 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good  
53 cause" means the department has made a determination by examining the employee's prior work  
54 history and other relevant factors that such employee does not present a risk to the health or  
55 safety of residents.