

FIRST REGULAR SESSION

# SENATE BILL NO. 543

92ND GENERAL ASSEMBLY

---

INTRODUCED BY SENATORS DAUGHERTY AND FOSTER.

Read 1st time February 19, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1499S.02I

---

## AN ACT

To repeal sections 43.500, 43.503, 43.506, 43.521, 43.527, 43.530, 43.540, 43.543, 210.900, 210.906, 210.909, 210.921, 210.922, 210.937, 302.272, 610.120, 610.123, 630.140, 630.167, 630.170, and 660.317, RSMo, and to enact in lieu thereof twenty-three new sections relating to background checks, with penalty provisions and an effective date for a certain section.

---

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

Section A. Sections 43.500, 43.503, 43.506, 43.521, 43.527, 43.530, 43.540, 43.543, 210.900, 210.906, 210.909, 210.921, 210.922, 210.937, 302.272, 610.120, 610.123, 630.140, 630.167, 630.170, and 660.317, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 43.500, 43.503, 43.506, 43.527, 43.530, 43.532, 43.540, 43.543, 168.283, 210.482, 210.487, 210.900, 210.906, 210.909, 210.921, 210.922, 302.272, 610.120, 610.123, 630.140, 630.167, 630.170, and 660.317, to read as follows:

43.500. As used in sections 43.500 to [43.530] **43.543**, the following terms mean:

(1) **"Administration of criminal justice", performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information, including fingerprint searches, photographs, and other indicia of identification;**

[(1)] (2) **"Central repository", the Missouri state highway patrol criminal records and**

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

**identification** division for compiling and disseminating complete and accurate criminal history records **and for compiling, maintaining, and disseminating criminal incident and arrest reports and statistics;**

[(2)] (3) "Committee", criminal records **and justice information** advisory committee;

[(3)] (4) "Criminal history record information", information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release;

[(4)] (5) "Final disposition", the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system;

(6) **"Missouri charge code", a unique number assigned by the office of the state courts administrator to an offense for tracking and grouping offenses. Beginning January 1, 2005, the complete charge code shall consist of the digits assigned by the office of state courts administrator, the two digit national crime information center modifiers and a single digit designating attempt, accessory, or conspiracy. The only exception to the January 1, 2005, date shall be the courts that are not using the statewide court automation case management pursuant to section 476.055, RSMo; the effective date will be as soon thereafter as economically feasible for all other courts;**

[(5)] (7) "State offense cycle number", a [preprinted] **unique number, supplied by or approved by the highway patrol, on the state criminal fingerprint card [which]. The offense cycle number** is used to **link the** identify [each arrest which may include multiple offenses for which a person is fingerprinted. This number] **of a person, through fingerprints, to one or many offenses for which the person is arrested or charged. The offense cycle number** will be [associated with] **used to track** an offense incident from the date of arrest to the [date] **final disposition when** the offender exits from the criminal justice system[;

(6) "Without undue delay", as soon as possible but not later than thirty days after the criminal history event;

(7) "Administration of criminal justice", performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information, including fingerprint searches, photographs, and other indicia of identification].

43.503. 1. For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the department of corrections, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall

submit certain criminal arrest, charge, and disposition information to the central repository for filing [without undue delay] **within fifteen days** in the form and manner required by sections 43.500 to [43.530] **43.543**.

2. All law enforcement agencies making misdemeanor and felony arrests as determined by section 43.506 shall furnish without undue delay, to the central repository, fingerprints, charges, **appropriate charge codes**, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied **or approved** by the highway patrol **or electronically in a format and manner approved by the highway patrol**. All such agencies shall also notify the central repository of all decisions not to refer such arrests for prosecution. An agency making such arrests may enter into arrangements with other law enforcement agencies for the purpose of furnishing [without undue delay] **within fifteen days** such fingerprints, charges, and descriptions to the central repository upon its behalf. In instances where an individual less than seventeen years of age is taken into custody for an offense which would be considered a felony if committed by an adult, the arresting officer shall take one set of fingerprints for the central repository and may take another set for inclusion in a local or regional automated fingerprint identification system. These fingerprints shall be taken on fingerprint cards which are plainly marked "juvenile card" and shall be provided by the central repository. The fingerprint cards shall be so constructed that only the fingerprints, unique identifying number, and the court of jurisdiction are made available to the central or local repository. The remainder of the card which bears the individual's identification and the duplicate unique number shall be provided to the court of jurisdiction. The appropriate portion of the juvenile fingerprint card shall be forwarded to the central repository and the courts without undue delay. The fingerprint information from the card shall be captured and stored in the automated fingerprint identification system operated by the central repository. The juvenile fingerprint card shall be stored in a secure location, separate from all other fingerprint cards. In the event the fingerprints from this card are found to match latent prints searched in the automated fingerprint identification system, the court of jurisdiction shall be so advised.

3. The prosecuting attorney of each county or the circuit attorney of a city not within a county shall notify the central repository on standard forms supplied by the highway patrol **or in a manner approved by the highway patrol** of all charges filed, including all those added subsequent to the filing of a criminal court case, and whether charges were not filed in criminal cases for which the central repository has a record of an arrest. All records forwarded to the central repository by prosecutors or circuit attorneys as required by sections 43.500 to 43.530 shall include the state offense cycle number of the offense, and **charge code for the offense**, **and** the originating agency identifier number of the reporting prosecutor, using such numbers as assigned by the highway patrol.

4. The clerk of the courts of each county or city not within a county shall furnish the

central repository, on standard forms supplied by the highway patrol **or in a manner approved by the highway patrol**, with all final dispositions of [criminal] cases for which the central repository has a record of an arrest or a record of fingerprints reported pursuant to [subsections 6 and 7 of this section] **sections 43.500 to 43.506**. Such information shall include, for each charge:

(1) All judgments of not guilty, acquittals on the ground of mental disease or defect excluding responsibility, judgments or pleas of guilty including the sentence, if any, or probation, if any, pronounced by the court, nolle pros, discharges, releases and dismissals in the trial court;

(2) Court orders filed with the clerk of the courts which reverse a reported conviction or vacate or modify a sentence;

(3) Judgments terminating or revoking a sentence to probation, supervision or conditional release and any resentencing after such revocation; and

(4) The offense cycle number of the offense, and the originating agency identifier number of the [reporting] **sentencing** court, using such numbers as assigned by the highway patrol.

5. The clerk of the courts of each county or city not within a county shall furnish **to the department of corrections or the department of mental health** court judgment and sentence documents and the state offense cycle number **and the charge code** of the offense[,] which result in the commitment or assignment of an offender[,] to the jurisdiction of the department of corrections or the department of mental health if the person is committed pursuant to chapter 552, RSMo. This information shall be reported to the department of corrections or the department of mental health at the time of commitment or assignment. If the offender was already in the custody of the department of corrections or the department of mental health at the time of such subsequent conviction, the clerk shall furnish notice of such subsequent conviction to the appropriate department by certified mail, return receipt requested[, within ten days of such disposition] **or in a manner and format mutually agreed to within fifteen days of such disposition**.

6. [After the court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be collected, maintained, or disseminated by the central repository, or commits a person to the department of mental health pursuant to chapter 552, RSMo,] **Information, fingerprints, and other indicia forwarded to the central repository, normally obtained from a person at the time of arrest, may be obtained at any time the subject is in the criminal justice system or committed to the department of mental health. A law enforcement agency or the department of corrections may fingerprint the person and obtain the necessary information at any time while the subject is in custody. If at the time of disposition the defendant has not been fingerprinted for the offense which is required by statute to be collected, maintained, or disseminated by the central repository, the court shall order a law**

enforcement agency to fingerprint immediately [all persons appearing before the court to be sentenced or committed who have not previously been fingerprinted for the same case] **the defendant**. The law enforcement agency shall submit such fingerprints to the central repository [without undue delay] **within fifteen days and shall furnish the offense cycle number associated with the fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county and to the court clerk of the court ordering the subject fingerprinted.**

7. The department of corrections and the department of mental health shall furnish the central repository with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, **legal name change**, or discharge of an individual who has been sentenced to that department's custody for any offenses which are mandated by law to be collected, maintained or disseminated by the central repository. All records forwarded to the central repository by the department as required by sections 43.500 to ~~[43.530]~~ **43.543** shall include the offense cycle number of the offense, and the originating agency identifier number of the department using such numbers as assigned by the highway patrol.

8. **In instances where an individual less than seventeen years of age and not currently certified as an adult, is taken into custody for an offense which would be a felony if committed by an adult, the arresting officer shall take fingerprints for the central repository. These fingerprints shall be taken on fingerprint cards supplied by or approved by the highway patrol or transmitted electronically in a format and manner approved by the highway patrol. The fingerprint cards shall be so constructed that the name of the juvenile shall not be made available to the central repository. The name and the unique number associated with the fingerprints and other pertinent information shall be provided to the court of jurisdiction by the agency taking the juvenile into custody. The juvenile's fingerprints and other information shall be forwarded within fifteen days to the central repository and the courts. The fingerprint information from the card shall be captured and stored in the automated fingerprint identification system operated by the central repository. In the event the fingerprints are found to match other tenprints or unsolved latent prints the central repository shall notify the submitting agency who shall notify the court of jurisdiction as per local agreement.**

9. Upon certification of the individual as an adult, the court shall order a law enforcement agency to immediately fingerprint the individual. The law enforcement agency shall submit such fingerprints to the central repository within fifteen days and shall furnish the offense cycle number associated with the fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county and to the

court clerk of the court ordering the subject fingerprinted.

10. If the juvenile is acquitted of the crime and is no longer certified as an adult, the prosecuting attorney shall notify within fifteen days the central repository of the change of status of the juvenile. Records of a child who has been fingerprinted and photographed after being taken into custody shall be closed records as provided pursuant to section 610.100, RSMo, if a petition has not been filed within thirty days of the date that the child was taken into custody; and if a petition for the child has not been filed within one year of the date the child was taken into custody, any records relating to the child concerning the alleged offense may be expunged under the procedures in sections 610.122 to 610.126, RSMo.

43.506. 1. Those offenses considered reportable for the purposes of sections 43.500 to [43.530] **43.543** include all felonies and serious or aggravated misdemeanors consistent with the reporting standards established by the National Crime Information Center, Federal Bureau of Investigation, for the Federal Interstate Identification Index System. In addition, all cases arising pursuant to sections 566.010 to 566.141, RSMo, where the defendant pleads guilty to an offense involving a child under seventeen years of age and the court imposes a suspended imposition of sentence shall be reported. The following types of offenses shall not be considered reportable for the purposes of sections 57.403, RSMo, 43.500 to [43.530] **43.543**, and 595.200 to 595.218, RSMo: disturbing the peace, curfew violation, loitering, false fire alarm, disorderly conduct, nonspecific charges of suspicion or investigation, and general traffic violations and all misdemeanor violations of the state wildlife code. All violations for driving under the influence of drugs or alcohol are reportable. All offenses considered reportable shall be reviewed annually and noted in the Missouri charge code manual established in section 43.512. All information collected pursuant to sections 43.500 to [43.530] **43.543** shall be available only as set forth in section 610.120, RSMo.

2. [With the exception of the manual reporting of arrests and fingerprints by law enforcement agencies as noted in subsection 2 of section 43.503, and notwithstanding subsections 2 to 7 of section 43.503,] Law enforcement agencies, court clerks, prosecutors and custody agencies may report required information by electronic medium either directly to the central repository or indirectly to the central repository via other criminal justice agency computer systems in the state with the approval of the [advisory committee] **highway patrol**.

3. In addition to the repository of fingerprint records for individual offenders **and applicants**, the central repository of criminal history **and identification** records for the state shall maintain a repository of latent prints, **palm prints, and other prints submitted to the repository**.

43.527. For purposes of sections 43.500 to [43.530] **43.543** all federal and nonstate of Missouri agencies **and persons** shall pay for criminal records checks, fingerprint searches, and

any of the information as defined in subdivision (3) of section 43.500, when such information is not related to the administration of criminal justice. **There shall be no charge for information, supplied to criminal justice agencies, for the administration of criminal justice. There shall be no charge for information requested by state agencies screening their state employees or applicants for state employment.** For purposes of sections 43.500 to [43.530] **43.543** the administration of criminal justice is defined in subdivision (7) of section 43.500 **and shall be available only as set forth in section 610.120, RSMo.**

43.530. For each request **requiring the payment of a fee** received by the central repository, [as defined in subdivision (1) of section 43.500,] the requesting entity shall pay a fee of not more than five dollars per request for criminal history record information **not based on a fingerprint search** and pay a fee of not more than fourteen dollars per request for [classification and search of fingerprints] **criminal history record information based on a fingerprint search.** Each such request shall be limited to check and search on one individual. Each request shall be accompanied by a check, warrant, voucher, or money order payable to the state of Missouri-criminal record system **or payment shall be made in a manner approved by the highway patrol.** There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080, RSMo, to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in [section 43.527] **sections 43.500 to 43.543**, the unexpended moneys in such fund shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

**43.532. 1. Criminal history and identification records obtained from the central repository shall be used solely for the purpose for which they were obtained. The subject of the record shall be afforded the opportunity to challenge the correctness, accuracy, and completeness of a criminal history record.**

**2. The central records repository has exclusive authority to engage in the practice of collecting, assembling, or disseminating criminal history record information for the purpose of retaining manually or electronically stored criminal history information. Any person obtaining criminal history record information from the central repository under false pretenses, engages in the practice of collecting, assembling, or disseminating criminal history record information other than to provide the information to the original authorized state agency for its intended purpose is guilty of a class A misdemeanor.**

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

**(1) "Authorized state agency", a division of state government or an office of state government designated by the statutes of this state to issue or renew a license, permit, certification, or registration of authority to a qualified entity;**

**(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation;**

**[(1)] (3) "Criminal record review", [a request to the highway patrol for information concerning any criminal history record for a felony or misdemeanor and any offense for which the person has registered pursuant to sections 589.400 to 589.425, RSMo] a review of the criminal history records maintained by the highway patrol in the criminal records repository;**

**(4) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;**

**[(2)] (5) "Patient or resident", a person who by reason of [aging] age, illness, disease, or physical or mental infirmity receives or requires care or services furnished by a provider, as defined in this section, or who resides or boards in, or is otherwise kept, cared for, treated or accommodated in a facility as defined in section 198.006, RSMo, for a period exceeding twenty-four consecutive hours;**

**[(3) "Patrol", the Missouri state highway patrol;**

**(4)] (6) "Provider", any [licensed day care home, licensed day care center, licensed child-placing agency, licensed residential care facility for children, licensed group home, licensed foster family group home, licensed foster family home or any operator licensed pursuant to chapter 198, RSMo, any employer of nurses or nursing assistants for temporary or intermittent placement in health care facilities or any entity licensed pursuant to chapter 197, RSMo;] person who:**

**(a) Is employed by or seeks employment with a qualified entity; or**

**(b) Volunteers or seeks to volunteer with a qualified entity; or**

**(c) Owns or operates a qualified entity; and**

**(d) Has or may have unsupervised access to children, the elderly, or persons with disabilities;**

**(7) "Qualified entity", a person, business, or organization, whether public or private, for profit, not-for-profit, or voluntary, that provides care or placement services for children, the elderly or persons with disabilities as patients or residents, including a business or organization that licenses or certifies others to provide care or placement services;**

**[(5)] (8) "Youth services agency", any public or private agency, school, or association which provides programs, care or treatment for or which exercises supervision over minors.**

**2. [Upon receipt of a written request from a private investigatory agency, a youth service agency or a provider, with the written consent of the applicant, the highway patrol shall conduct a criminal record review of an applicant for a paid or voluntary position with the agency or provider if such position would place the applicant in contact with minors, patients or residents.**



3. Any request for information made pursuant to the provisions of this section shall be on a form provided by the highway patrol and shall be signed by the person who is the subject of the request.

4. The patrol shall respond in writing to the youth service agency or provider making a request for information pursuant to this section and shall inform such youth service agency or provider of the address and offense for which the offender registered pursuant to sections 589.400 to 589.425, RSMo, and the nature of the offense, and the date, place and court for any other offenses contained in the criminal record review. Notwithstanding any other provision of law to the contrary, the youth service agency or provider making such request shall have access to all records of arrests resulting in an adjudication where the applicant was found guilty or entered a plea of guilty or nolo contendere in a prosecution pursuant to chapter 565, RSMo, sections 566.010 to 566.141, RSMo, or under the laws of any state or the United States for offenses described in sections 566.010 to 566.141, RSMo, or chapter 565, RSMo, during the period of any probation imposed by the sentencing court.

5. Any information received by a provider or a youth services agency pursuant to this section shall be used solely for the provider's or youth service agency's internal purposes in determining the suitability of an applicant or volunteer. The information shall be confidential and any person who discloses the information beyond the scope allowed in this section is guilty of a class A misdemeanor. The patrol shall inform, in writing, the provider or youth services agency of the requirements of this subsection and the penalties provided in this subsection at the time it releases any information pursuant to this section.] **A qualified entity may obtain a criminal record review of a provider from the highway patrol by furnishing information on forms and in the manner approved by the highway patrol.**

**3. The information shall include:**

- (1) A valid Social Security number;**
- (2) Two sets of fingerprints of the provider;**
- (3) A statement signed by the provider which contains:**
  - (a) The provider's name, address, and date of birth;**
  - (b) Whether or not the provider has been convicted of or has pled guilty to a crime which includes a suspended imposition of sentence;**
  - (c) If the provider has been convicted of or has pled guilty to a crime, a description of the crime, and the particulars of the conviction or plea;**
  - (d) The authority of the qualified entity to check the provider's criminal history;**
  - (e) The right of the provider to review the report received by the qualified entity;**
  - (f) The right of the provider to challenge the accuracy of the report. If the**

challenge is to the accuracy of the criminal record review, the challenge shall be made to the highway patrol.

4. A qualified entity may request a criminal record review and a national criminal record review of a provider through an authorized state agency. No authorized state agency is required by this section to process state or national criminal record reviews for a qualified entity.

5. The authorized state agency shall forward the required forms and fees to the highway patrol. The results of the record review shall be forwarded to the authorized state agency who will notify the qualified entity as to the suitability of the provider. The authorized state agency may assess a fee to the qualified entity to cover the cost of handling the criminal record review and may establish an account solely for the collection and dissemination of fees associated with the criminal record reviews.

6. Any information received by an authorized state agency or a qualified entity pursuant to the provisions of this section shall be used solely for the internal purposes of determining the suitability of a provider. All criminal record check information shall be confidential and any person who discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

7. The highway patrol shall make available or approve the necessary forms, procedures, and agreements necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

43.543. [Any state agency listed in section 621.045, RSMo, or any state agency which provides programs, care or treatment for or which exercises supervision over minors shall submit two sets of fingerprints for any person seeking employment with such agency or provider or for any person who is seeking the issuance or renewal of a license, permit or certificate of registration or authority from such agency, for the purpose of checking the person's prior criminal history when the state agency determines a nationwide check is warranted. The fingerprint cards and any required fees shall be sent to the Missouri state highway patrol's criminal records division. The first set of fingerprints shall be used for searching the state repository of criminal history information. If no identification is made, the second set of fingerprints shall be forwarded

to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual.] **Any state agency listed in section 610.045, RSMo, the division of professional registration of the department of economic development, the department of social services, the state supreme court, the department of elementary and secondary education, the Missouri lottery, and the gaming commission may for persons seeking employment with such agency or issuance or renewal of a license, permit, certificate, or registration of authority from such agency, or any state agency or committee which is authorized by state statute or executive order to screen applicants or candidates seeking or considered for employment, assignment, or appointment to a position within state government; or the police officers standards and training commission pursuant to chapter 630, RSMo, may for persons not employed by a criminal justice agency who seek enrollment or access into a certified POST training academy police school; or law enforcement agencies may for persons seeking issuance or renewal of a license, permit, certificate, or registration to purchase or possess a firearm; shall submit two sets of fingerprints to the highway patrol. Such fingerprints shall be used by the highway patrol to search the criminal records repository and the second set shall be submitted to the Federal Bureau of Investigation to be used for searching the federal criminal history files if necessary. The fingerprints shall be submitted on forms and in the manner prescribed by the highway patrol. Fees assessed for the searches shall be paid in the manner prescribed by the highway patrol. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the state agency making the record request.**

**168.283. 1. Prior to employment no school employee shall have unsupervised contact with pupils until the individual has obtained a criminal history background check. This includes, but is not limited to, administrators, teachers, aides, paraprofessionals, assistants, secretaries, custodians, cooks, nurses, and bus drivers. The results of the background check shall be sent to the employing school district.**

**2. In order to facilitate the criminal history background check on any person employed, the individual shall submit two sets of fingerprints collected pursuant to standards determined by the highway patrol. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.**

**3. The individual shall pay the fee for the state criminal history information**

pursuant to section 43.530, RSMo, and pay the fee determined by the Federal Bureau of Investigation for the federal criminal history record. The department shall distribute the fees collected for the state and federal criminal histories to the highway patrol.

4. The individual may be reimbursed by the employing school district should the school district policy provide for reimbursement intended for state and federal criminal history information pursuant to section 43.530, RSMo.

5. If, as a result of the criminal history background check mandated pursuant to this section, it is determined that the holder of a certificate issued pursuant to section 168.021 has been charged with or pled guilty or been found guilty of a crime under the laws of this state, of any other state, of the United States, or any other country, whether or not sentence is imposed, such information shall be reported to the department of elementary and secondary education.

6. Any school official making a report to the department of elementary and secondary education in conformity with this section shall not be civilly liable for such action.

7. The state board of education may promulgate rules for criminal history background checks made pursuant to this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

8. This section shall be effective January 1, 2004.

210.482. 1. When the emergency placement of a child in a private home is necessary due to the unexpected absence of the child's parents, legal guardian, or custodian, the juvenile court or division of family services may request that a local or state law enforcement agency or juvenile officer immediately conduct a name-based criminal history record check to include orders of protection and outstanding warrants of each individual age eighteen or over in the home by using the Missouri uniform law enforcement system and National Crime Information Center to access the Interstate Identification Index maintained by the Federal Bureau of Investigation.

2. If a name-based search has been conducted pursuant to subsection 1 of this section, within five business days after the emergency placement of the child in the

private home, and if the private home has not been previously been approved as a foster or adoptive home, all individuals eighteen years of age or older residing in the home shall report to a local law enforcement agency for the purpose of providing two sets of fingerprints each and accompanying fees, pursuant to section 43.530, RSMo. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files. Results of the checks will be provided to the juvenile court or division of family services' office requesting such information. Any child placed in emergency placement in a private home shall be removed immediately if any individual in the home failed to provide fingerprints after being requested to do so, unless the individual refusing to provide fingerprints ceases to reside in the private home.

3. When the placement of a child is denied as a result of a name-based criminal history check and the denial is contested, all individuals eighteen years of age or older residing in the home shall, within five business days, submit to the juvenile court or the division of family services two sets of fingerprints, accompanying fees, and written permission authorizing the juvenile court or the division of family services to forward the fingerprints to the state criminal record repository for submission to the Federal Bureau of Investigation. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

4. For the purposes of this section, "emergency placement" refers to those limited instances when the juvenile court or division of family services is placing a child in the home of private individuals, including neighbor, friends, or relatives, as a result of a sudden unavailability of the child's primary caretaker.

210.487. 1. When conducting investigations of persons for the purpose of foster parent licensing, the division shall:

(1) Conduct a search for any adult in the applicant's household for evidence of ex parte or full orders of protection. The office of state courts administrator shall allow access to the automated court information system by the division. The clerk of each court contacted by the division shall provide the division information within ten days of a request; and

(2) Obtain two sets of fingerprints for any adult in the applicant's household. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files. The

highway patrol shall assist the division and provide the criminal fingerprint background information, upon request.

2. The division may make arrangements with other executive branch agencies to obtain any investigative background information.

3. The division may promulgate rules and regulations that are necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited as the "Family Care Safety Act".

2. As used in sections 210.900 to 210.936, the following terms shall mean:

(1) "Child-care provider", any licensed or license-exempt child-care home, any licensed or license-exempt child-care center, child-placing agency, residential care facility for children, group home, foster family group home, foster family home, employment agency that refers a child-care worker to parents or guardians as defined in section 289.005, RSMo. The term "child-care provider" does not include summer camps or voluntary associations designed primarily for recreational or educational purposes;

(2) "Child-care worker", any person who is employed by a child-care provider, or receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for child-care services;

(3) "Department", the department of health and senior services;

(4) **"Designated release", release of background screening information by the family care safety registry based upon a request made by a human services provider that contains a release of information signed by the registration-exempt worker, that shall not result in registration with the family care safety registry and is limited to a one-time only response;**

[(4)] (5) "Elder-care provider", any operator licensed pursuant to chapter 198, RSMo, or any person, corporation, or association who provides in-home services under contract with the division of aging, or any employer of nurses or nursing assistants of home health agencies licensed pursuant to sections 197.400 to 197.477, RSMo, or any nursing assistants employed by a hospice pursuant to sections 197.250 to 197.280, RSMo, or that portion of a hospital for which

subdivision (3) of subsection 1 of section 198.012, RSMo, applies;

[(5)] **(6)** "Elder-care worker", any person who is employed by an elder-care provider, or who receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for elder-care services;

**(7) "Employer", any child-care provider, elder-care provider, or personal-care provider as defined in this section;**

**(8) "Human services provider", any provider under contract with, certified, or licensed by a state agency that employs registration-exempt workers through a direct employer-employee relationship or who perform duties in a voluntary capacity under the authority and direction of the human services provider;**

[(6)] **(9)** "Patrol", the Missouri state highway patrol;

[(7) "Employer", any child-care provider, elder-care provider, or personal-care provider as defined in this section;

**(8)] (10) "Personal-care attendant" or "personal-care worker", a person who performs routine services or supports necessary for a person with a physical or mental disability to enter and maintain employment or to live independently;**

**[(9)] (11) "Personal-care provider", any person, corporation, or association who provides personal-care services or supports under contract with the department of mental health, the division of aging, the department of health and senior services or the department of elementary and secondary education;**

**(12) "Registration-exempt worker", any person not required to register with the family care safety registry pursuant to this section who provides prevention, evaluation, care, treatment, rehabilitation, or related services to minors, patients, or residents;**

**[(10)] (13) "Related child care", child care provided only to a child or children by such child's or children's grandparents, great-grandparents, aunts or uncles, or siblings living in a residence separate from the child or children;**

**[(11)] (14) "Related elder care", care provided only to an elder by an adult child, a spouse, a grandchild, a great-grandchild or a sibling of such elder.**

210.906. 1. Every child-care worker or elder-care worker hired on or after January 1, 2001, or personal-care worker hired on or after January 1, 2002, shall complete a registration form provided by the department. The department shall make such forms available no later than January 1, 2001, and may, by rule, determine the specific content of such form, but every form shall:

(1) Request the valid Social Security number of the applicant;

(2) Include information on the person's right to appeal the information contained in the registry pursuant to section 210.912;

(3) Contain the signed consent of the applicant for the background checks required pursuant to this section; and

(4) Contain the signed consent for the release of information contained in the background check for employment purposes only.

**2. Human services providers may request a background screening on registration-exempt workers pursuant to section 43.540 using a form developed by the department for the purpose of a designated release. The department shall make such forms available no later than January 1, 2004, and may by rule, determine the specific content of such forms, but every form shall:**

**(1) Request the valid Social Security number of the applicant;**

**(2) Include information on the person's right to appeal the information contained in the registry pursuant to section 210.912;**

**(3) Contain the signed consent of the applicant for the background checks required pursuant to this section; and**

**(4) Contain the signed consent for the release of information contained in the background check for a one-time release by the family care safety registry to the human services provider.**

[2.] **3.** Every child-care worker or elder-care worker hired on or after January 1, 2001, and every personal-care worker hired on or after January 1, 2002, shall complete a registration form within fifteen days of the beginning of such person's employment. Any person employed as a child-care, elder-care or personal-care worker who fails to submit a completed registration form to the department of health and senior services as required by sections 210.900 to 210.936 without good cause, as determined by the department, is guilty of a class [B] A misdemeanor.

[3.] **4.** The costs of the criminal background check may be paid by the individual applicant, or by the provider if the applicant is so employed, or for those applicants receiving public assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to the patrol for the costs of the criminal background check shall be deposited to the credit of the criminal record system fund as required by section 43.530, RSMo.

[4.] **5.** Any person licensed pursuant to sections 210.481 to 210.565 shall be automatically registered in the family care safety registry at no additional cost other than the costs required pursuant to sections 210.481 to 210.565.

[5.] **6.** Any [person] **registration-exempt worker** not required to register pursuant to the provisions of sections 210.900 to 210.936 may also be included in the registry if such person voluntarily applies to the department for registration and meets the requirements of this section and section 210.909, including submitting to the background checks in subsection 1 of section 210.909.



[6.] 7. The provisions of sections 210.900 to 210.936 shall not extend to related child care, related elder care or related personal care.

210.909. 1. Upon submission of a completed registration form by a child-care worker, elder-care worker or personal-care attendant, **or completed designated-release form by a human services provider**, the department shall:

(1) Determine if a probable cause finding of child abuse or neglect involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;

(2) Determine if the applicant has been refused licensure or has experienced involuntary licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

(5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any [conviction, plea of guilty or nolo contendere, or a suspended execution of sentence to a charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573, 575 and 578, RSMo] **criminal history record for a felony or misdemeanor and any offense for which the person has registered pursuant to sections 589.400 to 589.425, RSMo**; and

(6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any convictions, employee disqualification listings, registry listings, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

210.921. 1. The department shall not provide any registry information pursuant to this section unless the department obtains the name and address of the person [calling.] **making the request**, and, **with the exception of a designated release**, determines that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936, "employment purposes" includes direct employer-employee relationships, prospective employer-employee relationships, and screening and interviewing of persons or facilities by those persons contemplating the placement

of an individual in a child-care, elder-care or personal-care setting. **Designated release of background screening information shall be allowed for purposes other than employer-employee relationships with the written permission of the applicant for a one-time release of information.** Disclosure of background information concerning a given applicant recorded by the department in the registry shall be limited to:

(1) Confirming whether the individual is listed in the registry; and

(2) Indicating whether the individual has been listed or named in any of the background checks listed in subsection 2 of section 210.903. If such individual has been so listed, the department of health and senior services shall only disclose the name of the background check in which the individual has been identified. With the exception of any agency licensed by the state to provide child care, elder care, or personal care **and human services providers** which shall receive specific information immediately if requested, any specific information related to such background check shall only be disclosed after the department has received a signed request from the person calling, with the person's name, address and reason for requesting the information.

2. Any person requesting registry information shall be informed that the registry information provided pursuant to this section consists only of information relative to the state of Missouri and does not include information from other states or information that may be available from other states.

3. Any person who uses the information obtained from the registry for any purpose other than that specifically provided for in sections 210.900 to 210.936 is guilty of a class [B] A misdemeanor.

4. When any registry information is disclosed pursuant to subdivision (2) of subsection 1 of this section, the department shall notify the registrant of the name and address of the person making the inquiry.

5. The department of health and senior services staff providing information pursuant to sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions; provided, however, any department of health and senior services staff person who releases registry information in bad faith or with ill intent shall not have immunity from any liability, civil or criminal. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the release of registry information. The department is prohibited from selling the registry or any portion of the registry for any purpose including "employment purposes" as defined in subsection 1 of this section.

210.922. The department **of health and senior services, the department of mental health, and the department of social services** may use the registry information to carry out the duties assigned to the department pursuant to this chapter and chapters 190, 195, 197, 198,

**630**, and 660, RSMo.

302.272. 1. No person shall operate any school bus owned by or under contract with a public school or the state board of education unless such driver has qualified for a school bus permit under this section and complied with the pertinent rules and regulations of the department of revenue. A school bus permit shall be issued to any applicant who meets the following qualifications:

(1) The applicant has a valid state license issued under this chapter or has a license valid in any other state;

(2) The applicant is at least twenty-one years of age;

(3) The applicant has passed a medical examination, including vision and hearing tests, as prescribed by the director of revenue and, if the applicant is at least seventy years of age, the applicant shall pass the medical examination annually to maintain or renew the permit; and

(4) The applicant has successfully passed an examination for the operation of a school bus as prescribed by the director of revenue. The examination shall include, but need not be limited to, a written skills examination of applicable laws, rules and procedures, and a driving test in the type of vehicle to be operated. The test shall be completed in the appropriate class of vehicle to be driven. For purposes of this section classes of school buses shall comply with the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570).

2. Except as otherwise provided in this section, a school bus permit shall be renewed every three years and shall require the applicant to provide a medical examination as specified in subdivision (3) of subsection 1 of this section and to successfully pass a written skills examination as prescribed by the director of revenue in consultation with the department of elementary and secondary education. If the applicant is at least seventy years of age, the school bus permit shall be renewed annually, and the applicant shall successfully pass the examination prescribed in subdivision (4) of subsection 1 of this section prior to receiving the renewed permit. The director may waive the written skills examination on renewal of a school bus permit upon verification of the applicant's successful completion within the preceding twelve months of a training program which has been approved by the director in consultation with the department of elementary and secondary education and which is at least eight hours in duration with special instruction in school bus driving.

3. The fee for a new or renewed school bus permit shall be three dollars.

4. Upon the applicant's completion of the requirements of subsections 1, 2, and 3 of this section, the director of revenue shall issue a temporary school bus permit to the applicant until such time as a permanent school bus permit shall be issued following the record clearance as provided in subsection 6 of this section.

5. The director of revenue, to the best of the director's knowledge, shall not issue or renew a school bus permit to any applicant:

(1) Whose driving record shows that such applicant's privilege to operate a motor vehicle has been suspended, revoked or disqualified or whose driving record shows a history of moving vehicle violations;

(2) Who has pled guilty to or been found guilty of any felony or misdemeanor for violation of drug regulations as defined in chapter 195, RSMo; of any felony for an offense against the person as defined by chapter 565, RSMo, or any other offense against the person involving the endangerment of a child as prescribed by law; of any misdemeanor or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for prostitution as defined by chapter 567, RSMo; of any misdemeanor or felony for an offense against the family as defined in chapter 568, RSMo; of any felony or misdemeanor for a weapons offense as defined by chapter 571, RSMo; of any misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which the director has knowledge;

(3) Who has pled guilty to or been found guilty of any felony involving robbery, arson, burglary or a related offense as defined by chapter 569, RSMo; or any similar crime in any federal, state, municipal or other court of similar jurisdiction within the preceding ten years of which the director has knowledge.

6. The [department of social services or the] Missouri highway patrol[, whichever has access to applicable records,] shall provide a record of clearance or denial of clearance for any applicant for a school bus permit for the convictions specified in subdivisions (2) and (3) of subsection 5 of this section. The Missouri highway patrol in providing the record of clearance or denial of clearance for any such applicant is authorized to obtain from the Federal Bureau of Investigation any information which might aid the Missouri highway patrol in providing such record of clearance or denial of clearance. The [department of social services or the] Missouri highway patrol shall provide the record of clearance or denial of clearance within thirty days of the date requested, relying on information available at that time, except that the [department of social services or the] Missouri highway patrol shall provide any information subsequently discovered to the department of revenue.

**7. The applicant shall submit two sets of fingerprints. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.**

**8. The applicant shall pay the fee for the state criminal history information pursuant to section 43.530, RSMo, and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for the school bus permit pursuant to this section. The director shall distribute the fees collected for the state and federal criminal histories to the highway**

patrol.

9. The director may adopt any rules and regulations necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

610.120. 1. Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMo. ~~[[They shall be available to]]~~ **The closed records shall be available to: criminal justice agencies for the administration of criminal justice pursuant to section 43.500, RSMo, criminal justice employment, screening persons with access to criminal justice facilities, procedures and sensitive information; to law enforcement agencies for issuance or renewal of a license, permit, certification, or registration of authority from such agency; those agencies authorized pursuant to section 43.543, RSMo, to submit and when submitting fingerprints to the central repository; the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices; and only to courts, law enforcement agencies, child care agencies,]** **in accordance with section 43.507, RSMo; to qualified entities for the purpose of screening providers as defined in section 43.530, RSMo; the department of revenue for [driving record purposes, facilities as defined in section 198.006, RSMo, in-home services provider agencies as defined in section 660.250, RSMo,]** **driver license administration;** the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo~~[[,];~~ **the department of health and senior services for the purpose of licensing and regulating facilities and regulating in-home service provider agencies;** and federal agencies for purposes of ~~[[prosecution, sentencing, parole consideration,]]~~ **criminal justice administration, criminal justice employment, child, elderly, or disabled care [employment, nursing home employment], and [to federal agencies] for such investigative purposes as authorized by law or presidential executive order.**

2. These records shall be made available **only** for the ~~[[above]]~~ purposes ~~[[regardless of any previous statutory provision which had closed such records to certain agencies or for certain purposes.]]~~ **and to the entities listed in this section. A criminal justice agency receiving**

**a request for criminal history information under its control may require positive identification, to include fingerprints of the subject of the record search, prior to releasing closed record information. Dissemination of closed and open records from the state criminal records repository shall be in accordance with administrative rules and regulations established in accordance with section 43.509, RSMo.** All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

[2. As used in this section, the term "child care" includes providers and youth services agencies as those terms are defined in section 43.540, RSMo, elementary and secondary school teachers, and elementary and secondary school bus drivers, whether such drivers are employed by a school or an entity which has contracted with the school to provide transportation services.]

610.123. 1. Any person who wishes to have a record of arrest expunged pursuant to section 610.122 may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of this section. The petition shall include the following information or shall be dismissed if the information is not given:

- (1) The petitioner's:
  - (a) Full name;
  - (b) Sex;
  - (c) Race;
  - (d) Date of birth;
  - (e) Driver's license number;
  - (f) Social Security number; and
  - (g) Address at the time of the arrest;
- (2) The offense charged against the petitioner;
- (3) The date the petitioner was arrested;
- (4) The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (5) The name of the agency that arrested the petitioner;
- (6) The case number and court of the offense;
- (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition to expunge a record that will be forwarded to the central repository for the sole purpose of positively identifying the petitioner.**

2. The petition shall name as defendants all law enforcement agencies, courts,

prosecuting attorneys, central state depositories of criminal records or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action.

3. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

4. If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. A copy of the order shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

5. The supreme court shall promulgate rules establishing procedures for the handling of cases filed pursuant to the provisions of this section and section 610.122. Such procedures shall be similar to the procedures established in chapter 482, RSMo, for the handling of small claims.

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

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

(1) The parent of a minor patient, resident or client;

(2) The guardian or other person having legal custody of the patient, resident or client;

(3) The attorney of a patient, resident or client who is a ward of the juvenile court, an alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as evidenced by court orders of the attorney's appointment;

(4) An attorney or personal physician as authorized by the patient, resident or client;

(5) Law enforcement officers and agencies, information about patients, residents or clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement officers shall be obligated to keep such information confidential;

(6) The entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042. The entity or agency shall be able to obtain access to the records of a person with developmental disabilities who is a client of the entity or agency if such person has authorized the entity or agency to have such access; and the records of any person with developmental disabilities who, by reason of mental or physical condition is unable to authorize the entity or agency to have such access, if such person does not have a legal guardian, conservator or other legal representative, and a complaint has been received by the entity or agency with respect to such

person or there is probable cause to believe that such person has been subject to abuse or neglect. The entity or agency obtaining access to a person's records shall meet all requirements for confidentiality as set out in this section;

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

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

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

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

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

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

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

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

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

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

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

(9) To the department of social services **or the department of health and senior services** as necessary to report or have investigated abuse, neglect, or rights violations of



patients, residents, or clients;

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

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

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

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

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

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

2. If the investigation indicates possible abuse or neglect of a patient, resident or client, the investigator shall refer the complaint together with the investigator's report to the department director for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal from a facility not operated or funded by the department is necessary to protect the residents from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the residents in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident for a period not to exceed thirty days.

3. (1) Reports referred to in section 630.165 and the investigative reports referred to in this section shall be confidential, shall not be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that: complete copies all such reports shall be open and available to the parents or other guardian of the patient, resident, or client who is the subject of such report, except that the names and any other descriptive information of the complainant or other person mentioned in the reports shall not be disclosed unless such complainant or person specifically consents to such disclosure. All reports

referred to in this section shall be admissible in any judicial proceedings or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department of mental health, or the director's designee. All such reports may be disclosed by the department of mental health to law enforcement officers and public health officers, but only to the extent necessary to carry out the responsibilities of their offices, and to the department of social services, **to the department of health and senior services**, and to boards appointed pursuant to sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or client as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents or clients provided that all such law enforcement officers, public health officers, department of social services' officers, **department of health and senior services officers**, and boards shall be obligated to keep such information confidential;

(2) Except as otherwise provided in this section, the proceedings, findings, deliberations, reports and minutes of committees of health care professionals as defined in section 537.035, RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the responsibility to evaluate, maintain, or monitor the quality and utilization of mental health services are privileged and shall not be subject to the discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible into evidence into any judicial or administrative action for failure to provide adequate or appropriate care. Such committees may exist, either within department facilities or its agents, contractors, or vendors, as applicable. Except as otherwise provided in this section, no person who was in attendance at any investigation or committee proceeding shall be permitted or required to disclose any information acquired in connection with or in the course of such proceeding or to disclose any opinion, recommendation or evaluation of the committee or board or any member thereof; provided, however, that information otherwise discoverable or admissible from original sources is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before any committee or in the course of any investigation, nor is any member, employee or agent of such committee or other person appearing before it to be prevented from testifying as to matters within their personal knowledge and in accordance with the other provisions of this section, but such witness cannot be questioned about the testimony or other proceedings before any investigation or before any committee;

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

(4) Nothing in this section shall limit authority otherwise provided by law in subdivisions

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

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

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

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

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

- (1) Good cause exists for the untimely commencement of the request for the review;
- (2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity for employment; and
- (3) There is no other adequate remedy at law.

630.170. 1. A person convicted of, **pled guilty to or nolo contendere to** any crime pursuant to section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility or day program operated, funded or licensed by the department or in any mental health facility or mental health program in which people are admitted on a voluntary

or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

2. A person convicted of, **pled guilty to or nolo contendere to** any felony offense against persons as defined in chapter 565, RSMo; of any felony sexual offense as defined in chapter 566, RSMo; of any felony offense defined in section **568.020**, 568.045, 568.050, 568.060, 569.020, **569.025**, 569.030, **569.035**, 569.040 [or], 569.050, **569.070**, or **569.160**, RSMo, or of an equivalent felony offense, **or any violation of subsection 3 of section 198.070, RSMo**, shall be disqualified from holding any direct-care position in any public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

**3. A person who has received a suspended imposition of sentence or a suspended execution of sentence following a plea of guilty to any of the disqualifying crimes listed in subsection 1 or 2 of this section shall remain disqualified.**

[3.] 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section may [appeal] **seek an exception to the employment** disqualification [to] **from** the director of the department or the director's designee. The request shall be written and may not be made more than once every twelve months. The request may be granted by the director or designee if in the judgment of the director or designee a clear showing has been made by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident or client of a facility, program or service. The director or designee may grant [the appeal] **an exception** subject to any conditions deemed appropriate and failure to comply with such terms may result in the person again being disqualified. Decisions by the director or designee pursuant to the provisions of this subsection shall not be subject to appeal. The right to [appeal] **request an exception** pursuant to this subsection shall not apply to persons [convicted of] **who are disqualified due to being listed on the department of social services or department of health and senior services employee disqualification list pursuant to section 660.315, RSMo, nor to persons disqualified from employment due to any crime pursuant to the provisions of chapter 566 [or 568], RSMo, or section 565.020 [or 565.021], RSMo, section 568.020 or 568.060, RSMo, or section 569.025 or 569.070, RSMo.**

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

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

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

**(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315, RSMo, or the department of mental health disqualification registry as provided for in this section.**

**6. Any person who has received a good cause waiver issued by the division of aging or division of senior services pursuant to subsection 9 of section 660.317, RSMo, shall not require an additional exception pursuant to this section in order to be employed in a long term care facility licensed pursuant to chapter 198, RSMo.**

**7. Any public or private residential facility, day program, or specialized service licensed, certified, or funded by the department shall, not later than two working days of hiring any person for a full-time, part-time, or temporary position to have contact with clients or residents or patients shall:**

**(1) Request a criminal background check as provided in section 43.540, RSMo;**

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

**(3) Make an inquiry to the department of mental health whether the person is listed on the disqualification registry as provided in this section.**

**8. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires a person to hold a direct care position if that persons has been disqualified pursuant to the provisions of subsection 1 or 2 of this section.**

**[4.] 9.** The department may maintain a disqualification registry and place on the registry the names of any persons who have been finally determined by the department to be disqualified pursuant to this section, or who have had administrative substantiations made against them for abuse or neglect pursuant to department rule. Such list shall reflect that the person is barred from holding any position in any public or private facility or day program operated, funded or licensed by the department, or any mental health facility or mental health program in which persons are 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, corporation or association who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. An applicant who knowingly fails to disclose his criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other

state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

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

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

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

[43.521. Sections 43.500 to 43.530 shall not require fingerprinting of juvenile offenders or reporting of information pertaining to a proceeding pursuant to the Missouri juvenile code, except in those cases where a juvenile is certified to the circuit court to stand trial as an adult.]

[210.937. The provisions of sections 210.900 to 210.936 shall terminate on January 1, 2004.]

Bill

Copy