

FIRST REGULAR SESSION

SENATE BILL NO. 704

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

2672S.04I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 210.115, 568.045, 568.050, 568.060, and 578.421, RSMo, and to enact in lieu thereof five new sections relating to child protection, with penalty provisions.

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

Section A. Sections 210.115, 568.045, 568.050, 568.060,
2 and 578.421, RSMo, are repealed and five new sections enacted
3 in lieu thereof, to be known as sections 210.115, 568.045,
4 568.050, 568.060, and 578.421, to read as follows:

210.115. 1. When any physician, medical examiner,
2 coroner, dentist, chiropractor, optometrist, podiatrist,
3 resident, intern, nurse, hospital or clinic personnel that
4 are engaged in the examination, care, treatment or research
5 of persons, and any other health practitioner, psychologist,
6 mental health professional, social worker, day care center
7 worker or other child-care worker, juvenile officer,
8 probation or parole officer, jail or detention center
9 personnel, teacher, principal or other school official,
10 minister as provided by section 352.400, peace officer or
11 law enforcement official, volunteer or personnel of a
12 community service program that offers support services for
13 families in crisis to assist in the delegation of any powers
14 regarding the care and custody of a child by a properly
15 executed power of attorney pursuant to sections 475.600 to
16 475.604, or other person with responsibility for the care of
17 children has reasonable cause to suspect that a child has

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

18 been or may be subjected to abuse or neglect or observes a
19 child being subjected to conditions or circumstances which
20 would reasonably result in abuse or neglect, that person
21 shall immediately report to the division in accordance with
22 the provisions of sections 210.109 to 210.183. No internal
23 investigation shall be initiated until such a report has
24 been made. As used in this section, the term "abuse" is not
25 limited to abuse inflicted by a person responsible for the
26 child's care, custody and control as specified in section
27 210.110, but shall also include abuse inflicted by any other
28 person.

29 2. If two or more members of a medical institution who
30 are required to report jointly have knowledge of a known or
31 suspected instance of child abuse or neglect, a single
32 report may be made by a designated member of that medical
33 team. Any member who has knowledge that the member
34 designated to report has failed to do so shall thereafter
35 immediately make the report. Nothing in this section,
36 however, is meant to preclude any person from reporting
37 abuse or neglect.

38 3. The reporting requirements under this section are
39 individual, and no supervisor or administrator may impede or
40 inhibit any reporting under this section. No person making
41 a report under this section shall be subject to any
42 sanction, including any adverse employment action, for
43 making such report. Every employer shall ensure that any
44 employee required to report pursuant to subsection 1 of this
45 section has immediate and unrestricted access to
46 communications technology necessary to make an immediate
47 report and is temporarily relieved of other work duties for
48 such time as is required to make any report required under
49 subsection 1 of this section.

50 4. Notwithstanding any other provision of sections
51 210.109 to 210.183[,] **to the contrary:**

52 (1) Any child who does not receive specified medical
53 treatment by reason of the legitimate practice of the
54 religious belief of the child's parents, guardian, or others
55 legally responsible for the child, for that reason alone,
56 shall not be found to be an abused or neglected child, and
57 such parents, guardian or other persons legally responsible
58 for the child shall not be entered into the central
59 registry. However, the division may accept reports
60 concerning such a child and may subsequently investigate or
61 conduct a family assessment as a result of that report, **but**
62 **shall not investigate or conduct a family assessment for the**
63 **sole reason that the child's parent, guardian, or other**
64 **person responsible for the child's care, custody, and**
65 **control refuses to affirm or otherwise recognize the child's**
66 **sexual orientation or gender identity if such identity**
67 **differs from the child's biological sex, as such term is**
68 **defined in section 191.1720, or if he or she refuses to**
69 **assist or consent to the child's gender transition, as such**
70 **term is defined in section 191.1720.** Such an exception
71 shall not limit the administrative or judicial authority of
72 the state to ensure that medical services are provided to
73 the child when the child's health requires it; **provided,**
74 **that such medical services shall not include services**
75 **prohibited under section 191.1720;**

76 (2) A child shall not be considered abused or
77 neglected for the sole reason that the child's parent,
78 guardian, or other person responsible for the child's care,
79 custody, and control refuses to affirm or otherwise
80 recognize the child's sexual orientation or gender identity
81 if such identity differs from the child's biological sex, as

82 such term is defined in section 191.1720, and such parent,
83 guardian, or other person responsible for the child's care,
84 custody, and control shall not be entered into the central
85 registry. The division shall not investigate or conduct a
86 family assessment for the sole reason that the child's
87 parent, guardian, or other person responsible for the
88 child's care, custody, and control refuses to affirm or
89 otherwise recognize the child's sexual orientation or gender
90 identity if such identity differs from the child's
91 biological sex, as such term is defined in section 191.1720.

92 5. In addition to those persons and officials required
93 to report actual or suspected abuse or neglect, any other
94 person may report in accordance with sections 210.109 to
95 210.183 if such person has reasonable cause to suspect that
96 a child has been or may be subjected to abuse or neglect or
97 observes a child being subjected to conditions or
98 circumstances which would reasonably result in abuse or
99 neglect.

100 6. Any person or official required to report pursuant
101 to this section, including employees of the division, who
102 has probable cause to suspect that a child who is or may be
103 under the age of eighteen, who is eligible to receive a
104 certificate of live birth, has died shall report that fact
105 to the appropriate medical examiner or coroner. If, upon
106 review of the circumstances and medical information, the
107 medical examiner or coroner determines that the child died
108 of natural causes while under medical care for an
109 established natural disease, the coroner, medical examiner
110 or physician shall notify the division of the child's death
111 and that the child's attending physician shall be signing
112 the death certificate. In all other cases, the medical
113 examiner or coroner shall accept the report for

114 investigation, shall immediately notify the division of the
115 child's death as required in section 58.452 and shall report
116 the findings to the child fatality review panel established
117 pursuant to section 210.192.

118 7. Any person or individual required to report may
119 also report the suspicion of abuse or neglect to any law
120 enforcement agency or juvenile office. Such report shall
121 not, however, take the place of reporting to the division.

122 8. If an individual required to report suspected
123 instances of abuse or neglect pursuant to this section has
124 reason to believe that the victim of such abuse or neglect
125 is a resident of another state or was injured as a result of
126 an act which occurred in another state, the person required
127 to report such abuse or neglect may, in lieu of reporting to
128 the Missouri children's division, make such a report to the
129 child protection agency of the other state with the
130 authority to receive such reports pursuant to the laws of
131 such other state. If such agency accepts the report, no
132 report is required to be made, but may be made, to the
133 children's division.

134 9. For the purposes of providing supportive services
135 or verifying the status of a youth as unaccompanied or
136 homeless for the purposes of accessing supportive services,
137 the fact that a child is an unaccompanied youth as defined
138 in 42 U.S.C. Section 11434a(6) is not, in and of itself, a
139 sufficient basis for reporting child abuse or neglect,
140 unless the child is under sixteen years of age or is an
141 incapacitated person, as defined in section 475.010.
142 Nothing in this subsection shall limit a mandated reporter
143 from making a report under this section if the mandated
144 reporter knows or has reasonable cause to suspect that an

145 unaccompanied youth has been or may be a victim of abuse or
146 neglect.

568.045. 1. A person commits the offense of
2 endangering the welfare of a child in the first degree if he
3 or she:

4 (1) Knowingly acts in a manner that creates a
5 substantial risk to the life, body, or health of a child
6 less than seventeen years of age; or

7 (2) Knowingly engages in sexual conduct with a person
8 under the age of seventeen years over whom the person is a
9 parent, guardian, or otherwise charged with the care and
10 custody;

11 (3) Knowingly encourages, aids or causes a child less
12 than seventeen years of age to engage in any conduct which
13 violates the provisions of chapter 571 or 579;

14 (4) In the presence of a child less than seventeen
15 years of age or in a residence where a child less than
16 seventeen years of age resides, unlawfully manufactures or
17 attempts to manufacture compounds, possesses, produces,
18 prepares, sells, transports, tests or analyzes amphetamine
19 or methamphetamine or any of its analogues.

20 2. The offense of endangering the welfare of a child
21 in the first degree is a class D felony unless the offense:

22 (1) Is committed as part of an act or series of acts
23 performed by two or more persons as part of an established
24 or prescribed pattern of activity, or where physical injury
25 to the child results, or the offense is a second or
26 subsequent offense under this section, in which case the
27 offense is a class C felony;

28 (2) Results in serious physical injury to the child,
29 in which case the offense is a class B felony; or

30 (3) Results in the death of a child, in which case the
31 offense is a class A felony.

32 **3. A person does not commit the offense of endangering**
33 **the welfare of a child in the first degree if he or she**
34 **refuses to affirm or recognize a child's sexual orientation**
35 **or gender identity if such identity differs from the child's**
36 **biological sex, as such term is defined in section 191.1720,**
37 **or if he or she refuses to assist or consent to a child's**
38 **gender transition, as such term is defined in section**
39 **191.1720.**

568.050. 1. A person commits the offense of
2 endangering the welfare of a child in the second degree if
3 he or she:

4 (1) With criminal negligence acts in a manner that
5 creates a substantial risk to the life, body or health of a
6 child less than seventeen years of age; or

7 (2) Knowingly encourages, aids or causes a child less
8 than seventeen years of age to engage in any conduct which
9 causes or tends to cause the child to come within the
10 provisions of paragraph (d) of subdivision (2) of subsection
11 1 or subdivision (3) of subsection 1 of section 211.031; or

12 (3) Being a parent, guardian or other person legally
13 charged with the care or custody of a child less than
14 seventeen years of age, recklessly fails or refuses to
15 exercise reasonable diligence in the care or control of such
16 child to prevent him or her from coming within the
17 provisions of paragraph (c) of subdivision (1) of subsection
18 1 or paragraph (d) of subdivision (2) of subsection 1 or
19 subdivision (3) of subsection 1 of section 211.031; or

20 (4) Knowingly encourages, aids or causes a child less
21 than seventeen years of age to enter into any room, building

22 or other structure which is a public nuisance as defined in
23 section 579.105.

24 2. Nothing in this section shall be construed to mean
25 the welfare of a child is endangered for the sole reason
26 that he or she is being provided nonmedical remedial
27 treatment recognized and permitted under the laws of this
28 state.

29 3. The offense of endangering the welfare of a child
30 in the second degree is a class A misdemeanor unless the
31 offense is committed as part of an act or series of acts
32 performed by two or more persons as part of an established
33 or prescribed pattern of activity, in which case the offense
34 is a class E felony.

35 **4. A person does not commit the offense of endangering**
36 **the welfare of a child in the second degree if he or she**
37 **refuses to affirm or recognize a child's sexual orientation**
38 **or gender identity if such identity differs from the child's**
39 **biological sex, as such term is defined in section 191.1720,**
40 **or if he or she refuses to assist or consent to a child's**
41 **gender transition, as such term is defined in section**
42 **191.1720.**

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

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

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

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

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

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

31 (6) "Serious emotional injury", an injury that creates
32 a substantial risk of temporary or permanent medical or
33 psychological damage, manifested by impairment of a
34 behavioral, cognitive, or physical condition. Serious
35 emotional injury shall be established by testimony of
36 qualified experts upon the reasonable expectation of
37 probable harm to a reasonable degree of medical or
38 psychological certainty;

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

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

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

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

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

55 4. A person does not commit the offense of abuse or
56 neglect of a child by virtue of the sole fact that the
57 person delivers or allows the delivery of a child to a
58 provider of emergency services.

59 **5. A person does not commit the offense of abuse or**
60 **neglect of a child by virtue of the sole fact that the**
61 **person refuses to affirm or otherwise recognize a child's**
62 **sexual orientation or gender identity if such identity**
63 **differs from the child's biological sex, as such term is**
64 **defined in section 191.1720.**

65 6. The offense of abuse or neglect of a child is:

66 (1) A class D felony, without eligibility for
67 probation, parole, or conditional release until the
68 defendant has served no less than one year of such sentence,
69 unless the person has previously been found guilty of a
70 violation of this section or of a violation of the law of
71 any other jurisdiction that prohibits the same or similar
72 conduct or the injury inflicted on the child is a serious
73 emotional injury or a serious physical injury, in which case
74 abuse or neglect of a child is a class B felony, without

75 eligibility for probation or parole until the defendant has
76 served not less than five years of such sentence; or

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

80 [6.] 7. Notwithstanding subsection [5] 6 of this
81 section to the contrary, the offense of abuse or neglect of
82 a child is a class A felony, without eligibility for
83 probation, parole, or conditional release until the
84 defendant has served not less than fifteen years of such
85 sentence, if:

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

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

89 (3) The injury is the result of sexual abuse or sexual
90 abuse in the first degree as defined under section 566.100
91 or sexual exploitation of a minor as defined under section
92 573.023.

93 [7.] 8. The circuit or prosecuting attorney may refer
94 a person who is suspected of abuse or neglect of a child to
95 an appropriate public or private agency for treatment or
96 counseling so long as the agency has consented to taking
97 such referrals. Nothing in this subsection shall limit the
98 discretion of the circuit or prosecuting attorney to
99 prosecute a person who has been referred for treatment or
100 counseling pursuant to this subsection.

101 [8.] 9. Nothing in this section shall be construed to
102 alter the requirement that every element of any crime
103 referred to herein must be proven beyond a reasonable doubt.

104 [9.] 10. Discipline, including spanking administered
105 in a reasonable manner, shall not be construed to be abuse
106 under this section.

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

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

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

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

(a) Assault with a deadly weapon or by means of force likely to cause serious physical injury, as provided in sections 565.050 and 565.052;

(b) Robbery, arson and those offenses under chapter 569 which are related to robbery and arson;

(c) Murder or manslaughter, as provided in sections 565.020 to 565.024;

(d) Any violation of the provisions of chapter 579 which involves the distribution, delivery or manufacture of a substance prohibited by chapter 579;

(e) Unlawful use of a weapon which is a felony pursuant to section 571.030;

32 (f) Tampering with witnesses and victims, as provided
33 in section 575.270;

34 (g) Promoting online sexual solicitation, as provided
35 in section 566.103;

36 (h) Sexual trafficking of a child in the first degree,
37 as provided in section 566.210;

38 (i) Sexual trafficking of a child in the second
39 degree, as provided in section 566.211;

40 (j) Patronizing prostitution, as provided in
41 subsection 4 of section 567.030;

42 (k) Promoting prostitution in the first degree, as
43 provided in section 567.050;

44 (l) Promoting prostitution in the second degree, as
45 provided in section 567.060;

46 (m) Abuse or neglect of a child, as provided in
47 subsection [6] 7 of section 568.060;

48 (n) Sexual exploitation of a minor, as provided in
49 section 573.023;

50 (o) Child used in sexual performance, as provided in
51 section 573.200;

52 (p) Promoting sexual performance by a child, as
53 provided in section 573.205; or

54 (q) Any dangerous felony, as defined in section
55 556.061.

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