

## DEPARTMENT OF SOCIAL SERVICES

## CHILDREN'S DIVISION

P.O. BOX 88

JEFFERSON CITY, MISSOURI

August 12, 2010

**What's Inside:**  
Immediate Changes to the  
Child Abuse/Neglect  
Administrative Review  
Process Resulting from  
Case Law

**MEMORANDUM**

TO: REGIONAL EXECUTIVE STAFF, CIRCUIT MANAGERS AND  
CHILDREN'S DIVISION STAFF

FROM: PAULA NEESE, DIRECTOR

SUBJECT: IMMEDIATE CHANGES TO THE CHILD ABUSE/NEGLECT  
ADMINISTRATIVE REVIEW PROCESS RESULTING FROM  
CASE LAW.

## DISCUSSION:

The purpose of this memorandum is to inform staff that immediate changes to the child abuse/neglect review process are necessary in response to a Western District Court of Appeals decision. The Court defined the term "pending criminal charges", which will impact the Division's ability to: 1) proceed with an administrative review; and, 2) release Child Abuse/Neglect (CA/N) Investigative records to an alleged perpetrator. See, *Stephen J. Pitts vs. Williams and Levy*, Missouri Court of Appeals Case No. WD71275.

The court's ruling requires the Division to revise its policy and procedures as sent out in [CD10-69](#). The updated Child Welfare Manual section and adjoining forms, checklists and/or items of professional correspondence are listed below, and should be used effective the date of this memorandum.

**Pending Criminal Charges**

It has been the Division's practice not to release copies of CA/N investigation materials if there was a pending criminal *investigation*. The Court of Appeals was asked to interpret the language in Section 210.150 RSMo., which prohibited the Children's Division from releasing information to alleged perpetrators when there were "pending criminal charges", until an indictment is returned or information filed. The Court clarified the language of the law. The Court held that the term "pending criminal charges" means that actual criminal charges have been formally filed with the Court.

**Impact of the Decision on the Administrative Review Process**

The Court's decision in **Pitts** will simplify the administrative review process. It means that unless there are criminal charges actually filed in a court, the administrative review

process must proceed without delay. However, once criminal charges have been filed with the court, the administrative review process shall be suspended until the Court has disposed of the case. The Division's practice of suspending the administrative review process while there is a "pending" or "open" criminal *investigation* is no longer in effect.

### **Impact of the Decision on the Release of Records**

When an alleged perpetrator requests a release of records, the redacted records must be released, except in a very limited set of circumstances as described below:

- **An alleged perpetrator SHALL have access to appropriately redacted CA/N investigative records in the following situations under Sections 210.150.2(5) and 210.150.3(3) RSMo:**
  - There is a pending criminal investigation but no formal criminal charges have been filed in court;
  - The alleged perpetrator has been indicted for a misdemeanor;
  - The alleged perpetrator has been charged with a misdemeanor by the filing of an information;
  - The alleged perpetrator has been charged with a felony by indictment; or,
  - The alleged perpetrator has been charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records, and the felony complaint has resulted in an information after a preliminary hearing has been held or the alleged perpetrator has waived preliminary hearing and information and the case has been bound over for trial.
  
- **An alleged perpetrator SHALL NOT have access to hotline CA/N investigative records under Sections 210.150.2(5) and 210.150.3(3) RSMo in cases where the following applies:**
  - The perpetrator has been formally charged with a felony by the filing of a criminal complaint in court arising out of the facts and circumstances identified in the investigative records; and,
  - The felony complaint has not yet resulted in an information after a preliminary hearing and the preliminary hearing has not been waived.
  
- **Division staff may still redact in appropriate cases:**
  - Protected Health Information (PHI) as outlined in the Child Welfare Manual at [Section 5 Chapter 2.7 Health Insurance Portability and Accountability Act \(HIPAA\)](#);
  - The information which would identify a hotline reporter;
  - Any "identifying information" when the Division determines that a person's life or safety may be in danger. The Division must document this decision with clearly stated facts that disclosure of identifying information would endanger a person's life or safety; and,
  - Any other information which may be required to be redacted as provided by law.

## Practical Application of the Court's Ruling

- A pending criminal investigation **without** the filing of a formal criminal charge is **not** a justifiable reason to suspend the administrative or judicial review (e.g., local administrative review, Child Abuse Neglect Review Board review and/or de novo judicial review) process.
- **IMMEDIATE ACTION IS REQUIRED. Staff shall complete administrative reviews of ALL currently pending administrative reviews in which the administrative review process was, and continues to be, suspended due to one of the following:**
  1. **an open criminal investigation;**
  2. **an understanding that the local prosecuting attorney was contemplating filing criminal charges, but has not actually filed any charges; and,**
  3. **all cases which may be pending adjudication before the juvenile court.**
- The alleged perpetrator's ability to receive a copy of the Division's records is separate from their eligibility to request an administrative review of the Division's preliminary finding of child abuse or neglect. There may be circumstances in which the alleged perpetrator would have access to the CA/N record, but not have the ability to receive an administrative review. This would be the case when there are pending misdemeanor charges, or when there are pending felony charges after an information or indictment have been filed with the court.
- If criminal charges are filed within sixty (60) days of the CA/N Disposition Form Letter For Parents, Non-Custodial Parents, And Alleged Perpetrators, CS-21, then alleged perpetrators will have sixty (60) days from either of the following situations to request an administrative review:
  - The court disposes of the criminal charges (e.g. judgment of conviction, acquittal or judicial dismissal of charges); or,
  - The prosecutor formally dismisses charges.
- Deferred Prosecution Agreements – If the prosecutor declines to file criminal charges under a deferred prosecution agreement then criminal charges have not been filed. The Division shall therefore honor requests to release records and proceed with administrative review without delay, if a timely request for administrative review has been received.

It is imperative that Division personnel amend practice to coincide with the ruling of the court. Details of the court's opinion may be accessed at <http://www.courts.mo.gov/file.jsp?id=39876>.

It is further recommended that field administration and/or designated staff share this link with their multidisciplinary teams in order for our collaborative partners to have an opportunity to understand the implications of the court's ruling on the administrative review process and how that may affect previous interagency practices.

**NECESSARY ACTIONS:**

1. Review this memorandum with all Children's Division staff.
2. Review revised Child Welfare Manual chapters as indicated below.
3. All questions should be cleared through normal supervisory channels and directed to:

**PDS CONTACT**

Scott B. Montgomery, PDS  
573-526-5408  
[Scott.B.Montgomery@dss.mo.gov](mailto:Scott.B.Montgomery@dss.mo.gov)

**PROGRAM MANAGER**

Dena Driver  
573-522-8024  
[Dena.D.Driver@dss.mo.gov](mailto:Dena.D.Driver@dss.mo.gov)

**CHILD WELFARE MANUAL REVISIONS**

[Section 2 Chapter 4.5.1 Administrative Review Process](#)  
[Section 2 Chapter 4 Table of Contents](#)

**FORMS AND INSTRUCTIONS**

Description of the Investigation Process, CS-24  
Administrative Review Ineligibility Letter, CS-21E  
Request for Pending Criminal Charges Letter, CS-21F  
Administrative Review Checklist

**REFERENCE DOCUMENTS AND RESOURCES**

[CANRB Flowchart](#)

**RELATED STATUTE**

Stephen J. Pitts vs. Williams and Levy, Missouri Court of Appeals Case No. WD71275  
<http://www.courts.mo.gov/file.jsp?id=39876>

**ADMINISTRATIVE RULE**

N/A

**COUNCIL ON ACCREDITATION (COA) STANDARDS**

N/A

**CHILD AND FAMILY SERVICES REVIEW (CFSR)**

N/A

**PROTECTIVE FACTORS –N/A**

Parental Resilience  
Social Connections  
Knowledge of Parenting and Child Development  
Concrete Support in Times of Need  
Social and Emotional Competence of Children

**FACES REQUIREMENTS**

N/A