

DEPARTMENT OF SOCIAL SERVICES

CHILDREN'S DIVISION

P. O. BOX 88

JEFFERSON CITY, MISSOURI

September 8, 2021

M E M O R A N D U M

TO: CHILDREN'S DIVISION AND CONTRACTED STAFF
FROM: JOANIE ROGERS, INTERIM DIRECTOR
SUBJECT: 2021 LEGISLATION AFFECTING CHILDREN'S DIVISION

DISCUSSION:

Several child welfare bills were enacted this session which impact the work of Children's Division and the families we serve. Although bills normally are effective on August 28th each year, a few of these pieces of legislation had emergency clauses which made the new laws effective upon the Governor's signature. This memorandum is an overview of the new or amended statutes but is not all-inclusive as some portions of the bills may not be directly relevant to the work of Children's Division.

Policy changes may be detailed in separate memos or trainings, depending on the type of change needed. The Legal Aspects Training Team is also creating an eLearning to help explain some of the most recent changes. Look for that course to be highlighted in the upcoming newsletter and it will be found in the Employee Learning Center listed as LA LEGISLATIVE UPDATE 2021, course code CD000710.

Remember that some of our anticipated changes, like Temporary Alternative Placement Agreements, were a result of legislation from last year that needed regulations completed before implementation. This memorandum will briefly discuss new regulations, in addition to the statutes, but additional information has been or will be provided through trainings and appropriate policy changes.

Provisions of the following House Bills (HB) and Senate Bills (SB) which impact the Children's Division are included for discussion: HB 11 and 12, HB 429 and 430, HB 432, HB 557 and 560, HB 604, SB 53 and 60, SB 71, and SB 120.

Changes in Juvenile Court Process

Raise the Age/Division of Youth Services (DYS):

In 2018, SB 793 raised the age of juvenile court jurisdiction over delinquent offenses from age 17 to 18. That change was slated to take effect on January 1, 2021 but an appropriations clause contained in the bill required that the budget include sufficient funds for the services necessary to serve an expanded population of juvenile offenders. The FY '21 budget did not include those appropriations so implementation was delayed. On June 30, 2021, Governor Parson signed HB 11 and HB 12, the FY '22 appropriation bills that became effective July 1, 2021. Since funding has been appropriated, the contingency clause in 211.438, RSMo was satisfied, and made raising the age of juvenile court jurisdiction effective July 1, 2021. To determine whether a person is under the jurisdiction of the juvenile court, the person's age at the time the alleged offense or violation was committed is determined and, if the person was considered an adult according to then-existing law, juvenile court jurisdiction does not apply.

Senate Bills 53 and 60 helped support and update provisions of the Juvenile Code to align with provisions of Raise the Age legislation. Additionally, Section 211.181, RSMo. was amended regarding DYS commitments and provides that a child may remain in the custody of the Division of Youth Services until the child's nineteenth birthdate.

Juveniles Waiving Right to Counsel:

Children who have been charged with a status offense or law violation are entitled to appointment of counsel or may waive counsel, pursuant to Section 211.211, RSMo. Counsel may only be waived in open court, on the record, and must be in writing. For the court to accept the waiver, the court must be satisfied that it was made knowingly, intelligently, and voluntarily, considering all of the circumstances. There are certain hearings where children would rarely be allowed to waive right to counsel, like contested detention or certification hearings. Remember, a Guardian ad Litem serves to represent the best interests of a child; a child in our custody who has a petition or motion to modify pending with the court for acts other than abuse or neglect is also entitled to have a separate attorney as an advocate. If a child on your caseload is subject to this provision, and you have questions about the child's counsel status, please contact the Division of Legal Services to discuss the circumstances.

Appeal from Change of Placement:

Section 211.261, RSMo., now allows a parent, Guardian ad Litem, or Juvenile Officer (but NOT Children's Division) to appeal from any order changing or modifying the placement of a juvenile. Previously, such an interlocutory appeal (an appeal of a ruling of the court while other parts of the case are still proceeding) would not have been allowed as appeals are usually only taken from final judgments. The notice of appeal must be filed within three days of the entry of the trial court's judgment. The time requirements for actions within the appeal are very short. If you receive notice of a placement appeal for a child on your caseload, please refer the matter to the Division of Legal Services (DLS) immediately.

Child Abuse and Neglect/Safety and Prevention

Birth Match: For more complete information, see [CD21-53](#). The Birth Match Program, authorized in Sections 193.075, 210.150, and 210.156, RSMo., allows data sharing between Children's Division and the State Registrar of Vital Statistics so that parents of newborns who may be at higher risk for child abuse/neglect, due to the parents' history

of certain criminal convictions or involuntary termination of their parental rights to other children, are identified. When a data “match” is potentially produced, the information will be provided to the local CD office, so CD can attempt to contact the family and offer appropriate services. All contact with the family and services offered must be documented in FACES.

Orders of Protection: Laws in Chapter 455, RSMo. were amended regarding Adult and Child Protection Orders to afford petitioners and their children additional protections, including:

- Such orders can now be granted to prohibit a respondent from committing or threatening to commit abuse against a pet and could grant possession of a pet to a party, plus money for medical bills for any abuse of the pet;
- The definitions of course of conduct and stalking were broadened; and
- If the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the protective order shall be valid for at least two years and not more than ten years, but can be renewed for the life of the respondent.

Newborn Safety Incubator: The “Safe Place for Newborns Act of 2002” in Section 210.950, RSMo. was amended define a newborn safety incubator, a medical device used to maintain an optimal environment for the care of a newborn infant, and allow a parent of a child up to 45 days old to voluntarily deliver the child with the intent not to return, without being prosecuted, to one of these incubators. The Department of Health and Senior Services may promulgate rules relating governing the specifications, installation, maintenance, and oversight of such newborn safety incubators. This placement into a newborn safety incubator is another choice for birth parents, in addition to relinquishment to the persons already identified in statute, such as firefighters, law enforcement or hospital personnel.

Temporary Alternative Placement Agreements (TAPAS): These agreements were created by legislation in 2020, for implementation once rules were promulgated. Those rules were filed on an emergency basis with the Missouri Secretary of State and became effective on August 2, 2021. You may read complete copies of the rules here, beginning on page 1040, [Immediate Safety Plan and TAPA emergency rules](#). The emergency rules are located at 13 CSR 35-30.020 and 13 CSR 35-30.030 and will expire in February 2022, when they should be replaced by identical, non-emergency, rules. For more discussion about policy changes and available training, please see [CD21-37](#).

Child Abuse/Neglect Review Board (CANRB): Regulations were also filed to change the review process for preliminary findings of child abuse and neglect and become effective October 30, 2021 at 13 CSR 35-31.025. Primary changes include a streamlined process for review upon request so that circuit level review is not required; resolution of many unnecessary delays for alleged perpetrators with pending criminal charges; and differences in the way cases are presented to the CANRB Boards. You may review the filed rule here: [Child Abuse and Neglect Review Process](#). The Legal Aspects (LA) Team, in conjunction with CANHU and the other members of the Safety and Prevention Unit, have created an elearning about the CANRB process which will soon be available on the ELC. Watch for more details regarding that training in the upcoming LA newsletter.

Prevention/Older Youth

Access to Services for Homeless Youth: Section 210.115, RSMo. was amended and Section 210.121, RSMo was added to modify mandated reporting for unaccompanied and homeless youth seeking supportive services. If a child is seeking to access services and is unaccompanied, the child's status alone as homeless or unaccompanied is not, by itself, a sufficient basis for reporting child abuse or neglect, unless the child is under sixteen years of age or is an incapacitated person. The changes allow an unaccompanied youth to access supportive services, interventions, and resources including, but not limited to, food, shelter, counseling legal services, or transportation. The law also exempts persons who in good faith provided supportive services from civil and criminal action without permission from the youth's parent. For a complete list of the services which may be provided, please review [Section 210.121 RSMo.](#)

Permanency-Foster Care and Adoption

Tax Law/ Third Party Custody: House Bills 429 and 430 made significant changes to laws impacting Third Party Custody, and Tax Credits/Deductions, among others, which could generate additional commitment from prospective resource providers to children in the custody of Children's Division.

➤ *Tax Law*

Adoption: Specifics regarding the changes in adoption tax credits are being addressed in a separate memorandum so are only summarized here. The Special Needs Adoption Tax Credit Act will now be known as the Adoption Tax Credit Act as authorized in Section 135.325, RSMo. Section 135.326, RSMo added and clarified definitions, specifically to provide a definition of child as any individual who is not yet age eighteen or is eighteen years of age or older but physically or mentally incapable of caring for him/herself. The definition of special needs child was updated to delete ethnic background and membership in a minority group as qualifiers and to rename "handicap" as "disability". The Special Needs Adoption Tax Credit will now apply to those adoptions occurring before January 1, 2022 but an Adoption Tax Credit will continue to exist, up to ten thousand dollars for nonrecurring adoption expenses for each qualifying child, regardless of special need status or residency, but giving priority to applicants who adopt special needs children who are residents or wards of residents of this state at the time the adoption is filed.

Foster Parents: Section 143.1170, RSMo., added a tax credit for foster parents, allowing that beginning on or after January 1, 2022, a foster parent shall be allowed an annual tax deduction for direct expenses incurred in providing care as a foster parent to one or more children. If the foster parent provided care for at least six months of the year, the deduction will be equal to the amount of direct expenses incurred, capped at \$2500 (\$5000 if married and filing jointly) and, if not for six months, foster parents may still claim a deduction, reduced proportionally for the amount of time care was provided. The Department of Revenue (DOR) is authorized to produce rules and regulations necessary to administer the program but there will be a verification process created between DOR and CD to confirm foster parent claim eligibility and foster parents will need to file an affidavit with their income tax return, affirming their foster parent status and entitlement to the deduction in the amount claimed.

➤ *Third Party Custody*

Section 452.375.5, RSMo. was amended to add a preference to persons related by consanguinity (blood relative) or affinity (related through marriage), before other third parties, in custody or visitation decisions when the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child. The court has to make the third party a party to the custody action.

Monetary Settlements

HB 604 created, in pertinent part, the “Missouri Statutory Thresholds for Settlements Involving Minors Act” at Section 436.700, RSMo. Occasionally children who are in the custody of CD are entitled to proceeds from an insurance action or other settlement on their behalf. If a child on your caseload may have a claim due to an accident or other incident, please consult with the Division of Legal Services for guidance. Staff are not authorized to enter into settlement agreements on behalf of children in CD custody.

Foster Care Case Management

In 2020, Section 210.112, RSMo., was overhauled regarding requirements for the division’s Foster Care Case Management contractors and included a mandate that by July 1, 2021, the division must promulgate regulations to implement the provisions of this section and those rules must define implementation plans and dates. Those emergency amendments and regulations became effective on July 1, 2021 and can be found here [Missouri Secretary of State: Register \(mo.gov\)](https://www.sos.mo.gov/secretary/register).

Children’s Rights/Medical Care

House Bill 432 mandates in Section 210.1225, RSMo., that the Children’s Division shall take physical custody of a child who is in the legal custody of CD and who is hospitalized but no longer in need of medical care. Sometimes it is difficult to match a child with significant behavioral health issues with the most appropriate placement and a worker may still be searching for that placement when a child becomes ready for discharge from the hospital. The law provides for this allowance but requires that if CD fails to take physical custody of the child when deemed ready for discharge, CD shall reimburse the hospital at the same rate the hospital would receive per day for an inpatient admission. Additionally, if CD requests transportation of a child to an emergency room, the hospital to which the child is transported or any subsequent psychiatric hospital to which the child is transferred shall be allowed to administer emergency psychiatric treatment, which aligns with the provisions for children’s emergency behavioral health care in the Psychotropic Medication Settlement.

Termination of Parental Rights (TPR)/Adoption:

Section 211.447 was extensively amended, with a focus on allowing for a more expedient termination of parental rights cause of action for particularly young children or those whose parents have committed previously defined triggering offenses against other children. A modified Termination of Parental Rights referral form should be created by the Division of Legal Services and made available on their Intranet site.

More specifically, for **TPR under Chapter 211**:

- The “abandoned infant” ground under Section 211.447.2(2), RSMo. substitutes a child under two years of age for infant and expands the abandonment ground to include a period of sixty days, when a child was under one year of age, a parent willfully, substantially, and continuously neglected to provide the child with necessary care and protection.
- Section 211.447.2(4), RSMo. was amended to remove the requirement that the victim child be “of the family” for parents found guilty of certain triggering offenses and expanded those offenses to include felony violations of [chapter 566](#), [567](#), [568](#), or [573](#) when the child or any child was a victim.
- The abandoned child ground in Section 211.447.5(1) redefines child to be two years of age and older, due to the expansion of the abandonment ground for young children. Also redefines abandonment to more closely mirror the language in the ground previously contained within the adoption statute, specifying now that the parent has willfully, substantially, and continuously neglected to provide the child with necessary care and protection. This amendment deletes the language about failure to provide parental support, visit or communicate with the child, although able to do so.
- Parental unfitness was amended under Section 211.447.5(5)(b)e to add the 15 out of 22 months trigger as a ground when a child has been in foster care under the jurisdiction of the juvenile court.

Consult with DLS if you have questions about legal sufficiency for these grounds on the specific facts regarding any child on your caseload.

For **Chapter 453 TPR/Adoptions**

- Chapter 453 was amended to remove references to “the Department” and the Department of Health and Senior Services and change those to CD.
- Clarifies that CD is responsible for developing a consent form for adoption, and promulgate rules and regulations regarding the content of home assessment of the petitioners.
- Amends language in Section 453.040(7), RSMo. to include that parental consent to adoption is unnecessary when a parent has abandoned a child as described in Sections 211.447.2(2)(b) and 211.447.5(1)(b)
- Additional changes were made to Chapter 453 that delete the payment of any reasonable legal fees incurred through the adoption process for birth parents; however, the statute allows birth parents the right to seek counsel. A qualifying condition was added that the court may appoint an attorney to represent the interests of the birth parent only if the parent is under 18 years of age. The section allowing the court to tax costs for legal representation of an indigent parent to the prospective adoptive parents was also removed.

Non-licensed residential facilities

House Bills 557 and 560 created the Residential Care Facility Notification Act (the Act) and substantially changed requirements for non-licensed residential facilities. They also require CD to conduct background checks of all licensed residential care facilities and licensed child placement agencies, in addition to the license exempt residential care facilities. These bills contained an emergency clause to allow for immediate implementation and were effective July 14, 2021. The Act is contained in Sections

210.1250 through 210.1286, RSMo. Emergency regulations were also created regarding the requirements of these bills.

These facilities are now required to:

- Notify the state of their existence and their location;
- Provide documentation of compliance with requirements to complete background checks for all employees, volunteers, and others who have contact with children at the facility, as well as documentation of compliance with basic health and safety laws.
- Maintain medical records for all residents.
- Provide sufficient food, clothing, and medical care for residents.
- Allow greater access to children in the facility by parents and by CD.

The law outlines procedures to petition a court for an order to cause a child to be produced for health, safety, and well-being assessments and includes a provision that the court may expand the order to encompass other children at the facility, if necessary.

The Department of Social Services (DSS) will maintain a list of all residential facilities in compliance with the Act and has the ability to petition for an injunction to close facilities not in compliance. The list shall be provided upon request and DSS will also include information regarding how a person may obtain information about the nature and disposition of any substantiated child abuse or neglect reports at or related to the residential care facility.

Failure to comply with the requirements of the Act can result in injunctions, and civil and criminal penalties. If children are removed from the facility through a protective custody action by the Juvenile Officer, a referral can also be made to the Attorney General.

Customer Service/Veterans' Rights

Senate Bill 120 requires in Section 42.390, RSMo., that every state agency shall ensure that any form used to collect data from individuals, including digital forms posted on an Internet website, created or modified on or after August 28, 2021, include a question about the constituent's Veteran status and then inquiring if the constituent would like to receive information and assistance regarding the agency's veteran services. The legislation also requires that every state agency prepare information regarding the agency's applicable services and benefits available to veterans and provide that information to those who request it as outlined above.

NECESSARY ACTION

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:

ATTORNEY CONTACT Ellen K. Haynes 573-751-4333 ellen.k.haynes@dss.mo.gov	
CHILD WELFARE MANUAL REVISIONS Multiple	
FORMS AND INSTRUCTIONS N/A	
REFERENCE DOCUMENTS AND RESOURCES HB 11 , HB 12 , HB 429 , HB 430 , HB 432 , HB 557 and 560 , HB 604 , SB 53 and 60 , , SB 71 , SB 120	
RELATED STATUTE See above	