

FIRST REGULAR SESSION

# SENATE BILL NO. 234

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time January 13, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1173S.011

## AN ACT

To repeal section 198.070 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 198.070 as enacted by senate bills nos. 556 & 311, ninety-second general assembly, first regular session, and to enact in lieu thereof one new section relating to sexual assault reporting, with existing penalty provisions.

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

Section A. Section 198.070 as enacted by senate bill no. 491, ninety-  
2 seventh general assembly, second regular session and section 198.070 as enacted  
3 by senate bills nos. 556 & 311, ninety-second general assembly, first regular  
4 session, are repealed and one new section enacted in lieu thereof, to be known as  
5 section 198.070, to read as follows:

198.070. 1. When any adult day care worker; chiropractor; Christian  
2 Science practitioner; coroner; dentist; embalmer; employee of the departments of  
3 social services, mental health, or health and senior services; employee of a local  
4 area agency on aging or an organized area agency on aging program; funeral  
5 director; home health agency or home health agency employee; hospital and clinic  
6 personnel engaged in examination, care, or treatment of persons; in-home services  
7 owner, provider, operator, or employee; law enforcement officer; long-term care  
8 facility administrator or employee; medical examiner; medical resident or intern;  
9 mental health professional; minister; nurse; nurse practitioner; optometrist; other  
10 health practitioner; peace officer; pharmacist; physical therapist; physician;  
11 physician's assistant; podiatrist; probation or parole officer; psychologist; social  
12 worker; or other person with the care of a person sixty years of age or older or an  
13 eligible adult has reasonable cause to believe that a resident of a facility has been  
14 abused or neglected, he or she shall immediately report or cause a report to be

15 made to the department.

16           2. **(1)** The report shall contain the name and address of the facility, the  
17 name of the resident, information regarding the nature of the abuse or neglect,  
18 the name of the complainant, and any other information which might be helpful  
19 in an investigation.

20           **(2) In the event of suspected sexual assault of the resident, in**  
21 **addition to the report to be made to the department, a report shall be**  
22 **made under federal law pursuant to the provisions of Sections 6701-**  
23 **6703 of the Elder Justice Act of 2009 (42 U.S.C. 1397 et. seq.) to local law**  
24 **enforcement.**

25           3. Any person required in subsection 1 of this section to report or cause  
26 a report to be made to the department who knowingly fails to make a report  
27 within a reasonable time after the act of abuse or neglect as required in this  
28 subsection is guilty of a class A misdemeanor.

29           4. In addition to the penalties imposed by this section, any administrator  
30 who knowingly conceals any act of abuse or neglect resulting in death or serious  
31 physical injury, as defined in section 556.061, is guilty of a class E felony.

32           5. In addition to those persons required to report pursuant to subsection  
33 1 of this section, any other person having reasonable cause to believe that a  
34 resident has been abused or neglected may report such information to the  
35 department.

36           6. Upon receipt of a report, the department shall initiate an investigation  
37 within twenty-four hours and, as soon as possible during the course of the  
38 investigation, shall notify the resident's next of kin or responsible party of the  
39 report and the investigation and further notify them whether the report was  
40 substantiated or unsubstantiated unless such person is the alleged perpetrator  
41 of the abuse or neglect. As provided in section 192.2425, substantiated reports  
42 of elder abuse shall be promptly reported by the department to the appropriate  
43 law enforcement agency and prosecutor.

44           7. If the investigation indicates possible abuse or neglect of a resident, the  
45 investigator shall refer the complaint together with the investigator's report to  
46 the department director or the director's designee for appropriate action. If,  
47 during the investigation or at its completion, the department has reasonable  
48 cause to believe that immediate removal is necessary to protect the resident from  
49 abuse or neglect, the department or the local prosecuting attorney may, or the  
50 attorney general upon request of the department shall, file a petition for

51 temporary care and protection of the resident in a circuit court of competent  
52 jurisdiction. The circuit court in which the petition is filed shall have equitable  
53 jurisdiction to issue an ex parte order granting the department authority for the  
54 temporary care and protection of the resident, for a period not to exceed thirty  
55 days.

56 8. Reports shall be confidential, as provided pursuant to section 192.2500.

57 9. Anyone, except any person who has abused or neglected a resident in  
58 a facility, who makes a report pursuant to this section or who testifies in any  
59 administrative or judicial proceeding arising from the report shall be immune  
60 from any civil or criminal liability for making such a report or for testifying  
61 except for liability for perjury, unless such person acted negligently, recklessly,  
62 in bad faith or with malicious purpose. It is a crime under section 565.189 for  
63 any person to knowingly file a false report of elder abuse or neglect.

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

67 11. No person who directs or exercises any authority in a facility shall  
68 evict, harass, dismiss or retaliate against a resident or employee because such  
69 resident or employee or any member of such resident's or employee's family has  
70 made a report of any violation or suspected violation of laws, ordinances or  
71 regulations applying to the facility which the resident, the resident's family or an  
72 employee has reasonable cause to believe has been committed or has  
73 occurred. Through the existing department information and referral telephone  
74 contact line, residents, their families and employees of a facility shall be able to  
75 obtain information about their rights, protections and options in cases of eviction,  
76 harassment, dismissal or retaliation due to a report being made pursuant to this  
77 section.

78 12. Any person who abuses or neglects a resident of a facility is subject  
79 to criminal prosecution under section 565.184.

80 13. The department shall maintain the employee disqualification list and  
81 place on the employee disqualification list the names of any persons who are or  
82 have been employed in any facility and who have been finally determined by the  
83 department pursuant to section 192.2490 to have knowingly or recklessly abused  
84 or neglected a resident. For purposes of this section only, "knowingly" and  
85 "recklessly" shall have the meanings that are ascribed to them in this section. A  
86 person acts "knowingly" with respect to the person's conduct when a reasonable

87 person should be aware of the result caused by his or her conduct. A person acts  
88 "recklessly" when the person consciously disregards a substantial and  
89 unjustifiable risk that the person's conduct will result in serious physical injury  
90 and such disregard constitutes a gross deviation from the standard of care that  
91 a reasonable person would exercise in the situation.

92 14. The timely self-reporting of incidents to the central registry by a  
93 facility shall continue to be investigated in accordance with department policy,  
94 and shall not be counted or reported by the department as a hot-line call but  
95 rather a self-reported incident. If the self-reported incident results in a  
96 regulatory violation, such incident shall be reported as a substantiated report.

198.070. 1. When any adult day care worker; chiropractor; Christian  
2 Science practitioner; coroner; dentist; embalmer; employee of the departments of  
3 social services, mental health, or health and senior services; employee of a local  
4 area agency on aging or an organized area agency on aging program; funeral  
5 director; home health agency or home health agency employee; hospital and clinic  
6 personnel engaged in examination, care, or treatment of persons; in-home services  
7 owner, provider, operator, or employee; law enforcement officer; long-term care  
8 facility administrator or employee; medical examiner; medical resident or intern;  
9 mental health professional; minister; nurse; nurse practitioner; optometrist; other  
10 health practitioner; peace officer; pharmacist; physical therapist; physician;  
11 physician's assistant; podiatrist; probation or parole officer; psychologist; social  
12 worker; or other person with the care of a person sixty years of age or older or an  
13 eligible adult has reasonable cause to believe that a resident of a facility has been  
14 abused or neglected, he or she shall immediately report or cause a report to be  
15 made to the department.

16 2. (1) The report shall contain the name and address of the facility, the  
17 name of the resident, information regarding the nature of the abuse or neglect,  
18 the name of the complainant, and any other information which might be helpful  
19 in an investigation.

20 (2) **In the event of suspected sexual assault of the resident, in**  
21 **addition to the report to be made to the department, a report shall be**  
22 **made under federal law pursuant to the provisions of Sections 6701-**  
23 **6703 of the Elder Justice Act of 2009 (42 U.S.C. 1397 et. seq.) to local law**  
24 **enforcement.**

25 3. Any person required in subsection 1 of this section to report or cause  
26 a report to be made to the department who knowingly fails to make a report

27 within a reasonable time after the act of abuse or neglect as required in this  
28 subsection is guilty of a class A misdemeanor.

29         4. In addition to the penalties imposed by this section, any administrator  
30 who knowingly conceals any act of abuse or neglect resulting in death or serious  
31 physical injury, as defined in section 565.002, is guilty of a class D felony.

32         5. In addition to those persons required to report pursuant to subsection  
33 1 of this section, any other person having reasonable cause to believe that a  
34 resident has been abused or neglected may report such information to the  
35 department.

36         6. Upon receipt of a report, the department shall initiate an investigation  
37 within twenty-four hours and, as soon as possible during the course of the  
38 investigation, shall notify the resident's next of kin or responsible party of the  
39 report and the investigation and further notify them whether the report was  
40 substantiated or unsubstantiated unless such person is the alleged perpetrator  
41 of the abuse or neglect. As provided in section 565.186, substantiated reports of  
42 elder abuse shall be promptly reported by the department to the appropriate law  
43 enforcement agency and prosecutor.

44         7. If the investigation indicates possible abuse or neglect of a resident, the  
45 investigator shall refer the complaint together with the investigator's report to  
46 the department director or the director's designee for appropriate action. If,  
47 during the investigation or at its completion, the department has reasonable  
48 cause to believe that immediate removal is necessary to protect the resident from  
49 abuse or neglect, the department or the local prosecuting attorney may, or the  
50 attorney general upon request of the department shall, file a petition for  
51 temporary care and protection of the resident in a circuit court of competent  
52 jurisdiction. The circuit court in which the petition is filed shall have equitable  
53 jurisdiction to issue an ex parte order granting the department authority for the  
54 temporary care and protection of the resident, for a period not to exceed thirty  
55 days.

56         8. Reports shall be confidential, as provided pursuant to section 660.320.

57         9. Anyone, except any person who has abused or neglected a resident in  
58 a facility, who makes a report pursuant to this section or who testifies in any  
59 administrative or judicial proceeding arising from the report shall be immune  
60 from any civil or criminal liability for making such a report or for testifying  
61 except for liability for perjury, unless such person acted negligently, recklessly,  
62 in bad faith or with malicious purpose. It is a crime pursuant to section 565.186

63 and 565.188 for any person to purposely file a false report of elder abuse or  
64 neglect.

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

68 11. No person who directs or exercises any authority in a facility shall  
69 evict, harass, dismiss or retaliate against a resident or employee because such  
70 resident or employee or any member of such resident's or employee's family has  
71 made a report of any violation or suspected violation of laws, ordinances or  
72 regulations applying to the facility which the resident, the resident's family or an  
73 employee has reasonable cause to believe has been committed or has  
74 occurred. Through the existing department information and referral telephone  
75 contact line, residents, their families and employees of a facility shall be able to  
76 obtain information about their rights, protections and options in cases of eviction,  
77 harassment, dismissal or retaliation due to a report being made pursuant to this  
78 section.

79 12. Any person who abuses or neglects a resident of a facility is subject  
80 to criminal prosecution under section 565.180, 565.182, or 565.184.

81 13. The department shall maintain the employee disqualification list and  
82 place on the employee disqualification list the names of any persons who are or  
83 have been employed in any facility and who have been finally determined by the  
84 department pursuant to section 660.315 to have knowingly or recklessly abused  
85 or neglected a resident. For purposes of this section only, "knowingly" and  
86 "recklessly" shall have the meanings that are ascribed to them in this section. A  
87 person acts "knowingly" with respect to the person's conduct when a reasonable  
88 person should be aware of the result caused by his or her conduct. A person acts  
89 "recklessly" when the person consciously disregards a substantial and  
90 unjustifiable risk that the person's conduct will result in serious physical injury  
91 and such disregard constitutes a gross deviation from the standard of care that  
92 a reasonable person would exercise in the situation.

93 14. The timely self-reporting of incidents to the central registry by a  
94 facility shall continue to be investigated in accordance with department policy,  
95 and shall not be counted or reported by the department as a hot-line call but  
96 rather a self-reported incident. If the self-reported incident results in a  
97 regulatory violation, such incident shall be reported as a substantiated report.

✓