

SCS SB 54 -- PROTECTING CHILDREN FROM SEXUAL OFFENDERS

SPONSOR: Cunningham (Kelly, 24)

COMMITTEE ACTION: Voted "do pass" by the Committee on Elementary and Secondary Education by a vote of 13 to 0.

This substitute changes the laws regarding the protection of children from sexual offenders. In its main provisions, the substitute:

(1) Authorizes the Office of Child Advocate within the Office of Administration to file any findings or reports regarding the parent or child with the court, issue recommendations regarding the disposition of an investigation which may be provided to the court and the investigating agency, and mediate between an alleged victim of sexual misconduct and a school district (Section 37.710, RSMo);

(2) Specifies that certain provisions regarding the protection of children from sexual offenders will be known as the Amy Hestir Student Protection Act (Section 160.085);

(3) Requires a school employee who is a mandated reporter and the superintendent of the school district to forward any allegation by a student of sexual misconduct by a teacher or other school employee to the Children's Division within the Department of Social Services within 24 hours of receiving the information in order for the division to investigate the report. The school district must not conduct an investigation for the purpose of determining whether the allegation should be substantiated, but it may investigate the allegation for the purpose of making a decision regarding the accused employee's employment. The investigating officer must review the report using a preponderance of evidence standard (Section 160.261);

(4) Authorizes the Office of Child Advocate to coordinate mediation efforts between a school district and a student when requested by both parties for a child abuse allegation arising in a school setting. No student, parent, school employee, or district can be required to participate in mediation. If the district or the student or the student's parent does not wish to enter into mediation, mediation will not occur. The requirements of the mediation procedure are specified in the substitute (Section 160.262);

(5) Establishes Erin's Law which creates the Task Force on the Prevention of Sexual Abuse of Children consisting of 18 members including one member appointed by the President Pro Tem of the Senate, one member by the Minority Leader of the Senate, one

member by the Speaker of the House of Representatives, and one member by the Minority Leader of the House of Representatives. The task force must make recommendations for reducing child sexual abuse in Missouri; must submit a final report to the Governor, General Assembly, and the State Board of Education within the Department of Elementary and Secondary Education by January 1, 2013; and may adopt and implement a policy addressing sexual abuse of children (Sections 160.2100 and 160.2110);

(6) Prohibits a registered sexual offender or a person required to be registered as a sexual offender from being a candidate for any school board (Section 162.014);

(7) Requires, by July 1, 2012, every school district to adopt a written policy on information that the district provides about a former employee to another public school. A district employee who is permitted to respond to a request for information regarding a former employee, communicates only the information that the policy directs, and acts in good faith without malice will be immune from any civil action for damages brought by the former employee arising from the communication of the information. If an action is brought against the employee, he or she may request the Attorney General to defend him or her in the suit, except as specified in the substitute. If a district had an employee whose job involved contact with children and the district received an allegation of the employee's sexual misconduct or the substantiation of an allegation by the Child Abuse and Neglect Review Board and the district dismisses or allows the employee to resign in lieu of being fired and fails to disclose the allegation when furnishing a reference for the former employee to another district or when responding to a potential employer's request for information, the district will be liable for damages and will bear third-party liability for any legal liability and expenses incurred by the employing district caused by the failure to disclose the information. A district must immediately suspend an employee who has been investigated by the division and for whom there has been a substantiated finding of sexual misconduct with a student. The district may return the person to employment if the board's finding that the allegation is substantiated is reversed by a court on appeal. Nothing will preclude a district from otherwise lawfully terminating the employment of an employee about whom there has been an unsubstantiated finding from an investigation. A district that has employed a person for whom there was a substantiated finding from a division investigation must disclose the substantiated finding to any other public school that contacts it for a reference (Section 162.068);

(8) Requires every school district to develop a written policy by January 1, 2012, concerning teacher-student communication and

employee-student communication. Each policy must include appropriate oral and nonverbal personal communication and appropriate use of electronic media. A teacher cannot establish or use a work-related web site unless it is available to school administrators and the child's legal custodian, physical custodian, or legal guardian and cannot establish or use a nonwork-related web site that allows exclusive access with a current or former student. By July 1, 2012, each district must include in its teacher and employee training a component on identifying signs of sexual abuse in children and danger signals of potentially abusive relationships between children and adults with an emphasis on the importance of mandatory reporting of abuse. The training must also include an emphasis on the obligation of mandated reporters to report suspected abuse by other mandatory reporters and how to establish an atmosphere of trust so that students feel their school has concerned adults with whom they feel comfortable discussing matters related to abuse (Section 162.069);

(9) Requires an applicant to complete a background check as provided in Section 168.133 in order to obtain a teaching certificate (Section 168.021);

(10) Adds the crimes of sexual contact with a student while on public school property as well as sexual misconduct in the second or third degree to the offenses for which a teacher's certificate may be revoked (Section 168.071);

(11) Specifies that the criminal background check for a bus driver employed by a pupil transportation company under contract with a school district must be conducted through the State Highway Patrol's criminal record review and must conform to the requirements of the National Child Protection Act of 1993, as amended by the Volunteers for Children Act. The district will be responsible for conducting the background check on a bus driver employed by the district (Section 168.133);

(12) Changes the number of sets of fingerprints an applicant must submit for a criminal history background check from two to one. The Department of Elementary and Secondary Education must facilitate an annual check of employed individuals with current active teaching certificates against criminal history records in the central repository, sexual offender registry, and child abuse central registry. The patrol must provide ongoing electronic updates to criminal history background checks of those persons previously submitted by the department. A school district may, in its discretion, conduct a new criminal background check and fingerprint collection for a newly hired employee at its expense (Section 168.133);

(13) Grants immunity from any civil and criminal liability under certain circumstances to any person who is not a school district employee and reports an alleged incident of child abuse to any employee of a school district unless he or she makes a false report knowing that it is false or acts in bad faith or with ill intent in making the report (Section 210.135);

(14) Requires the division to provide information about the Office of Child Advocate and the services it may provide to anyone who is not satisfied with the results of an investigation (Section 210.145);

(15) Allows the division to reopen a case for review at the request of an alleged victim, an alleged perpetrator, or the Office of Child Advocate under certain specified circumstances. An investigation cannot be reopened while a case is pending before a court or when a court has entered a final judgment after a de novo judicial review. Any person who makes a request to reopen an investigation based on facts which the person knows to be false will be guilty of a class A misdemeanor (Section 210.152);

(16) Adds the Department of Elementary and Secondary Education to the list of departments that must collaborate to compare records on child care; elder care; mental health; and personal care workers, including individuals required to undergo a background check under Section 168.133, and to the list of departments that may use registry information to carry out assigned duties (Sections 210.915 and 210.922); and

(17) Changes the statute of limitations for unlawful sexual offenses involving a person 18 years of age or younger so that a prosecution must be started within 30 years, rather than 20 years, after the victim reaches the age of 18 with the exception of certain specified crimes (Section 556.037).

The provisions of the substitute regarding Erin's Law will expire January 1, 2013.

**FISCAL NOTE:** Estimated Net Effect on General Revenue Fund of a cost of \$105,750 in FY 2012, an income of \$0 in FY 2013, and an income of \$0 in FY 2014. No impact on Other State Funds in FY 2012, FY 2013, and FY 2014.

**PROPOSERS:** Supporters say that current law has a loophole allowing an employee to molest a student and then be hired in another district. The bill transfers the responsibility of investigating claims of abuse to the experts in the Children's Division and strengthens protections against false allegations.

Testifying for the bill were Senator Cunningham; Representative Kelly (24); Missouri Family Network; Missouri National Education Association; American Federation of Teachers in Missouri; Missouri Family Policy Council; Missouri State Teachers Association; Missouri Eagle Forum; and Partnership for Children.

OPPONENTS: There was no opposition voiced to the committee.