

SECOND REGULAR SESSION

[CORRECTED]

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR

HOUSE BILL NO. 1323

96TH GENERAL ASSEMBLY

5196L.05P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.211, 210.245, and 544.455, RSMo, by adding thereto five new sections relating to the provision of child care services pending criminal charges with a penalty provision.

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

Section A. Sections 210.211, 210.245, and 544.455, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 210.211, 210.245, 452.374, 544.455, and 544.456, to read as follows:

210.211. 1. It shall be unlawful for any person to establish, maintain or operate a child-care facility for children, or to advertise or hold himself or herself out as being able to perform any of the services as defined in section 210.201, without having in effect a written license granted by the department of health and senior services; except that nothing in sections 210.203 to 210.245 shall apply to:

(1) Any person who is caring for four or fewer children. For purposes of this subdivision, children who are related by blood, marriage or adoption to such person within the third degree shall not be considered in the total number of children being cared for;

(2) Any person who has been duly appointed by a court of competent jurisdiction the guardian of the person of the child or children, or the person who has legal custody of the child or children;

(3) Any person who receives free of charge, and not as a business, for periods not exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 children of personal friends of such person, and who receives custody of no other unrelated child
15 or children;

16 (4) Any graded boarding school, summer camp, hospital, sanitarium or home which is
17 conducted in good faith primarily to provide education, recreation, medical treatment, or nursing
18 or convalescent care for children;

19 (5) Any child-care facility maintained or operated under the exclusive control of a
20 religious organization. When a nonreligious organization, having as its principal purpose the
21 provision of child-care services, enters into an arrangement with a religious organization for the
22 maintenance or operation of a child-care facility, the facility is not under the exclusive control
23 of the religious organization;

24 (6) Any residential facility or day program licensed by the department of mental health
25 pursuant to sections 630.705 to 630.760 which provides care, treatment and habilitation
26 exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental
27 retardation or developmental disability, as defined in section 630.005; and

28 (7) Any nursery school.

29 2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility
30 shall be exempt from licensure if such facility receives any state or federal funds for providing
31 care for children, except for federal funds for those programs which meet the requirements for
32 participation in the Child and Adult Care Food Program pursuant to 42 U.S.C. 1766. Grants to
33 parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds
34 received by a person or facility listed in subdivisions (1) and (5) of subsection 1 of this section.

35 **3. No child-care facility exempt from licensure shall assert to any parent or**
36 **guardian of children for which the facility provides care that the facility is licensed when**
37 **such facility is in fact not licensed.**

210.245. 1. Any person who violates any provision of sections 210.201 to 210.245, or
2 who for such person or for any other person makes materially false statements in order to obtain
3 a license or the renewal thereof pursuant to sections 210.201 to 210.245, [shall be] **is** guilty of
4 an infraction for the first offense and shall be assessed a fine not to exceed two hundred dollars
5 and [shall be] **is** guilty of a class A misdemeanor **and shall be assessed a fine of two hundred**
6 **dollars per day, not to exceed a total of ten thousand dollars** for subsequent offenses. In case
7 such guilty person is a corporation, association, institution or society, the officers thereof who
8 participate in such misdemeanor shall be subject to the penalties provided by law.

9 2. If the department of health and senior services proposes to deny, suspend, place on
10 probation or revoke a license, the department of health and senior services shall serve upon the
11 applicant or licensee written notice of the proposed action to be taken. The notice shall contain

12 a statement of the type of action proposed, the basis for it, the date the action will become
13 effective, and a statement that the applicant or licensee shall have thirty days to request in writing
14 a hearing before the administrative hearing commission and that such request shall be made to
15 the department of health and senior services. If no written request for a hearing is received by
16 the department of health and senior services within thirty days of the delivery or mailing by
17 certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect
18 on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If
19 the applicant or licensee makes a written request for a hearing, the department of health and
20 senior services shall file a complaint with the administrative hearing commission within ninety
21 days of receipt of the request for a hearing.

22 3. The department of health and senior services may issue letters of censure or warning
23 without formal notice or hearing. Additionally, the department of health and senior services may
24 place a licensee on probation pursuant to chapter 621.

25 4. The department of health and senior services may suspend any license simultaneously
26 with the notice of the proposed action to be taken in subsection 2 of this section, if the
27 department of health and senior services finds that there is a threat of imminent bodily harm to
28 the children in care. The notice of suspension shall include the basis of the suspension and the
29 appeal rights of the licensee pursuant to this section. The licensee may appeal the decision to
30 suspend the license to the department of health and senior services. The appeal shall be filed
31 within ten days from the delivery or mailing by certified mail of the notice of appeal. A hearing
32 shall be conducted by the department of health and senior services within ten days from the date
33 the appeal is filed. The suspension shall continue in effect until the conclusion of the
34 proceedings, including review thereof, unless sooner withdrawn by the department of health and
35 senior services, dissolved by a court of competent jurisdiction or stayed by the administrative
36 hearing commission. Any person aggrieved by a final decision of the department made pursuant
37 to this section shall be entitled to judicial review in accordance with chapter 536.

38 5. In addition to initiating proceedings pursuant to subsection 1 of this section, or in lieu
39 thereof, the prosecuting attorney of the county where the child-care facility is located may file
40 suit for a preliminary and permanent order overseeing or preventing the operation of a child-care
41 facility for violating any provision of sections 210.201 to 210.245. The order shall remain in
42 force until such a time as the court determines that the child-care facility is in substantial
43 compliance. If the prosecuting attorney refuses to act or fails to act after receipt of notice from
44 the department of health and senior services, the department of health and senior services may
45 request that the attorney general seek an injunction of the operation of such child-care facility.

46 6. In cases of imminent bodily harm to children in the care of a child-care facility, the
47 department may file suit in the circuit court of the county in which the child-care facility is
48 located for injunctive relief, which may include removing the children from the facility,
49 overseeing the operation of the facility or closing the facility.

**452.374. 1. If criminal charges alleging an act of rape are brought against the
2 putative father of a child conceived as the result of that act of rape, the court shall issue an
3 automatic stay of any paternity proceeding involving both the child and the alleged
4 putative father. The stay shall not be lifted until there is a final disposition of such criminal
5 charges.**

**2. In any future custody proceeding, any denial of visitation under this section shall
7 not be used against the mother of the child when considering the factor contained in
8 subdivision 4 of subsection 2 of section 452.375.**

 544.455. 1. Any person charged with a bailable offense, at his or her appearance before
2 an associate circuit judge or judge may be ordered released pending trial, appeal, or other stage
3 of the proceedings against him on his personal recognizance, unless the associate circuit judge
4 or judge determines, in the exercise of his discretion, that such a release will not reasonably
5 assure the appearance of the person as required. When such a determination is made, the
6 associate circuit judge or judge may either in lieu of or in addition to the above methods of
7 release, impose any or any combination of the following conditions of release which will
8 reasonably assure the appearance of the person for trial:

9 (1) Place the person in the custody of a designated person or organization agreeing to
10 supervise him;

11 (2) Place restriction on the travel, association, or place of abode of the person during the
12 period of release;

13 (3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit
14 of cash in lieu thereof **by a defendant or a third party; however, under article I, section 20
15 of the Missouri Constitution, the court shall accept in lieu of a cash only bond a guarantee
16 from any surety who is in compliance with general laws regulating such profession;**

17 (4) Require the person to report regularly to some officer of the court, or peace officer,
18 in such manner as the associate circuit judge or judge directs;

19 (5) [Require the execution of a bond in a given sum and the deposit in the registry of the
20 court of ten percent, or such lesser percent as the judge directs, of the sum in cash or negotiable
21 bonds of the United States or of the state of Missouri or any political subdivision thereof;

22 (6)] Place the person on house arrest with electronic monitoring, except that all costs
23 associated with the electronic monitoring shall be charged to the person on house arrest. If the

24 judge finds the person unable to afford the costs associated with electronic monitoring, then the
25 judge shall not order that the person be placed on house arrest with electronic monitoring;

26 [(7)] (6) Impose any other condition deemed reasonably necessary to assure appearance
27 as required, including a condition requiring that the person return to custody after specified
28 hours.

29 2. In determining which conditions of release will reasonably assure appearance, the
30 associate circuit judge or judge shall, on the basis of available information, take into account the
31 nature and circumstances of the offense charged, the weight of the evidence against the accused,
32 the accused's family ties, employment, financial resources, character and mental condition, the
33 length of his residence in the community, his record of convictions, and his record of appearance
34 at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.

35 3. An associate circuit judge or judge authorizing the release of a person under this
36 section shall issue an appropriate order containing a statement of the conditions imposed, if any,
37 shall inform such person of the penalties applicable to violations of the conditions of his release
38 and shall advise him that a warrant for his arrest will be issued immediately upon any such
39 violation.

40 4. A person for whom conditions of release are imposed and who after twenty-four hours
41 from the time of the release hearing continues to be detained as a result of his inability to meet
42 the conditions of release, shall, upon application, be entitled to have the condition reviewed by
43 the associate circuit judge or judge who imposed them. The motion shall be determined
44 promptly.

45 5. An associate circuit judge or judge ordering the release of a person on any condition
46 specified in this section may at any time amend his order to impose additional or different
47 conditions of release; except that, if the imposition of such additional or different conditions
48 results in the detention of the person as a result of his inability to meet such conditions or in the
49 release of the person on a condition requiring him to return to custody after specified hours, the
50 provisions of subsection 4 **of this section** shall apply.

51 6. Information stated in, or offered in connection with, any order entered pursuant to this
52 section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

53 7. Nothing contained in this section shall be construed to prevent the disposition of any
54 case or class of cases by forfeiture of collateral security where such disposition is authorized by
55 the court.

56 8. Persons charged with violations of municipal ordinances may be released by a
57 municipal judge or other judge who hears and determines municipal ordinance violation cases

58 of the municipality involved under the same conditions and in the same manner as provided in
59 this section for release by an associate circuit judge.

60 9. A circuit court may adopt a local rule authorizing the pretrial release on electronic
61 monitoring pursuant to subdivision (6) of subsection 1 of this section in lieu of incarceration of
62 individuals charged with offenses specifically identified therein.

544.456. 1. This section shall be known and may be cited as "Sam Pratt's Law".

2 **2. In any case involving abuse, neglect, or death of a child, any court with**
3 **competent jurisdiction may impose as a condition of release of a defendant under section**
4 **544.455 that such defendant be prohibited from providing child care services for**
5 **compensation pending final disposition of the case.**

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