

SECOND REGULAR SESSION

HOUSE BILL NO. 1641

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

4925H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.033, 211.071, 211.151, and 221.044, RSMo, and to enact in lieu thereof four new sections relating to the detention of persons under the age of seventeen in adult facilities, with an effective date for certain sections.

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

Section A. Sections 211.033, 211.071, 211.151, and 221.044, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 211.033, 211.071, 211.151,
3 and 221.044, to read as follows:

211.033. 1. No person under the age of seventeen years, except those transferred to the
2 court of general jurisdiction under the provisions of section 211.071 **who have been sentenced**
3 **to serve an adult criminal sentence** shall be detained in a jail or other adult detention facility
4 as that term is defined in section 211.151. A traffic court judge may request the juvenile court
5 to order the commitment of a person under the age of seventeen to a juvenile detention facility.

6 2. Nothing in this section shall be construed as creating any civil or criminal liability for
7 any law enforcement officer, juvenile officer, school personnel, or court personnel for any action
8 taken or failure to take any action involving a minor child who remains under the jurisdiction of
9 the juvenile court under this section if such action or failure to take action is based on a good
10 faith belief by such officer or personnel that the minor child is not under the jurisdiction of the
11 juvenile court.

12 3. The amendments to subsection 2 of this section, as provided for in this act, shall not
13 take effect until such time as the provisions of section 211.021 shall take effect in accordance
14 with subsection 2 of section 211.021.

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.

211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any child has committed an offense which would be considered first degree murder under section 565.020, second degree murder under section 565.021, first degree assault under section 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section 569.020, or distribution of drugs under section 195.211, or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly committed by any person between seventeen and twenty-one years of age over whom the juvenile court has retained continuing jurisdiction shall automatically terminate and that offense shall be dealt with in the court of general jurisdiction as provided in section 211.041.

3. Knowing and willful age misrepresentation by a juvenile subject shall not affect any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained during the period of time in which a child misrepresents his or her age may be used against the child and will be subject only to rules of evidence applicable in adult proceedings.

4. Written notification of a transfer hearing shall be given to the juvenile and his or her custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the hearing is to determine whether the child is a proper subject to be dealt with under the provisions of this chapter, and that if the court finds that the child is not a proper subject to be dealt with under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the child under the general law.

5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section. The prosecuting or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile officer, statements of witnesses and all other records or reports relating to the offense alleged to have been committed by the child. The prosecuting or circuit attorney shall have access to the disposition records of the child when the child has been adjudicated pursuant to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney shall not divulge any information

37 regarding the child and the offense until the juvenile court at a judicial hearing has determined
38 that the child is not a proper subject to be dealt with under the provisions of this chapter.

39 6. A written report shall be prepared in accordance with this chapter developing fully all
40 available information relevant to the criteria which shall be considered by the court in
41 determining whether the child is a proper subject to be dealt with under the provisions of this
42 chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice
43 system. These criteria shall include but not be limited to:

44 (1) The seriousness of the offense alleged and whether the protection of the community
45 requires transfer to the court of general jurisdiction;

46 (2) Whether the offense alleged involved viciousness, force and violence;

47 (3) Whether the offense alleged was against persons or property with greater weight
48 being given to the offense against persons, especially if personal injury resulted;

49 (4) Whether the offense alleged is a part of a repetitive pattern of offenses which
50 indicates that the child may be beyond rehabilitation under the juvenile code;

51 (5) The record and history of the child, including experience with the juvenile justice
52 system, other courts, supervision, commitments to juvenile institutions and other placements;

53 (6) The sophistication and maturity of the child as determined by consideration of his
54 home and environmental situation, emotional condition and pattern of living;

55 (7) The age of the child;

56 (8) The program and facilities available to the juvenile court in considering disposition;

57 (9) Whether or not the child can benefit from the treatment or rehabilitative programs
58 available to the juvenile court; and

59 (10) Racial disparity in certification.

60 7. If the court dismisses the petition to permit the child to be prosecuted under the
61 general law, the court shall enter a dismissal order containing:

62 (1) Findings showing that the court had jurisdiction of the cause and of the parties;

63 (2) Findings showing that the child was represented by counsel;

64 (3) Findings showing that the hearing was held in the presence of the child and his
65 counsel; and

66 (4) Findings showing the reasons underlying the court's decision to transfer jurisdiction.

67 8. A copy of the petition and order of the dismissal shall be sent to the prosecuting
68 attorney.

69 9. When a petition has been dismissed thereby permitting a child to be prosecuted under
70 the general law and the prosecution of the child results in a conviction, the jurisdiction of the
71 juvenile court over that child is forever terminated, except as provided in subsection 10 of this
72 section, for an act that would be a violation of a state law or municipal ordinance.

73 10. If a petition has been dismissed thereby permitting a child to be prosecuted under the
74 general law and the child is found not guilty by a court of general jurisdiction, the juvenile court
75 shall have jurisdiction over any later offense committed by that child which would be considered
76 a misdemeanor or felony if committed by an adult, subject to the certification provisions of this
77 section.

78 11. If the court does not dismiss the petition to permit the child to be prosecuted under
79 the general law, it shall set a date for the hearing upon the petition as provided in section
80 211.171.

81 **12. Any child certified under this section who has not yet reached his or her**
82 **seventeenth birthday and is being held prior to the disposition of his or her case shall be**
83 **detained in a juvenile facility, which adheres to current Missouri juvenile detention**
84 **standards. Upon turning seventeen years of age, he or she may be detained in a jail or**
85 **other adult detention facility, as the term "jail or other adult detention facility" is defined**
86 **under section 211.151. No certified child shall be held prior to his or her seventeenth**
87 **birthday in a jail or other adult detention facility unless the child has been sentenced to**
88 **serve an adult criminal sentence.**

 211.151. 1. Pending disposition of a case, the juvenile court may order in writing the
2 detention of a child in one of the following places:

3 (1) A juvenile detention facility provided by the county;

4 (2) A shelter care facility, subject to the supervision of the court;

5 (3) A suitable place of detention maintained by an association having for one of its
6 objects the care and protection of children;

7 (4) Such other suitable custody as the court may direct.

8 2. A child shall not be detained in a jail or other adult detention facility pending
9 disposition of a case.

10 3. Law enforcement officers shall take fingerprints and photographs of a child taken into
11 custody for offenses that would be considered felonies if committed by adults, without the
12 approval of the juvenile judge. A child taken into custody as a victim of abuse or neglect or as
13 a status offender pursuant to subdivision (1) or (2) of subsection 1 of section 211.031 or for an
14 offense that would be considered a misdemeanor if committed by an adult may be fingerprinted
15 or photographed with the consent of the juvenile judge. Records of a child who has been
16 fingerprinted and photographed after being taken into custody shall be closed records as provided
17 under section 610.100 if a petition has not been filed within thirty days of the date that the child
18 was taken into custody; and if a petition for the child has not been filed within one year of the
19 date the child was taken into custody, any records relating to the child concerning the alleged
20 offense may be expunged under the procedures in sections 610.122 to 610.126.

21 4. (1) As used in this section, the term "jail or other adult detention facility" means any
22 locked facility administered by state, county or local law enforcement and correctional agencies,
23 a primary purpose of which is to detain adults charged with violating a criminal law pending
24 trial, including facilities of a temporary nature which do not hold persons after they have been
25 formally charged, or to confine adults convicted of an offense. The term "jail or other adult
26 detention facility" does not include a juvenile detention facility.

27 (2) As used in this section, the term "juvenile detention facility" means a place,
28 institution, building or part thereof, set of buildings or area, whether or not enclosing a building
29 or set of buildings, which has been designated by the juvenile court as a place of detention for
30 juveniles and which is operated, administered and staffed separately and independently of a jail
31 or other detention facility for adults and used exclusively for the lawful custody and treatment
32 of juveniles. The facility may be owned or operated by public or private agencies. A juvenile
33 detention facility may be located in the same building or grounds as a jail or other adult detention
34 facility if there is spatial separation between the facilities which prevents haphazard or accidental
35 contact between juvenile and adult detainees; there is separation between juvenile and adult
36 program activities; and there are separate juvenile and adult staff other than specialized support
37 staff who have infrequent contact with detainees.

38 **5. The division of youth services in collaboration with the office of state courts**
39 **administrator shall establish a task force, which shall include, but not be limited to,**
40 **members from the division of youth services and office of state courts administrator. The**
41 **task force shall make recommendations on the system and process design to be used to**
42 **divert children who have been certified under section 211.071 from jails or other adult**
43 **detention facilities pending disposition of their cases by January 1, 2017. Any child**
44 **certified under section 211.071 on or after August 28, 2016, who has not yet reached his or**
45 **her seventeenth birthday and is being held prior to the disposition of his or her case shall**
46 **be detained in a juvenile detention facility that adheres to current Missouri juvenile**
47 **detention standards. Upon turning seventeen years of age, he or she may be detained in**
48 **a jail or other adult detention facility.**

221.044. No person under the age of seventeen years, except those transferred to the
2 court of general jurisdiction under the provisions of section 211.071 **who have been sentenced**
3 **to serve an adult criminal sentence**, shall be detained in a jail or other adult detention facility
4 as that term is defined in section 211.151. A traffic court judge may request the juvenile court
5 to order the commitment of a person under the age of seventeen to a juvenile detention facility.

Section B. Sections 211.033, 211.071, and 221.044 of this act shall become effective
2 January 1, 2017.

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