

SECOND REGULAR SESSION

# HOUSE BILL NO. 1745

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DOGAN.

3996H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 211.071, RSMo, and to enact in lieu thereof one new section relating to certification of juveniles for trial as an adult.

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

Section A. Section 211.071, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 211.071, to read as follows:

211.071. 1. If a petition alleges that a child between the ages of ~~twelve~~ **fourteen** and eighteen 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 as it existed prior to January 1, 2017, or robbery in the first degree under section 570.023, distribution of drugs under section 195.211 as it existed prior to January 1, 2017, or the manufacturing of a controlled substance under section 579.055, 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.

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.

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

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

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

33           5. The juvenile officer may consult with the office of prosecuting attorney concerning  
34 any offense for which the child could be certified as an adult under this section. The  
35 prosecuting or circuit attorney shall have access to police reports, reports of the juvenile or  
36 deputy juvenile officer, statements of witnesses and all other records or reports relating to the  
37 offense alleged to have been committed by the child. The prosecuting or circuit attorney shall  
38 have access to the disposition records of the child when the child has been adjudicated  
39 pursuant to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney shall  
40 not divulge any information regarding the child and the offense until the juvenile court at a  
41 judicial hearing has determined that the child is not a proper subject to be dealt with under the  
42 provisions of this chapter.

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

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

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

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

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

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

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

59 (7) The age of the child;

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

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

64 (10) Racial disparity in certification.

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

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

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

69 (3) Findings showing that the hearing was held in the presence of the child and his or  
70 her counsel; and

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

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

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

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

84 11. If the court does not dismiss the petition to permit the child to be prosecuted under  
85 the general law, it shall set a date for the hearing upon the petition as provided in section  
86 211.171.

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