

FIRST REGULAR SESSION

HOUSE BILL NO. 351

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

1104H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.033, 211.071, 211.151, 221.044, and 221.240, RSMo, and to enact in lieu thereof seven new sections relating to criminal offenders, 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, 221.044, and 221.240, RSMo, are
2 repealed and seven new sections enacted in lieu thereof, to be known as sections 211.033,
3 211.071, 211.151, 211.436, 217.152, 221.044, and 221.240, 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 has been sentenced**
3 **to serve an adult criminal sentence or those placed by the court in one of the department**
4 **of corrections' one hundred twenty-day programs under subsection 4 of section 559.036,**
5 **or as otherwise provided in subsection 13 of section 211.071,** shall be detained in a jail or
6 other adult detention facility as that term is defined in section 211.151. A traffic court judge may
7 request the juvenile court to order the commitment of a person under the age of seventeen to a
8 juvenile detention facility.

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

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.

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

211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen
2 has committed an offense which would be considered a felony if committed by an adult, the court
3 may, upon its own motion or upon motion by the juvenile officer, the child or the child's
4 custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be
5 transferred to the court of general jurisdiction and prosecuted under the general law; except that
6 if a petition alleges that any child has committed an offense which would be considered first
7 degree murder under section 565.020, second degree murder under section 565.021, first degree
8 assault under section 565.050, forcible rape under section 566.030 as it existed prior to August
9 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060
10 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first
11 degree robbery under section 569.020, or distribution of drugs under section 195.211, or has
12 committed two or more prior unrelated offenses which would be felonies if committed by an
13 adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer
14 the child to a court of general jurisdiction for prosecution under the general law.

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

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

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

30 5. The juvenile officer may consult with the office of prosecuting attorney concerning
31 any offense for which the child could be certified as an adult under this section. The prosecuting
32 or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile
33 officer, statements of witnesses and all other records or reports relating to the offense alleged to

34 have been committed by the child. The prosecuting or circuit attorney shall have access to the
35 disposition records of the child when the child has been adjudicated pursuant to subdivision (3)
36 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 on or after January 1, 2019, and held in**
82 **secure custody prior to the disposition of his or her case shall be detained in an alternative**
83 **detention facility, which adheres to standards set forth by the workgroup established under**
84 **subsection 5 of section 211.151, except as provided in subsection 13 of this section. Upon**
85 **turning seventeen years of age, any certified child held in an alternative detention facility**
86 **shall be transferred to a jail or other adult detention facility, as the term "jail or other**
87 **adult detention facility" is defined under section 211.151.**

88 **13. The court in which the criminal matter is pending may order a certified child**
89 **transferred from an alternative detention facility as defined in subdivision (3) of subsection**
90 **4 of section 211.151 to a jail or other adult detention facility pending disposition of the**
91 **criminal case upon a petition by the director of the alternative detention facility and a**
92 **showing of good cause.**

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, **including a child transferred to the court of general jurisdiction on or**
9 **after January 1, 2019, under the provisions of section 211.071, shall not be detained in a jail**
10 **or other adult detention facility pending disposition of a case, except as provided in subsection**
11 **13 of section 211.071.**

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

23 4. (1) **As used in this section, the term "alternative detention facility" means any**
24 **secure facility administered by state, county, or local law enforcement and correctional**
25 **agencies, whose purpose is to detain a child certified as an adult under section 211.071 who**
26 **has been charged with violating a criminal law pending trial and which adheres to**
27 **standards of operation as defined by the workgroup established in subsection 5 of this**
28 **section.**

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

35 ~~[(2)]~~ (3) As used in this section, the term "juvenile detention facility" means a place,
36 institution, building or part thereof, set of buildings or area, whether or not enclosing a building
37 or set of buildings, which has been designated by the juvenile court as a place of detention for
38 juveniles and which is operated, administered and staffed separately and independently of a jail
39 or other detention facility for adults and used exclusively for the lawful custody and treatment
40 of juveniles. The facility may be owned or operated by public or private agencies. A juvenile
41 detention facility may be located in the same building or grounds as a jail or other adult detention
42 facility if there is spatial separation between the facilities which prevents haphazard or accidental
43 contact between juvenile and adult detainees; there is separation between juvenile and adult
44 program activities; and there are separate juvenile and adult staff other than specialized support
45 staff who have infrequent contact with detainees.

46 **5. The division of youth services in collaboration with the office of state courts**
47 **administrator shall establish the "Certified Youth Jail Removal Workgroup":**

48 (1) The purpose of the workgroup shall be to develop by January 1, 2018, a formal
49 plan for removal of certified children under the age of seventeen years of age from adult
50 jail pending trial and sentencing. The workgroup shall consist of, but not be limited to, the
51 following members: two members from the division of youth services appointed by the
52 director of the division of youth services; two members from the office of state courts
53 administrator, one juvenile officer from an urban jurisdiction, one juvenile officer from
54 a rural jurisdiction, one superintendent of a juvenile detention center from an urban
55 jurisdiction, one superintendent of a juvenile detention center from a rural jurisdiction,
56 and one juvenile officer from a jurisdiction having no juvenile detention facility, all of
57 whom are appointed by the office of state courts administrator; the director of the
58 department of corrections or his or her designee; the executive director of the Missouri
59 association of counties or his or her designee; the executive director of the Missouri office
60 of prosecution services or his or her designee; the executive director of the Missouri
61 Sheriffs' Association or his or her designee; the commissioner of education or his or her
62 designee; the director of the department of mental health or his or her designee; the
63 director of the Missouri state public defender or his or her designee; the executive director
64 of the Missouri juvenile justice association or his or her designee; the president of Families
65 and Friends Organizing for Reform of Juvenile Justice or his or her designee; one juvenile
66 detention center chaplain or a member of the faith-based community appointed by the
67 president pro tempore of the senate; one young adult who was incarcerated as a child
68 appointed by the speaker of the house of representatives; two members from the Missouri
69 house of representatives appointed by the speaker of the house of representatives; and two
70 members from the Missouri senate appointed by the president pro tempore of the senate;

71 (2) By January 1, 2018, the workgroup shall make recommendations to the general
72 assembly regarding alternative detention facilities for secure custody of a child who has
73 been certified under section 211.071 pending disposition of his or her case as well as
74 standards for operating such alternative detention facilities. The recommendations
75 submitted to the general assembly shall address the following:

76 (a) The appropriate facility description including physical structure and location;

77 (b) The appropriate funding mechanism for implementation and ongoing financial
78 support of alternative detention facilities in compliance with the provisions of article X,
79 section 16 of the Missouri Constitution;

80 (c) Programming and services elements including education, mental health services,
81 transition planning, and youth development of incarcerated certified youth;

82 (d) Operational and administrative elements including transportation to court
83 proceedings and training requirements for facility staff;

84 (e) Defining what is "good cause" to return the child to an adult jail prior to
85 sentencing under subsection 13 of section 211.071;

86 (f) Funding of programs and services that coincides with Missouri's fiscal
87 appropriation calendar; and

88 (g) Additional recommendations that are within the scope and purpose of the
89 workgroup.

90 (3) The workgroup shall automatically terminate on September 1, 2019, unless
91 previously reauthorized by the general assembly. Members of the workgroup shall serve
92 without compensation.

211.436. 1. If a court of jurisdiction in juvenile cases has a local court rule or
2 otherwise mandates that a juvenile shall be restrained during court proceedings using
3 either handcuffs, chains, irons, or a straitjacket, the juvenile's attorney shall have the right
4 to be heard on the issue of the necessity of restraints on the juvenile and request that the
5 restraints on the juvenile not be used. The juvenile's attorney may present evidence that
6 the juvenile is not a flight risk, poses no safety risk to himself or herself or others, or has
7 no history of disruptive courtroom behavior.

8 2. If the court orders that restraints shall be used on the juvenile, the court shall
9 make findings of fact in support of such use.

217.152. 1. This section shall be known and may be cited as the Pregnant Offender
2 Transportation, Evaluation, and Correctional Treatment Act, or the ProTECT Act.

3 2. For purposes of this section, "extraordinary circumstances" exist when a chief
4 administrative officer or his or her designee makes a determination that restraints are
5 necessary to prevent a pregnant or postpartum offender from escaping or seriously
6 injuring herself, her unborn or newborn child, medical or correctional personnel, or
7 others. For purposes of this section, "postpartum" is the period of recovery immediately
8 following childbirth, which is six weeks for a vaginal birth or eight weeks for a cesarean
9 birth, or longer if so determined by a physician or nurse.

10 3. The department shall establish, by rule under section 217.040, policies and
11 procedures for the transportation, evaluation, and treatment of pregnant and postpartum
12 offenders consistent with the statutes of this state. The department shall consult with
13 physicians, nursing, correctional, and other professional organizations in establishing such
14 rules. Such rules shall include, but need not be limited to:

15 (1) Any time restraints are used on a pregnant offender during the third trimester
16 or on a postpartum offender for forty-eight hours post-delivery, the restraints shall be the
17 least restrictive available and the most reasonable under the circumstances. If wrist
18 restraints are used on a pregnant offender, they shall be applied in the front so she is able

19 to protect herself and her unborn child in the event of a forward fall. In no case shall leg,
20 ankle, or waist restraints be used during labor and delivery, or during immediate
21 post-delivery recuperation;

22 (2) Except in extraordinary circumstances, no restraints of any kind shall be used
23 on offenders during the third trimester of pregnancy or for forty-eight hours post-delivery,
24 whether during transportation to and from visits to health care providers outside of the
25 correctional center, court proceedings, or other places, or during labor and delivery;

26 (3) Pregnant and postpartum offenders shall be transported to and from visits to
27 health care providers outside of the correctional center, court proceedings, or other places
28 in vehicles with seatbelts;

29 (4) If a doctor, nurse, or other health care provider treating a pregnant or
30 postpartum offender requests that restraints not be used, the corrections officer
31 accompanying the pregnant or postpartum offender shall immediately remove all
32 restraints, unless there are extraordinary circumstances;

33 (5) Upon intake, a pregnant or postpartum offender shall be evaluated and treated
34 for:

35 (a) Overall maternal health and, if necessary, provided dietary supplements for
36 pregnant and breast-feeding offenders. Readily available and regularly scheduled
37 obstetric care, beginning in early pregnancy and continuing through the postpartum
38 period, shall be provided. The department shall, with the assistance of the department of
39 social services and consent of the pregnant offender, consider enrolling an unborn child
40 in the show-me healthy babies program under section 208.662;

41 (b) Substance abuse, and provided treatment, including, if necessary, provided
42 opioid-assisted therapy for offenders who are opioid-dependent;

43 (c) Infection with human immunodeficiency virus (HIV), and if HIV positive,
44 provided treatment for maternal health and to prevent perinatal HIV transmission; and

45 (d) Depression or mental stress during pregnancy and for postpartum depression
46 after delivery, and provided treatment as needed; and

47 (6) Required activities with a high risk of falling shall be avoided. Pregnant and
48 postpartum offenders shall be given a bottom bunk during pregnancy and the postpartum
49 period.

50 4. In the event a chief administrative officer or his or her designee determines that
51 extraordinary circumstances exist and restraints are used, the chief administrative officer
52 or his or her designee shall fully document in writing within seven days of the incident the
53 reasons he or she determined such extraordinary circumstances existed, the kind of

54 restraints used, and the reasons those restraints were considered the least restrictive
55 available and the most reasonable under the circumstances.

56 **5. The sentencing and corrections oversight commission established under section**
57 **217.147, and the advisory committee established under section 217.015, shall conduct**
58 **biennial reviews of every report written on the use of restraints on a pregnant or**
59 **postpartum offender in accordance with subsection 4 of this section to determine**
60 **compliance with this section. The written reports shall be kept on file by the department**
61 **for five years.**

62 **6. The chief administrative officer of each correctional center that houses pregnant**
63 **and postpartum offenders shall:**

64 **(1) Ensure the employees of the correctional center who come in contact with**
65 **pregnant or postpartum offenders are provided with training, which may include online**
66 **training, on the provisions of this section; and**

67 **(2) Inform female offenders of the policies and procedures developed in accordance**
68 **with this section upon admission to the correctional center, including the policies and**
69 **procedures in the offender handbook, and post the policies and procedures in locations in**
70 **the correctional center where such notices are commonly posted and will be seen by female**
71 **offenders, including common housing areas and health care facilities.**

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 has been sentenced**
3 **to serve an adult criminal sentence or those placed by the court in one of the department**
4 **of corrections' one hundred twenty-day programs under subsection 4 of section 559.036,**
5 **or as otherwise provided in subsection 13 of section 211.071,** shall be detained in a jail or
6 other adult detention facility as that term is defined in section 211.151. A traffic court judge may
7 request the juvenile court to order the commitment of a person under the age of seventeen to a
8 juvenile detention facility.

221.240. When any person shall be committed to jail **or alternative detention facility**
2 **as defined in subdivision (3) of subsection 4 of section 211.151,** in conformity to section
3 221.230, it shall be the duty of the sheriff of the county in which said jail **or alternative**
4 **detention facility** is situated to take, or cause to be taken, the person thus committed, together
5 with the day and cause of his **or her** capture and detention, before the circuit court of the county
6 appointed for the trial of such prisoner, at such time as the cause is set for trial and at such other
7 times as the court shall direct.

Section B. The repeal and reenactment of sections 211.033, 221.044, and 221.240 of this
2 act shall become effective January 1, 2019.

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