

FIRST REGULAR SESSION

SENATE BILL NO. 305

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROBERTS.

1434S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 211.211, RSMo, and to enact in lieu thereof one new section relating to a child's right to counsel.

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

Section A. Section 211.211, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 211.211,
3 to read as follows:

211.211. 1. A child is entitled to be represented by
2 counsel in all proceedings under subdivision (2) or (3) of
3 subsection 1 of section 211.031 and by a guardian ad litem
4 in all proceedings under subdivision (1) of subsection 1 of
5 section 211.031.

6 2. The court shall appoint counsel for a child prior
7 to the filing of a petition if a request is made therefor to
8 the court and the court finds that the child is the subject
9 of a juvenile court proceeding and that the child making the
10 request is indigent.

11 3. **(1)** When a petition has been filed under
12 subdivision (2) or (3) of subsection 1 of section 211.031,
13 the court shall appoint counsel for the child except if
14 private counsel has entered his or her appearance on behalf
15 of the child or if counsel has been waived in accordance
16 with law; **except that, counsel shall not be waived for any**
17 **proceeding specified under subsection 10 of this section.**

18 (2) If a child waives his or her right to counsel,
19 such waiver shall be made in open court and be recorded and
20 in writing and shall be made knowingly, intelligently, and
21 voluntarily. In determining whether a child has knowingly,
22 intelligently, and voluntarily waived his or her right to
23 counsel, the court shall look to the totality of the
24 circumstances including, but not limited to, the child's
25 age, intelligence, background, and experience generally and
26 in the court system specifically; the child's emotional
27 stability; and the complexity of the proceedings.

28 4. When a petition has been filed and the child's
29 custodian appears before the court without counsel, the
30 court shall appoint counsel for the custodian if it finds:

31 (1) That the custodian is indigent; and

32 (2) That the custodian desires the appointment of
33 counsel; and

34 (3) That a full and fair hearing requires appointment
35 of counsel for the custodian.

36 5. Counsel shall be allowed a reasonable time in which
37 to prepare to represent his **or her** client.

38 6. Counsel shall serve for all stages of the
39 proceedings, including appeal, unless relieved by the court
40 for good cause shown. If no appeal is taken, services of
41 counsel are terminated following the entry of an order of
42 disposition.

43 7. The child and his **or her** custodian may be
44 represented by the same counsel except where a conflict of
45 interest exists. Where it appears to the court that a
46 conflict exists, it shall order that the child and his **or**
47 **her** custodian be represented by separate counsel, and it
48 shall appoint counsel if required by subsection 3 or 4 of
49 this section.

50 8. When a petition has been filed, a child may waive
51 his **or her** right to counsel only with the approval of the
52 court **and if such waiver is not prohibited under subsection**
53 **10 of this section. If a child waives his or her right to**
54 **counsel for any proceeding except proceedings under**
55 **subsection 10 of this section, the waiver shall only apply**
56 **to that proceeding. In any subsequent proceeding, the child**
57 **shall be informed of his or her right to counsel.**

58 9. Waiver of counsel by a child may be withdrawn at
59 any stage of the proceeding, in which event the court shall
60 appoint counsel for the child if required by subsection 3 of
61 this section.

62 10. A child's right to be represented by counsel shall
63 not be waived in any of the following proceedings:

64 (1) At a detention hearing under Missouri supreme
65 court rule 127.08;

66 (2) At a certification hearing under section 211.071
67 or a dismissal hearing under Missouri supreme court rule
68 129.04;

69 (3) At an adjudication hearing under Missouri supreme
70 court rule 128.02 for any misdemeanor or felony offense,
71 including the acceptance of an admission;

72 (4) At a dispositional hearing under Missouri supreme
73 court rule 128.03; or

74 (5) At a hearing on a motion to modify or revoke
75 supervision under subdivision (2) or (3) of subsection 1 of
76 section 211.031.

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