

SECOND REGULAR SESSION

HOUSE BILL NO. 1384

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASHINGTON.

3808H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 211.021, 211.031, 211.061, and 211.071 as enacted by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session, RSMo, and to enact in lieu thereof four new sections relating to juvenile court proceedings, with penalty provisions and a delayed effective date.

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

Section A. Sections 211.021, 211.031, 211.061, and 211.071 as enacted by senate bill
2 no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session,
3 RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections
4 211.021, 211.031, 211.061, and 211.071, to read as follows:

211.021. As used in this chapter, unless the context clearly requires otherwise:

- 2 (1) "Adult" means a person eighteen years of age or older;
- 3 (2) "Child" means any person under eighteen years of age;
- 4 (3) "Juvenile court" means the juvenile division or divisions of the circuit court of the
5 county, or judges while hearing juvenile cases assigned to them;
- 6 (4) "Legal custody" means the right to the care, custody and control of a child and the
7 duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline
8 of a child. Legal custody may be taken from a parent only by court action and if the legal
9 custody is taken from a parent without termination of parental rights, the parent's duty to provide
10 support continues even though the person having legal custody may provide the necessities of
11 daily living;
- 12 (5) "Parent" means either a natural parent or a parent by adoption and if the child is
13 illegitimate, "parent" means the mother **until after the determination of paternity by a circuit**

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 **court or an agreement of the presumed father. After such paternity has been determined,**
 15 **"parent" shall also include the father;**

16 (6) "Shelter care" means the temporary care of juveniles in physically unrestricting
 17 facilities pending final court disposition. These facilities may include:

18 (a) "Foster home", the private home of foster parents providing twenty-four-hour care
 19 to one to three children unrelated to the foster parents by blood, marriage or adoption;

20 (b) "Group foster home", the private home of foster parents providing twenty-four-hour
 21 care to no more than six children unrelated to the foster parents by blood, marriage or adoption;

22 (c) "Group home", a child care facility which approximates a family setting, provides
 23 access to community activities and resources, and provides care to no more than twelve children.

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family
 2 court in circuits that have a family court as provided in sections 487.010 to 487.190 shall have
 3 exclusive original jurisdiction in proceedings:

4 (1) Involving any child who may be a resident of or found within the county and who is
 5 alleged to be in need of care and treatment because:

6 (a) The parents, or other persons legally responsible for the care and support of the child,
 7 neglect or refuse to provide proper support, education which is required by law, medical, surgical
 8 or other care necessary for his or her well-being; except that reliance by a parent, guardian or
 9 custodian upon remedial treatment other than medical or surgical treatment for a child shall not
 10 be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this
 11 state;

12 (b) The child is otherwise without proper care, custody or support;

13 (c) The child was living in a room, building or other structure at the time such dwelling
 14 was found by a court of competent jurisdiction to be a public nuisance pursuant to section
 15 195.130; or

16 (d) The child is in need of mental health services and the parent, guardian or custodian
 17 is unable to afford or access appropriate mental health treatment or care for the child;

18 (2) Involving any child who may be a resident of or found within the county and who is
 19 alleged to be in need of care and treatment because:

20 (a) The child while subject to compulsory school attendance is repeatedly and without
 21 justification absent from school;

22 (b) The child disobeys the reasonable and lawful directions of his or her parents or other
 23 custodian and is beyond their control;

24 (c) The child is habitually absent from his or her home without sufficient cause,
 25 permission, or justification;

26 (d) The behavior or associations of the child are otherwise injurious to his or her welfare
27 or to the welfare of others; or

28 (e) The child is charged with an offense not classified as criminal, or with an offense
29 applicable only to children; except that, the juvenile court shall not have jurisdiction over any
30 child fifteen years of age who is alleged to have violated a state or municipal traffic ordinance
31 or regulation, the violation of which does not constitute a felony, or any child who is alleged to
32 have violated a state or municipal ordinance or regulation prohibiting possession or use of any
33 tobacco product;

34 (3) Involving any child who is alleged to have violated a state law or municipal
35 ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior
36 to attaining the age of eighteen years, in which cases jurisdiction may be taken by the court of
37 the circuit in which the child or person resides or may be found or in which the violation is
38 alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child
39 [~~fifteen~~] **seventeen** years of age who is alleged to have violated a state or municipal traffic
40 ordinance or regulation, the violation of which does not constitute a felony, and except that the
41 juvenile court shall have concurrent jurisdiction with the municipal court over any child who is
42 alleged to have violated a municipal curfew ordinance, and except that the juvenile court shall
43 have concurrent jurisdiction with the circuit court on any child who is alleged to have violated
44 a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

45 (4) For the adoption of a person;

46 (5) For the commitment of a child to the guardianship of the department of social
47 services as provided by law; and

48 (6) Involving an order of protection pursuant to chapter 455 when the respondent is less
49 than eighteen years of age.

50 2. Transfer of a matter, proceeding, jurisdiction or supervision for a child who resides
51 in a county of this state shall be made as follows:

52 (1) Prior to the filing of a petition and upon request of any party or at the discretion of
53 the juvenile officer, the matter in the interest of a child may be transferred by the juvenile officer,
54 with the prior consent of the juvenile officer of the receiving court, to the county of the child's
55 residence or the residence of the person eighteen years of age for future action;

56 (2) Upon the motion of any party or on its own motion prior to final disposition on the
57 pending matter, the court in which a proceeding is commenced may transfer the proceeding of
58 a child to the court located in the county of the child's residence, or the county in which the
59 offense pursuant to subdivision (3) of subsection 1 of this section is alleged to have occurred for
60 further action;

61 (3) Upon motion of any party or on its own motion, the court in which jurisdiction has
62 been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction
63 of a child to the court located in the county of the child's residence for further action with the
64 prior consent of the receiving court;

65 (4) Upon motion of any party or upon its own motion at any time following a judgment
66 of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause
67 may place the child under the supervision of another juvenile court within or without the state
68 pursuant to section 210.570 with the consent of the receiving court;

69 (5) Upon motion of any child or his or her parent, the court having jurisdiction shall
70 grant one change of judge pursuant to Missouri supreme court rules;

71 (6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child,
72 certified copies of all legal and social documents and records pertaining to the case on file with
73 the clerk of the transferring juvenile court shall accompany the transfer.

74 3. In any proceeding involving any child taken into custody in a county other than the
75 county of the child's residence, the juvenile court of the county of the child's residence shall be
76 notified of such taking into custody within seventy-two hours.

77 4. When an investigation by a juvenile officer pursuant to this section reveals that the
78 only basis for action involves an alleged violation of section 167.031 involving a child who
79 alleges to be home schooled, the juvenile officer shall contact a parent or parents of such child
80 to verify that the child is being home schooled and not in violation of section 167.031 before
81 making a report of such a violation. Any report of a violation of section 167.031 made by a
82 juvenile officer regarding a child who is being home schooled shall be made to the prosecuting
83 attorney of the county where the child legally resides.

84 5. The disability or disease of a parent shall not constitute a basis for a determination that
85 a child is a child in need of care or for the removal of custody of a child from the parent without
86 a specific showing that there is a causal relation between the disability or disease and harm to
87 the child.

211.061. 1. When a child is taken into custody with or without warrant for an offense,
2 the child, together with any information concerning the child and the personal property found in
3 the child's possession, shall be taken immediately and directly before the juvenile court or
4 delivered to the juvenile officer or person acting for the child.

5 2. If any person is taken before a circuit or associate circuit judge not assigned to
6 juvenile court or a municipal judge, and it is then, or at any time thereafter, ascertained that he
7 or she was under the age of eighteen years at the time he or she is alleged to have committed the
8 offense, or that he or she is subject to the jurisdiction of the juvenile court as provided by this
9 chapter, it is the duty of the judge forthwith to transfer the case or refer the matter to the juvenile

10 court, and direct the delivery of such person, together with information concerning him or her
11 and the personal property found in his or her possession, to the juvenile officer or person acting
12 as such **within seven days of the child being brought before the judge.**

13 3. When the juvenile court is informed that a child is in detention it shall examine the
14 reasons therefor and shall immediately:

15 (1) Order the child released; or

16 (2) Order the child continued in detention until a detention hearing is held. An order to
17 continue the child in detention shall only be entered upon the filing of a petition or motion to
18 modify and a determination by the court that probable cause exists to believe that the child has
19 committed acts specified in the petition or motion that bring the child within the jurisdiction of
20 the court under subdivision (2) or (3) of subsection 1 of section 211.031.

21 4. A juvenile shall not remain in detention for a period greater than twenty-four hours
22 unless the court orders a detention hearing. If such hearing is not held within three days,
23 excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention
24 unless the court for good cause orders the hearing continued. The detention hearing shall be held
25 within the judicial circuit at a date, time and place convenient to the court. Notice of the date,
26 time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile
27 and his or her custodian in person, by telephone, or by such other expeditious method as is
28 available.

211.071. 1. If a petition alleges that a child between the ages of ~~[twelve]~~ **fourteen** and
2 eighteen has committed an offense which would be considered a felony if committed by an adult,
3 the court may, upon its own motion or upon motion by the juvenile officer, the child or the
4 child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child
5 may be transferred to the court of general jurisdiction and prosecuted under the general law;
6 except that if a petition alleges that any child **who is at least fourteen years of age** has
7 committed an offense which would be considered first degree murder under section 565.020,
8 second degree murder under section 565.021, first degree assault under section 565.050, forcible
9 rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under
10 section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013,
11 sodomy in the first degree under section 566.060, first degree robbery under section 569.020 as
12 it existed prior to January 1, 2017, or robbery in the first degree under section 570.023,
13 distribution of drugs under section 195.211 as it existed prior to January 1, 2017, or the
14 manufacturing of a controlled substance under section 579.055, or has committed two or more
15 prior unrelated offenses which would be felonies if committed by an adult, the court shall order
16 a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of
17 general jurisdiction for prosecution under the general law.

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 juvenile
20 court has retained continuing jurisdiction shall automatically terminate and that offense shall be
21 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 any
23 action or proceeding which occurs based upon the misrepresentation. Any evidence obtained
24 during the period of time in which a child misrepresents his or her age may be used against the
25 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 her
27 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 the
29 hearing is to determine whether the child is a proper subject to be dealt with under the provisions
30 of this chapter, and that if the court finds that the child is not a proper subject to be dealt with
31 under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the
32 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 prosecuting
35 or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile
36 officer, statements of witnesses and all other records or reports relating to the offense alleged to
37 have been committed by the child. The prosecuting or circuit attorney shall have access to the
38 disposition records of the child when the child has been adjudicated pursuant to subdivision (3)
39 of subsection 1 of section 211.031. The prosecuting attorney shall not divulge any information
40 regarding the child and the offense until the juvenile court at a judicial hearing has determined
41 that the child is not a proper subject to be dealt with under the provisions of this chapter.

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

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

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

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

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

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

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

58 (7) The age of the child;

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

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

62 (10) Racial disparity in certification.

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

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

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

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

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

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

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

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

81 11. If the court does not dismiss the petition to permit the child to be prosecuted under
82 the general law, it shall set a date for the hearing upon the petition as provided in section
83 211.171.

Section B. Section A of this act shall become effective on January 1, 2021.

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