

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 541

97TH GENERAL ASSEMBLY

1458H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.071, 211.073, and 565.020, RSMo, and to enact in lieu thereof three new sections relating to juvenile offenders, with an emergency clause and penalty provisions.

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

Section A. Sections 211.071, 211.073, and 565.020, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 211.071, 211.073, and 565.020, to read as follows:

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, forcible sodomy 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

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.

16 court has retained continuing jurisdiction shall automatically terminate and that offense shall be
17 dealt with in the court of general jurisdiction as provided in section 211.041.

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

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

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

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

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

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

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

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

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

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

54 (7) The age of the child;

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

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

58 (10) Racial disparity in certification.

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

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

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

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

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

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

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

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

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

211.073. 1. The court [may] **shall**, in a case when the offender is under seventeen years
2 **and six months** of age and has been transferred to a court of general jurisdiction pursuant to
3 section 211.071, and whose prosecution results in a conviction or a plea of guilty, [invoke]
4 **consider** dual jurisdiction of both the criminal and juvenile codes, as set forth in this section.
5 The court is authorized to impose a juvenile disposition under this chapter and simultaneously
6 impose an adult criminal sentence, the execution of which shall be suspended pursuant to the
7 provisions of this section. Successful completion of the juvenile disposition ordered shall be a

8 condition of the suspended adult criminal sentence. The court may order an offender into the
9 custody of the division of youth services pursuant to this section [if:

10 (1) A facility is designed and built by the division of youth services specifically for
11 offenders sentenced pursuant to this section and if the division determines that there is space
12 available, based on design capacity, in the facility; and

13 (2)] :

14 (1) Upon agreement of the division of youth services; and

15 (2) **If the division of youth services determines that there is space available in a**
16 **facility designed to serve offenders sentenced under this section.**

17

18 **If the division of youth services agrees to accept a youth and the court does not impose a**
19 **juvenile disposition, the court shall make findings on the record prior to imposing the adult**
20 **criminal sentence as to why the division of youth services was not appropriate for the**
21 **offender.**

22 2. If there is probable cause to believe that the offender has violated a condition of the
23 suspended sentence or committed a new offense, the court shall conduct a hearing on the
24 violation charged, unless the offender waives such hearing. If the violation is established and
25 found the court may continue or revoke the juvenile disposition, impose the adult criminal
26 sentence, or enter such other order as it may see fit.

27 3. When an offender has received a suspended sentence pursuant to this section and the
28 division determines the child is beyond the scope of its treatment programs, the division of youth
29 services may petition the court for a transfer of custody of the offender. The court shall hold a
30 hearing and shall:

31 (1) Revoke the suspension and direct that the offender be taken into immediate custody
32 of the department of corrections; or

33 (2) Direct that the offender be placed on probation.

34 4. When an offender who has received a suspended sentence reaches the age of
35 seventeen, the court shall hold a hearing. The court shall:

36 (1) Revoke the suspension and direct that the offender be taken into immediate custody
37 of the department of corrections;

38 (2) Direct that the offender be placed on probation; or

39 (3) Direct that the offender remain in the custody of the division of youth services if the
40 division agrees to such placement.

41 5. The division of youth services shall petition the court for a hearing before it releases
42 an offender who comes within subsection 1 of this section at any time before the offender
43 reaches the age of twenty-one years. The court shall:

44 (1) Revoke the suspension and direct that the offender be taken into immediate custody
45 of the department of corrections; or

46 (2) Direct that the offender be placed on probation.

47 6. If the suspension of the adult criminal sentence is revoked, all time served by the
48 offender under the juvenile disposition shall be credited toward the adult criminal sentence
49 imposed.

565.020. 1. A person commits the crime of murder in the first degree if he knowingly
2 causes the death of another person after deliberation upon the matter.

3 2. Murder in the first degree is a class A felony, and, **if a person has reached his or her**
4 **eighteenth birthday at the time of the commission of the crime**, the punishment shall be either
5 death or imprisonment for life without eligibility for probation or parole, or release except by act
6 of the governor; except that, if a person has not reached his **or her [sixteenth] eighteenth**
7 birthday at the time of the commission of the crime, the punishment shall be **either**
8 imprisonment for life without eligibility for probation or parole, or release except by act of the
9 governor, **or life imprisonment with eligibility for parole after fifty years.**

10 3. **If the person has not reached his or her eighteenth birthday at the time of the**
11 **commission of the crime, the court shall hold a hearing upon the motion of the prosecuting**
12 **attorney to determine whether the mandatory sentence of life imprisonment should be**
13 **without the possibility of parole or with eligibility for parole after fifty years. Such motion**
14 **shall be filed within fourteen days of the person's conviction. In the event the prosecuting**
15 **attorney does not file such a motion within fourteen days, the sentence shall be life with**
16 **eligibility for parole after fifty years.**

17 4. **The motion of the prosecuting attorney shall specify the basis on which he or she**
18 **believes the proper sentence shall be life without the possibility of parole.**

19 5. **At such hearing, the court shall consider both the statutory aggravating**
20 **circumstances under subsection 2 of section 565.032 and the statutory mitigating**
21 **circumstances under subsection 3 of section 565.032.**

22 6. **At the sentencing, the court shall specify on the record the statutory aggravating**
23 **circumstances and the statutory mitigating circumstances considered by the court, and the**
24 **court's reasons supporting the sentence imposed. The court may consider evidence**
25 **presented at trial together with any new evidence presented at the sentencing hearing.**

26 7. **The procedures specified in subsections 3, 4, 5 and 6 of this section shall not**
27 **apply to any case that is final for purposes of appeal on or before the enactment date of this**
28 **section. A case is final for purposes of appeal when the time for filing an appeal in the**
29 **Missouri Court of Appeals has expired; if an appeal was filed in the Missouri Court of**
30 **Appeals, when the time for filing an application for transfer to the Missouri Supreme**

31 **Court has expired; if an application for transfer to the Missouri Supreme Court has been**
32 **filed, when the application for transfer was denied or when a timely filed motion for**
33 **rehearing was denied; or if the Missouri Supreme Court granted transfer, when the**
34 **Missouri Supreme Court rendered its decision or when a timely filed motion for rehearing**
35 **was denied.**

36 **8. Any person sentenced to imprisonment for life without the eligibility for**
37 **probation or parole for a crime committed before the person reached his or her eighteenth**
38 **birthday, and who was sentenced prior to the effective date of this section, may file a**
39 **motion in the sentencing court for a sentencing hearing. Such sentencing hearing shall be**
40 **heard by the judge. The sole purpose of the sentencing hearing shall be to determine if the**
41 **sentence of imprisonment for life without the eligibility for probation or parole which was**
42 **originally imposed shall remain or should be amended to life with eligibility for parole**
43 **after fifty years.**

44 **9. This section shall have an emergency clause and shall be effective upon signature**
45 **by the governor.**

Section B. Because immediate action is necessary to protect public safety and to ensure
2 the constitutionality of statutes regarding criminal procedure for juvenile offenders the repeal and
3 reenactment of section 565.020 of section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an
5 emergency act within the meaning of the constitution, and the repeal and reenactment of section
6 565.020 of section A of this act shall be in full force and effect upon its passage and approval.

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