

FIRST REGULAR SESSION

HOUSE BILL NO. 708

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

1589L.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.033, 211.071, and 221.044, RSMo, and to enact in lieu thereof three new sections relating to the detention of persons under the age of seventeen in adult facilities.

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

Section A. Sections 211.033, 211.071, and 221.044, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 211.033, 211.071, and 221.044, to read as follows:

211.033. 1. No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071 **who have been sentenced to serve an adult criminal sentence** shall be detained in a jail or other adult detention facility as that term is defined in section 211.151. A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility.

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

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

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

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.

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 juvenile certified under this section shall be detained in a juvenile facility,**
82 **which adheres to current Missouri juvenile detention standards, pending disposition of the**
83 **case. No certified juvenile shall be held prior to the disposition of the case in a jail or other**
84 **adult detention facility as the term "jail or other detention facility" is defined under section**
85 **211.151.**

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 have been sentenced**
3 **to serve an adult criminal sentence**, shall be detained in a jail or other adult detention facility
4 as that term is defined in section 211.151. A traffic court judge may request the juvenile court
5 to order the commitment of a person under the age of seventeen to a juvenile detention facility.

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