

FIRST REGULAR SESSION

# HOUSE BILL NO. 42

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BURNETT.

0049H.02I

DANA RADEMAN MILLER, Chief Clerk

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## 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.

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Section A. Section 211.211, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 211.211, to read as follows:

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

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

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

**(2)** If a child waives his or her right to counsel, such waiver shall be made in open court and be recorded and in writing and shall be made knowingly, intelligently, and voluntarily. In determining whether a child has knowingly, intelligently, and voluntarily waived his or her right to counsel, the court shall look to the totality of the circumstances including, but not limited to, the child's age, intelligence, background, and experience

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.

17 **generally and in the court system specifically; the child's emotional stability; and the**  
18 **complexity of the proceedings.**

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

21 (1) That the custodian is indigent; and

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

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

24 5. Counsel shall be allowed a reasonable time in which to prepare to represent his client.

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

28 7. The child and his custodian may be represented by the same counsel except where a  
29 conflict of interest exists. Where it appears to the court that a conflict exists, it shall order that  
30 the child and his custodian be represented by separate counsel, and it shall appoint counsel if  
31 required by subsection 3 or 4 of this section.

32 8. When a petition has been filed, a child may waive his **or her** right to counsel only  
33 with the approval of the court **and if such waiver is not prohibited under subsection 10 of this**  
34 **section. If a child waives his or her right to counsel for any proceeding except proceedings**  
35 **under subsection 10 of this section, the waiver shall only apply to that proceeding. In any**  
36 **subsequent proceeding, the child shall be informed of his or her right to counsel.**

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

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

42 (1) **At a detention hearing under Missouri supreme court rule 127.08;**

43 (2) **At a certification hearing under section 211.071 or a dismissal hearing under**  
44 **Missouri supreme court rule 129.04;**

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

47 (4) **At a dispositional hearing under Missouri supreme court rule 128.03; or**

48 (5) **At a hearing on a motion to modify or revoke supervision under subdivision (2)**  
49 **or (3) of subsection 1 of section 211.031.**

50 **11. Under no circumstances shall a child waive his or her rights under section**  
51 **211.059 and be questioned by police.**

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