

SECOND REGULAR SESSION

SENATE BILL NO. 789

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Pre-filed January 3, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3858S.01I

AN ACT

To repeal sections 211.011, 211.021, 211.083, and 211.181, RSMo, and to enact in lieu thereof four new sections relating to juvenile courts, with penalty provisions.

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

Section A. Sections 211.011, 211.021, 211.083, and 211.181, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 211.011, 211.021, 211.083, and 211.181, to read as follows:

211.011. The purpose of this chapter is to facilitate the care, protection
2 and discipline of children who come within the jurisdiction of the juvenile
3 court. This chapter shall be liberally construed, therefore, to the end that each
4 child coming within the jurisdiction of the juvenile court shall receive such care,
5 guidance and control as will conduce to the child's welfare and the best interests
6 of the state[, and that]. **The juvenile court shall incorporate a balanced
7 and restorative approach in its care and treatment of juveniles who
8 come within the jurisdiction of the juvenile court under subdivisions
9 (2) and (3) of subsection 1 of section 211.031.** When such child is removed
10 from the control of his **or her** parents the court shall secure for him **or her** care
11 as nearly as possible equivalent to that which should have been given him **or her**
12 by them. The child welfare policy of this state is what is in the best interests of
13 the child.

211.021. As used in this chapter, unless the context clearly requires
2 otherwise, **the following terms shall mean:**

- 3 (1) "Adult" [means], a person seventeen years of age or older;
4 (2) **"Balanced and restorative approach", including to the extent
5 possible, the victim, offender, and community affected by the offenses**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

6 described in subdivisions (2) and (3) of subsection 1 of section 211.031,
7 and focuses on repairing the harm to the victim, holding the offender
8 accountable and assisting with development of competencies to be able
9 to become a responsible and productive member of society, and
10 promoting community safety;

11 (3) "Child" [means], a person under seventeen years of age;

12 [(3)] (4) "Juvenile court" [means], the juvenile division or divisions of the
13 circuit court of the county, or judges while hearing juvenile cases assigned to
14 them;

15 [(4)] (5) "Legal custody" [means], the right to the care, custody and
16 control of a child and the duty to provide food, clothing, shelter, ordinary medical
17 care, education, treatment and discipline of a child. Legal custody may be taken
18 from a parent only by court action and if the legal custody is taken from a parent
19 without termination of parental rights, the parent's duty to provide support
20 continues even though the person having legal custody may provide the
21 necessities of daily living;

22 [(5)] (6) "Parent" [means], either a natural parent or a parent by
23 adoption and if the child is illegitimate, "parent" means the mother;

24 [(6)] (7) "Shelter care" [means], the temporary care of juveniles in
25 physically unrestricting facilities pending final court disposition. These facilities
26 may include:

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

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

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

211.083. 1. Whenever an informal adjustment is made under the
2 provisions of section 211.081, the juvenile court **shall incorporate a balanced**
3 **and restorative approach and** may allow the child:

4 (1) To make restitution or reparation for the damage or loss caused by his
5 **or her** offense. Any restitution or reparation shall be reasonable in view of the
6 child's ability to make payment or perform the reparation. The court may require

7 the clerk of the circuit court to act as receiving and disbursing agent for any
8 payment agreed upon;

9 (2) To complete a term of community service, **related to the offense to**
10 **the extent possible**, under the supervision of the court or an organization
11 selected by the court.

12 2. Every person, organization, and agency, and each employee thereof,
13 who supervises a child under the provisions of this section, or who benefits from
14 any services performed under this section as a result of an informal adjustment,
15 shall be immune from any suit by the child performing services under this
16 section, or any person deriving a cause of action from such child, if such cause of
17 action arises from the supervision of the child's performance of services under
18 this section and if such cause of action does not arise from an intentional tort or
19 any wanton, willful, or malicious conduct. A child performing services under this
20 section shall not be deemed an employee within the meaning of the provisions of
21 chapter 287, RSMo, nor shall the services of such child be deemed employment
22 within the meaning of the provisions of chapter 288, RSMo.

211.181. 1. When a child or person seventeen years of age is found by the
2 court to come within the applicable provisions of subdivision (1) of subsection 1
3 of section 211.031, the court shall so decree and make a finding of fact upon
4 which it exercises its jurisdiction over the child or person seventeen years of age,
5 and the court may, by order duly entered, proceed as follows:

6 (1) Place the child or person seventeen years of age under supervision in
7 his **or her** own home or in the custody of a relative or other suitable person after
8 the court or a public agency or institution designated by the court conducts an
9 investigation of the home, relative or person and finds such home, relative or
10 person to be suitable and upon such conditions as the court may require;

11 (2) Commit the child or person seventeen years of age to the custody of:

12 (a) A public agency or institution authorized by law to care for children
13 or to place them in family homes; except that, such child or person seventeen
14 years of age may not be committed to the department of social services, division
15 of youth services;

16 (b) Any other institution or agency which is authorized or licensed by law
17 to care for children or to place them in family homes;

18 (c) An association, school or institution willing to receive the child or
19 person seventeen years of age in another state if the approval of the agency in
20 that state which administers the laws relating to importation of children into the

21 state has been secured; or

22 (d) The juvenile officer;

23 (3) Place the child or person seventeen years of age in a family home;

24 (4) Cause the child or person seventeen years of age to be examined and
25 treated by a physician, psychiatrist or psychologist and when the health or
26 condition of the child or person seventeen years of age requires it, cause the child
27 or person seventeen years of age to be placed in a public or private hospital, clinic
28 or institution for treatment and care; except that, nothing contained herein
29 authorizes any form of compulsory medical, surgical, or psychiatric treatment of
30 a child or person seventeen years of age whose parents or guardian in good faith
31 are providing other remedial treatment recognized or permitted under the laws
32 of this state;

33 (5) The court may order, pursuant to subsection 2 of section 211.081, that
34 the child receive the necessary services in the least restrictive appropriate
35 environment including home and community-based services, treatment and
36 support, based on a coordinated, individualized treatment plan. The
37 individualized treatment plan shall be approved by the court and developed by
38 the applicable state agencies responsible for providing or paying for any and all
39 appropriate and necessary services, subject to appropriation, and shall include
40 which agencies are going to pay for and provide such services. Such plan must
41 be submitted to the court within thirty days and the child's family shall actively
42 participate in designing the service plan for the child or person seventeen years
43 of age;

44 (6) The department of social services, in conjunction with the department
45 of mental health, shall apply to the United States Department of Health and
46 Human Services for such federal waivers as required to provide services for such
47 children, including the acquisition of community-based services waivers.

48 2. When a child is found by the court to come within the provisions of
49 subdivision (2) of subsection 1 of section 211.031, the court shall so decree and
50 upon making a finding of fact upon which it exercises its jurisdiction over the
51 child, the court **shall incorporate a balanced and restorative approach**
52 **and** may, by order duly entered, proceed as follows:

53 (1) Place the child under supervision in his **or her** own home or in
54 custody of a relative or other suitable person after the court or a public agency
55 or institution designated by the court conducts an investigation of the home,
56 relative or person and finds such home, relative or person to be suitable and upon

57 such conditions as the court may require;

58 (2) Commit the child to the custody of:

59 (a) A public agency or institution authorized by law to care for children
60 or place them in family homes; except that, a child may be committed to the
61 department of social services, division of youth services, only if he is presently
62 under the court's supervision after an adjudication under the provisions of
63 subdivision (2) or (3) of subsection 1 of section 211.031;

64 (b) Any other institution or agency which is authorized or licensed by law
65 to care for children or to place them in family homes;

66 (c) An association, school or institution willing to receive it in another
67 state if the approval of the agency in that state which administers the laws
68 relating to importation of children into the state has been secured; or

69 (d) The juvenile officer;

70 (3) Place the child in a family home;

71 (4) Cause the child to be examined and treated by a physician,
72 psychiatrist or psychologist and when the health or condition of the child requires
73 it, cause the child to be placed in a public or private hospital, clinic or institution
74 for treatment and care; except that, nothing contained herein authorizes any form
75 of compulsory medical, surgical, or psychiatric treatment of a child whose parents
76 or guardian in good faith are providing other remedial treatment recognized or
77 permitted under the laws of this state;

78 (5) Assess an amount of up to ten dollars to be paid by the child to the
79 clerk of the court.

80 Execution of any order entered by the court pursuant to this subsection, including
81 a commitment to any state agency, may be suspended and the child placed on
82 probation subject to such conditions as the court deems reasonable. After a
83 hearing, probation may be revoked and the suspended order executed.

84 3. When a child is found by the court to come within the provisions of
85 subdivision (3) of subsection 1 of section 211.031, the court shall so decree and
86 make a finding of fact upon which it exercises its jurisdiction over the child, and
87 the court **shall incorporate a balanced and restorative approach and** may,
88 by order duly entered, proceed as follows:

89 (1) Place the child under supervision in his or her own home or in custody
90 of a relative or other suitable person after the court or a public agency or
91 institution designated by the court conducts an investigation of the home, relative
92 or person and finds such home, relative or person to be suitable and upon such

93 conditions as the court may require; provided that, no child who has been
94 adjudicated a delinquent by a juvenile court for committing or attempting to
95 commit a sex-related offense which if committed by an adult would be considered
96 a felony offense pursuant to chapter 566, RSMo, including but not limited to rape,
97 forcible sodomy, child molestation, and sexual abuse, and in which the victim was
98 a child, shall be placed in any residence within one thousand feet of the residence
99 of the abused child of that offense until the abused child reaches the age of
100 eighteen, and provided further that the provisions of this subdivision regarding
101 placement within one thousand feet of the abused child shall not apply when the
102 abusing child and the abused child are siblings or children living in the same
103 home;

104 (2) Commit the child to the custody of:

105 (a) A public agency or institution authorized by law to care for children
106 or to place them in family homes;

107 (b) Any other institution or agency which is authorized or licensed by law
108 to care for children or to place them in family homes;

109 (c) An association, school or institution willing to receive it in another
110 state if the approval of the agency in that state which administers the laws
111 relating to importation of children into the state has been secured; or

112 (d) The juvenile officer;

113 (3) Beginning January 1, 1996, the court may make further directions as
114 to placement with the division of youth services concerning the child's length of
115 stay. The length of stay order may set forth a minimum review date;

116 (4) Place the child in a family home;

117 (5) Cause the child to be examined and treated by a physician,
118 psychiatrist or psychologist and when the health or condition of the child requires
119 it, cause the child to be placed in a public or private hospital, clinic or institution
120 for treatment and care; except that, nothing contained herein authorizes any form
121 of compulsory medical, surgical, or psychiatric treatment of a child whose parents
122 or guardian in good faith are providing other remedial treatment recognized or
123 permitted under the laws of this state;

124 (6) Suspend or revoke a state or local license or authority of a child to
125 operate a motor vehicle;

126 (7) Order the child to make restitution or reparation for the damage or
127 loss caused by his **or her** offense. In determining the amount or extent of the
128 damage, the court may order the juvenile officer to prepare a report and may

129 receive other evidence necessary for such determination. The child and his **or**
130 **her** attorney shall have access to any reports which may be prepared, and shall
131 have the right to present evidence at any hearing held to ascertain the amount
132 of damages. Any restitution or reparation ordered shall be reasonable in view of
133 the child's ability to make payment or to perform the reparation. The court may
134 require the clerk of the circuit court to act as receiving and disbursing agent for
135 any payment ordered;

136 (8) Order the child to a term of community service under the supervision
137 of the court or of an organization selected by the court. Every person,
138 organization, and agency, and each employee thereof, charged with the
139 supervision of a child under this subdivision, or who benefits from any services
140 performed as a result of an order issued under this subdivision, shall be immune
141 from any suit by the child ordered to perform services under this subdivision, or
142 any person deriving a cause of action from such child, if such cause of action
143 arises from the supervision of the child's performance of services under this
144 subdivision and if such cause of action does not arise from an intentional tort. A
145 child ordered to perform services under this subdivision shall not be deemed an
146 employee within the meaning of the provisions of chapter 287, RSMo, nor shall
147 the services of such child be deemed employment within the meaning of the
148 provisions of chapter 288, RSMo. Execution of any order entered by the court,
149 including a commitment to any state agency, may be suspended and the child
150 placed on probation subject to such conditions as the court deems
151 reasonable. After a hearing, probation may be revoked and the suspended order
152 executed;

153 (9) When a child has been adjudicated to have violated a municipal
154 ordinance or to have committed an act that would be a misdemeanor if committed
155 by an adult, assess an amount of up to twenty-five dollars to be paid by the child
156 to the clerk of the court; when a child has been adjudicated to have committed an
157 act that would be a felony if committed by an adult, assess an amount of up to
158 fifty dollars to be paid by the child to the clerk of the court.

159 4. Beginning January 1, 1996, the court may set forth in the order of
160 commitment the minimum period during which the child shall remain in the
161 custody of the division of youth services. No court order shall require a child to
162 remain in the custody of the division of youth services for a period which exceeds
163 the child's eighteenth birth date except upon petition filed by the division of
164 youth services pursuant to subsection 1 of section 219.021, RSMo. In any order

165 of commitment of a child to the custody of the division of youth services, the
166 division shall determine the appropriate program or placement pursuant to
167 subsection 3 of section 219.021, RSMo. Beginning January 1, 1996, the
168 department shall not discharge a child from the custody of the division of youth
169 services before the child completes the length of stay determined by the court in
170 the commitment order unless the committing court orders otherwise. The director
171 of the division of youth services may at any time petition the court for a review
172 of a child's length of stay commitment order, and the court may, upon a showing
173 of good cause, order the early discharge of the child from the custody of the
174 division of youth services. The division may discharge the child from the division
175 of youth services without a further court order after the child completes the
176 length of stay determined by the court or may retain the child for any period after
177 the completion of the length of stay in accordance with the law.

178 5. When an assessment has been imposed under the provisions of
179 subsection 2 or 3 of this section, the assessment shall be paid to the clerk of the
180 court in the circuit where the assessment is imposed by court order, to be
181 deposited in a fund established for the sole purpose of payment of judgments
182 entered against children in accordance with section 211.185.

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