

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 406 & 423

AN ACT

To repeal sections 211.031, 211.071, and 217.345, RSMo, and to enact in lieu thereof four new sections relating to criminal procedures involving juveniles, with an emergency clause for certain sections.

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

Section A. Sections 211.031, 211.071, and 217.345, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 211.031, 211.071, 211.600, and 217.345, to read as follows:

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in chapter 487 shall have exclusive original jurisdiction in proceedings:

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

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

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

(c) The child was living in a room, building or other structure at the time such dwelling was found by a court of

competent jurisdiction to be a public nuisance pursuant to section 195.130; or

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

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

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

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

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

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

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

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of eighteen years, in

which cases jurisdiction may be taken by the court of the circuit in which [the child or person resides or may be found or in which] the violation is alleged to have occurred, except as provided in subsection 2 of this section; except that, the juvenile court shall not have jurisdiction over any child fifteen years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, and except that the juvenile court shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance, and except that the juvenile court shall have concurrent jurisdiction with the circuit court on any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(4) For the adoption of a person;

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

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

(7) Involving a child who has been a victim of sex trafficking or sexual exploitation.

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

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's

residence or the residence of the person eighteen years of age for future action;

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

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

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

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

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

3. In any proceeding involving any child taken into custody in a county other than the county of the child's residence, the juvenile court of the county of the child's

residence shall be notified of such taking into custody within seventy-two hours.

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

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

211.071. 1. If a petition alleges that a child between the ages of ~~twelve~~ fourteen and eighteen 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~~ a child between the ages of twelve and eighteen 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 as it

existed prior to August 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section 569.020 as it existed prior to January 1, 2017, or robbery in the first degree under section 570.023, distribution of drugs under section 195.211 as it existed prior to January 1, 2017, or the manufacturing of a controlled substance under section 579.055, a dangerous felony as defined in section 556.061, 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 eighteen and twenty-one years of age over whom the juvenile court has retained continuing jurisdiction shall automatically terminate and that offense shall be dealt with in the court of general jurisdiction as provided in section 211.041.

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

4. Written notification of a transfer hearing shall be given to the juvenile and his or her custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the hearing may be waived by the custodian. Notice shall

contain a statement that the purpose of the hearing is to determine whether the child is a proper subject to be dealt with under the provisions of this chapter, and that if the court finds that the child is not a proper subject to be dealt with under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the child under the general law.

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

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

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

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

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

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

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

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

(7) The age of the child;

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

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

(10) Racial disparity in certification.

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

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

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

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

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

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

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

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

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

211.600. 1. The office of state courts administrator shall collect information related to the filing and disposition of petitions to certify juveniles pursuant to section 211.071.

2. The data collected pursuant to this section shall include the following:

(1) The number of certification petitions filed annually;

(2) The disposition of certification petitions filed annually;

(3) The offenses for which certification petitions are filed annually;

(4) The race of the juveniles for whom the certification petitions are filed annually; and

(5) The number of juveniles who have waived their right to counsel.

3. The data collected pursuant to this section shall be made publicly available annually.

217.345. 1. Correctional treatment programs for first offenders and offenders eighteen years of age or younger in the department shall be established, subject to the control and supervision of the director, and shall include such programs deemed necessary and sufficient for the successful rehabilitation of offenders.

2. [Correctional treatment programs for offenders who are younger than eighteen years of age shall be established, subject to the control and supervision of the director. By January 1, 1998, such] Programs established pursuant to this section shall include physical separation of offenders who are [younger than] eighteen years of age or younger from offenders who are older than eighteen years of age [or older] and shall include educational programs that award a high school diploma or its equivalent.

3. The department shall have the authority to promulgate rules pursuant to subsection 2 of section 217.378 to establish correctional treatment programs for offenders [under age] eighteen years of age or younger. Such rules may include:

(1) Establishing separate housing units for such offenders; and

(2) Providing housing and program space in existing housing units for such offenders that is not accessible to adult offenders.

4. The department shall have the authority to determine the number of juvenile offenders participating in any treatment program depending on available appropriations. The department may contract with any private or public entity for the provision of services and facilities for offenders under age eighteen. The department shall apply for and accept available federal, state and local public funds including project demonstration funds as well as private moneys to fund such services and facilities.

5. The department shall develop and implement an evaluation process for all juvenile offender programs.

Section B. Because immediate action is necessary to further equip and enhance our criminal justice system to fight violent crime in Missouri and protect our citizens and residents due to the recent unprecedented wave of violent crime across our nation and state, the repeal and reenactment of sections 211.071 and 217.345 and the enactment of section 211.600 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 211.071 and 217.345 and the enactment of section 211.600 of this act shall be in full force and effect upon its passage and approval.