

SENATE BILL NO. 406

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1396S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 211.071 and 217.345, RSMo, and to enact in lieu thereof three new sections relating to the certification of juveniles for trial as adults, with an emergency clause.

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

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2 repealed and three new sections enacted in lieu thereof, to be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

211.071. 1. If a petition alleges that a child
2 between the ages of [twelve] **fifteen** and eighteen has
3 committed an offense which would be considered a felony if
4 committed by an adult, the court may, upon its own motion or
5 upon motion by the juvenile officer, the child or the
6 child's custodian, order a hearing and may, in its
7 discretion, dismiss the petition and such child may be
8 transferred to the court of general jurisdiction and
9 prosecuted under the general law; except that if a petition
10 alleges that [any] a child **between the ages of fifteen and**
11 **eighteen** has committed an offense which would be considered
12 first degree murder under section 565.020, second degree
13 murder under section 565.021, first degree assault under
14 section 565.050, forcible rape under section 566.030 as it
15 existed prior to August 28, 2013, rape in the first degree
16 under section 566.030, forcible sodomy under section 566.060
17 as it existed prior to August 28, 2013, sodomy in the first

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

18 degree under section 566.060, first degree robbery under
19 section 569.020 as it existed prior to January 1, 2017, or
20 robbery in the first degree under section 570.023,
21 [distribution of drugs under section 195.211 as it existed
22 prior to January 1, 2017, or the manufacturing of a
23 controlled substance under section 579.055] **armed criminal**
24 **action under section 571.015**, or has committed two or more
25 prior unrelated offenses which would be felonies if
26 committed by an adult, the court shall order a hearing, and
27 may in its discretion, dismiss the petition and transfer the
28 child to a court of general jurisdiction for prosecution
29 under the general law.

30 **2. Before the court holds a hearing authorized under**
31 **subsection 1 of this section to determine if a child should**
32 **be transferred to the court of general jurisdiction and**
33 **prosecuted under the general law, the court shall hold an**
34 **evidentiary probable cause hearing to determine if probable**
35 **cause exists to proceed with the allegations contained in**
36 **the petition. The probable cause hearing shall be held**
37 **after the detention hearing but before the hearing under**
38 **subsection 1 of this section. The juvenile office shall**
39 **have the burden of proving probable cause to proceed by a**
40 **preponderance of the evidence, and the juvenile shall have**
41 **the right to testify, present evidence, cross-examine**
42 **witnesses, and present arguments of law and fact with**
43 **respect to the issue of probable cause.**

44 **3. Upon apprehension and arrest, jurisdiction over the**
45 **criminal offense allegedly committed by any person between**
46 **eighteen and twenty-one years of age over whom the juvenile**
47 **court has retained continuing jurisdiction shall**
48 **automatically terminate and that offense shall be dealt with**

49 in the court of general jurisdiction as provided in section
50 211.041.

51 [3.] 4. Knowing and willful age misrepresentation by a
52 juvenile subject shall not affect any action or proceeding
53 which occurs based upon the misrepresentation. Any evidence
54 obtained during the period of time in which a child
55 misrepresents his or her age may be used against the child
56 and will be subject only to rules of evidence applicable in
57 adult proceedings.

58 [4.] 5. Written notification of a transfer hearing
59 shall be given to the juvenile and his or her custodian in
60 the same manner as provided in sections 211.101 and
61 211.111. Notice of the hearing may be waived by the
62 custodian. Notice shall contain a statement that the
63 purpose of the hearing is to determine whether the child is
64 a proper subject to be dealt with under the provisions of
65 this chapter, and that if the court finds that the child is
66 not a proper subject to be dealt with under the provisions
67 of this chapter, the petition will be dismissed to allow for
68 prosecution of the child under the general law.

69 [5.] 6. The juvenile officer may consult with the
70 office of prosecuting attorney concerning any offense for
71 which the child could be certified as an adult under this
72 section. The prosecuting or circuit attorney shall have
73 access to police reports, reports of the juvenile or deputy
74 juvenile officer, statements of witnesses and all other
75 records or reports relating to the offense alleged to have
76 been committed by the child. The prosecuting or circuit
77 attorney shall have access to the disposition records of the
78 child when the child has been adjudicated pursuant to
79 subdivision (3) of subsection 1 of section 211.031. The
80 prosecuting attorney shall not divulge any information

81 regarding the child and the offense until the juvenile court
82 at a judicial hearing has determined that the child is not a
83 proper subject to be dealt with under the provisions of this
84 chapter.

85 [6.] 7. A written report shall be prepared in
86 accordance with this chapter developing fully all available
87 information relevant to the criteria which shall be
88 considered by the court in determining whether the child is
89 a proper subject to be dealt with under the provisions of
90 this chapter and whether there are reasonable prospects of
91 rehabilitation within the juvenile justice system. These
92 criteria shall include but not be limited to:

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

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

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

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

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

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

112 (7) The age of the child;

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

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

118 (10) Racial disparity in certification.

119 **[7.] 8.** If the court dismisses the petition to permit
120 the child to be prosecuted under the general law, the court
121 shall enter a dismissal order containing:

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

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

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

128 (4) **Findings, based on evidence adduced by the**
129 **juvenile officer and the child at the evidentiary probable**
130 **cause hearing, showing that probable cause exists to proceed**
131 **with the allegations contained in the petition; and**

132 (5) Findings showing the reasons underlying the
133 court's decision to transfer jurisdiction.

134 **[8.] 9.** A copy of the petition and order of the
135 dismissal shall be sent to the prosecuting attorney.

136 **[9.] 10.** When a petition has been dismissed thereby
137 permitting a child to be prosecuted under the general law
138 and the prosecution of the child results in a conviction,
139 the jurisdiction of the juvenile court over that child is
140 forever terminated, except as provided in subsection **[10] 11**
141 of this section, for an act that would be a violation of a
142 state law or municipal ordinance.

143 **[10.] 11.** If a petition has been dismissed thereby
144 permitting a child to be prosecuted under the general law

145 and the child is found not guilty by a court of general
146 jurisdiction, the juvenile court shall have jurisdiction
147 over any later offense committed by that child which would
148 be considered a misdemeanor or felony if committed by an
149 adult, subject to the certification provisions of this
150 section.

151 [11.] 12. If the court does not dismiss the petition
152 to permit the child to be prosecuted under the general law,
153 it shall set a date for the hearing upon the petition as
154 provided in section 211.171.

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

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

7 (1) The number of certification petitions filed
8 annually;

9 (2) The disposition of certification petitions filed
10 annually;

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

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

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

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

217.345. 1. Correctional treatment programs for first
2 offenders and offenders eighteen years of age or younger in
3 the department shall be established, subject to the control
4 and supervision of the director, and shall include such

5 programs deemed necessary and sufficient for the successful
6 rehabilitation of offenders.

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

16 3. [The department shall have the authority to
17 promulgate rules pursuant to subsection 2 of section 217.378
18 to establish correctional treatment programs for offenders
19 under age eighteen. Such rules may include:

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

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

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

34 [5.] 4. The department shall develop and implement an
35 evaluation process for all juvenile offender programs.

Section B. Because immediate action is necessary to
2 further equip and enhance our criminal justice system to
3 fight violent crime in Missouri and protect our citizens and
4 residents due to the recent unprecedented wave of violent
5 crime across our nation and state, section A of this act is
6 deemed necessary for the immediate preservation of the
7 public health, welfare, peace, and safety, and is hereby
8 declared to be an emergency act within the meaning of the
9 constitution, and section A of this act shall be in full
10 force and effect upon its passage and approval.

✓