

FIRST REGULAR SESSION

# HOUSE BILL NO. 768

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LANT.

1626H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

To repeal sections 211.059, 211.081, 211.211, 211.351, 211.361, 211.401, and 211.447, RSMo, and to enact in lieu thereof seven new sections relating to juvenile courts.

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

Section A. Sections 211.059, 211.081, 211.211, 211.351, 211.361, 211.401, and 211.447, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 211.059, 211.081, 211.211, 211.351, 211.361, 211.401, and 211.447, to read as follows:

211.059. 1. When a child is taken into custody by a juvenile officer or law enforcement official, with or without a warrant for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 of section 211.031, the child shall be advised, **orally and in writing**, prior to questioning:

(1) That ~~he~~ **the child** has the right to remain silent; ~~and~~

(2) That any statement ~~he~~ **the child** does make to anyone can be and may be used against ~~him~~ **the child in subsequent juvenile court proceedings**; ~~and~~

(3) That ~~he~~ **the child** has a right to have a parent, guardian or custodian present during questioning; ~~and~~

(4) That ~~he~~ **the child** has a right to consult with an attorney and that one will be appointed and paid for him if he cannot afford one;

(5) **That the child has the right to stop talking at any time; and**

(6) **That any statement the child does make to law enforcement can be and may be used against the child if the child is transferred to a court of general jurisdiction to be prosecuted under the general law.**

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           2. ~~[If the child indicates in any manner and at any stage of questioning pursuant to this~~  
18 ~~section that he does not wish to be questioned further, the officer shall cease questioning.]~~ **The**  
19 **juvenile officer shall halt or discontinue any questioning by law enforcement upon notice**  
20 **from the child that the child wishes to stop being questioned.**

21           3. **The juvenile officer shall ensure a child is advised of the limited role of the**  
22 **juvenile officer during questioning by law enforcement and specifically advise the child**  
23 **that the juvenile officer is not legal counsel for the child or an advocate for the child during**  
24 **questioning by law enforcement.**

25           4. **The juvenile officer shall not participate in the questioning by law enforcement**  
26 **by asking any questions or soliciting any information from the child regarding the alleged**  
27 **offense or offenses.**

28           5. When a child is taken into custody by a juvenile officer or law enforcement official  
29 which places the child under the jurisdiction of the juvenile court under subdivision (1) of  
30 subsection 1 of section 211.031, including any interactions with the child by the children's  
31 division, the following shall apply:

32           (1) If the child indicates in any manner at any stage during questioning involving the  
33 alleged abuse and neglect that the child does not wish to be questioned any further on the  
34 allegations, or that the child wishes to have his or her parent, legal guardian, or custodian if such  
35 parent, guardian, or custodian is not the alleged perpetrator, or his or her attorney present during  
36 questioning as to the alleged abuse, the questioning of the child shall cease on the alleged abuse  
37 and neglect until such a time that the child does not object to talking about the alleged abuse and  
38 neglect unless the interviewer has reason to believe that the parent, legal guardian, or custodian  
39 is acting to protect the alleged perpetrator. Nothing in this subdivision shall be construed to  
40 prevent the asking of any questions necessary for the care, treatment, or placement of a child; and

41           (2) Notwithstanding any prohibition of hearsay evidence, all video or audio recordings  
42 of any meetings, interviews, or interrogations of a child shall be presumed admissible as  
43 evidence in any court or administrative proceeding involving the child if the following conditions  
44 are met:

45           (a) Such meetings, interviews, or interrogations of the child are conducted by the state  
46 prior to or after the child is taken into the custody of the state; and

47           (b) Such video or audio recordings were made prior to the adjudication hearing in the  
48 case. Nothing in this paragraph shall be construed to prohibit the videotaping or audiotaping of  
49 any such meetings, interviews, or interrogations of a child after the adjudication hearing; and

50           (3) Only upon a showing by clear and convincing evidence that such a video or audio  
51 recording lacks sufficient indicia of reliability shall such recording be inadmissible.

53 The provisions of this subsection shall not apply to statements admissible under section 491.075  
54 or 492.304 in criminal proceedings.

211.081. 1. Whenever any person informs the ~~[court in person and]~~ **juvenile officer** in  
2 writing that a child appears to be within the purview of applicable provisions of section 211.031  
3 or that a person seventeen years of age appears to be within the purview of the provisions of  
4 subdivision (1) of subsection 1 of section 211.031, the ~~[court]~~ **juvenile officer** shall make or  
5 cause to be made a preliminary inquiry to determine the facts and to determine whether or not  
6 the interests of the public or of the child or person seventeen years of age require that further  
7 action be taken. On the basis of this inquiry, the juvenile ~~[court]~~ **officer** may make such informal  
8 adjustment as is practicable without a petition or ~~[may authorize the filing of a petition by the~~  
9 ~~juvenile officer]~~ **file a petition**. Any other provision of this chapter to the contrary  
10 notwithstanding, the juvenile court shall not make any order for disposition of a child or person  
11 seventeen years of age which would place or commit the child or person seventeen years of age  
12 to any location outside the state of Missouri without first receiving the approval of the children's  
13 division.

14 2. Placement in any institutional setting shall represent the least restrictive appropriate  
15 placement for the child or person seventeen years of age and shall be recommended based upon  
16 a psychological or psychiatric evaluation or both. Prior to entering any order for disposition of  
17 a child or person seventeen years of age which would order residential treatment or other services  
18 inside the state of Missouri, the juvenile court shall enter findings which include the  
19 recommendation of the psychological or psychiatric evaluation or both; and certification from  
20 the division director or designee as to whether a provider or funds or both are available,  
21 including a projection of their future availability. If the children's division indicates that funding  
22 is not available, the division shall recommend and make available for placement by the court an  
23 alternative placement for the child or person seventeen years of age. The division shall have the  
24 burden of demonstrating that they have exercised due diligence in utilizing all available services  
25 to carry out the recommendation of the evaluation team and serve the best interest of the child  
26 or person seventeen years of age. The judge shall not order placement or an alternative  
27 placement with a specific provider but may reasonably designate the scope and type of the  
28 services which shall be provided by the department to the child or person seventeen years of age.

29 3. Obligations of the state incurred under the provisions of section 211.181 shall not  
30 exceed, in any fiscal year, the amount appropriated for this purpose.

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

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

7           3. When a petition has been filed **under subdivision (2) or (3) of subsection 1 of**  
8 **section 211.031**, the court shall appoint counsel for the child [~~when necessary to assure a full and~~  
9 ~~fair hearing~~] **except if private counsel has entered his or her appearance on behalf of the**  
10 **child or if counsel has been waived in accordance with law.**

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

13           (1) That the custodian is indigent; and

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

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

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

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

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

24           8. When a petition has been filed, a child may waive his right to counsel only with the  
25 approval of the court.

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

211.351. 1. The [~~juvenile~~] court **or the family court administrator in circuits where**  
2 **a family court administrator has been appointed to act as the appointing authority under**  
3 **section 487.060** shall appoint a juvenile officer and other necessary juvenile court personnel to  
4 serve under the direction of the court in each county of the first and second class and the circuit  
5 judge in circuits comprised of third and fourth class counties:

6           (1) May appoint a juvenile officer and other necessary personnel to serve the judicial  
7 circuit; or

8           (2) Circuit judges of any two or more adjoining circuits may by agreement, confirmed  
9 by judicial order, appoint a juvenile officer and other necessary personnel to serve their  
10 respective judicial circuits and, in such a case, the juvenile officers and other persons appointed  
11 shall serve under the joint direction of the judges so agreeing.

12           2. **The presiding judge of the circuit shall ensure that any case in the family court**  
13 **or juvenile court divisions in which a juvenile officer is a participant is not heard by a**  
14 **judge who is the appointing authority for the juvenile officer or other necessary juvenile**  
15 **employees.**

16           3. In the event a juvenile officer and other juvenile court personnel are appointed to serve  
17 as provided in subdivisions (1) and (2) of subsection 1 of this section, the total cost to the  
18 counties for the compensation of these persons shall be prorated among the several counties and  
19 upon a ratio to be determined by a comparison of the respective populations of the counties.

20           ~~[3-]~~ 4. In each judicial circuit, a grievance review committee shall be appointed by the  
21 circuit court en banc to serve as final administrative authority of a grievance regarding personnel  
22 policy or action that negatively affects an employee of the family court and/or juvenile court who  
23 is not governed by the Missouri circuit court personnel system. The grievance review committee  
24 may be comprised of either the circuit court en banc, a committee of not less than three circuit  
25 or associate circuit judges, or other body established by local court rule.

          211.361. 1. Whenever the need arises for the appointment of a juvenile officer, the  
2 ~~[juvenile]~~ **court or the family court administrator in circuits where a family court**  
3 **administrator has been appointed to act as the appointing authority under section 487.060**  
4 shall either:

5           (1) Provide, by rule of court, for open competitive written and oral examinations and  
6 create an eligible list of persons who possess the qualifications prescribed by subdivision (2) and  
7 who have successfully passed such examination; or

8           (2) Appoint any person over the age of twenty-one years who has completed  
9 satisfactorily four years of college education with a major in sociology or related subjects or who,  
10 in lieu of such academic training, has had four years or more experience in social work with  
11 juveniles in probation or allied services.

12           2. This section does not terminate the existing appointment nor present term of office  
13 of any juvenile officer or deputy juvenile officer in any county, but it applies to any appointment  
14 to be made after the existing appointment or term of office of any incumbent terminates or  
15 expires for any reason whatsoever.

          211.401. 1. The juvenile officer shall ~~[, under direction of the juvenile court]~~:

2           (1) Make such investigations and furnish the court with such information and assistance  
3 as the judge may ~~[require]~~ **order;**

4           (2) Keep a written record of such investigations and ~~[submit reports thereon to the judge]~~  
5 **offer such reports into evidence in accordance with law;**

6           (3) Take charge of children before and after the hearing as may be ~~[directed]~~ **ordered**  
7 by the court;

8 (4) Perform such other duties and exercise such powers as the judge of the juvenile court  
9 may ~~[direct]~~ **order**.

10 2. ~~[The juvenile officer is vested with all the power and authority of sheriffs to make~~  
11 ~~arrests and perform other duties incident to his office.]~~

12 ~~—————3.]~~ The juvenile officers or other persons acting as such in the several counties of the  
13 state shall cooperate with each other in carrying out the purposes and provisions of this chapter.

211.447. 1. Any information that could justify the filing of a petition to terminate  
2 parental rights may be referred to the juvenile officer by any person. The juvenile officer shall  
3 make a preliminary inquiry and if it **appears that the information could justify the filing of**  
4 **a petition, the juvenile officer may take further action, including filing a petition. If it** does  
5 not appear to the juvenile officer that a petition should be filed, such officer shall so notify the  
6 informant in writing within thirty days of the referral. Such notification shall include the reasons  
7 that the petition will not be filed. ~~[Thereupon, the informant may bring the matter directly to the~~  
8 ~~attention of the judge of the juvenile court by presenting the information in writing, and if it~~  
9 ~~appears to the judge that the information could justify the filing of a petition, the judge may order~~  
10 ~~the juvenile officer to take further action, including making a further preliminary inquiry or filing~~  
11 ~~a petition.]~~

12 2. Except as provided for in subsection 4 of this section, a petition to terminate the  
13 parental rights of the child's parent or parents shall be filed by the juvenile officer or the division,  
14 or if such a petition has been filed by another party, the juvenile officer or the division shall seek  
15 to be joined as a party to the petition, when:

16 (1) Information available to the juvenile officer or the division establishes that the child  
17 has been in foster care for at least fifteen of the most recent twenty-two months; or

18 (2) A court of competent jurisdiction has determined the child to be an abandoned infant.  
19 For purposes of this subdivision, an "infant" means any child one year of age or under at the time  
20 of filing of the petition. The court may find that an infant has been abandoned if:

21 (a) The parent has left the child under circumstances that the identity of the child was  
22 unknown and could not be ascertained, despite diligent searching, and the parent has not come  
23 forward to claim the child; or

24 (b) The parent has, without good cause, left the child without any provision for parental  
25 support and without making arrangements to visit or communicate with the child, although able  
26 to do so; or

27 (c) The parent has voluntarily relinquished a child under section 210.950; or

28 (3) A court of competent jurisdiction has determined that the parent has:

29 (a) Committed murder of another child of the parent; or

30 (b) Committed voluntary manslaughter of another child of the parent; or

31 (c) Aided or abetted, attempted, conspired or solicited to commit such a murder or  
32 voluntary manslaughter; or

33 (d) Committed a felony assault that resulted in serious bodily injury to the child or to  
34 another child of the parent.

35 3. A termination of parental rights petition shall be filed by the juvenile officer or the  
36 division, or if such a petition has been filed by another party, the juvenile officer or the division  
37 shall seek to be joined as a party to the petition, within sixty days of the judicial determinations  
38 required in subsection 2 of this section, except as provided in subsection 4 of this section.  
39 Failure to comply with this requirement shall not deprive the court of jurisdiction to adjudicate  
40 a petition for termination of parental rights which is filed outside of sixty days.

41 4. If grounds exist for termination of parental rights pursuant to subsection 2 of this  
42 section, the juvenile officer or the division may, but is not required to, file a petition to terminate  
43 the parental rights of the child's parent or parents if:

44 (1) The child is being cared for by a relative; or

45 (2) There exists a compelling reason for determining that filing such a petition would  
46 not be in the best interest of the child, as documented in the permanency plan which shall be  
47 made available for court review; or

48 (3) The family of the child has not been provided such services as provided for in section  
49 211.183.

50 5. The juvenile officer or the division may file a petition to terminate the parental rights  
51 of the child's parent when it appears that one or more of the following grounds for termination  
52 exist:

53 (1) The child has been abandoned. For purposes of this subdivision a "child" means any  
54 child over one year of age at the time of filing of the petition. The court shall find that the child  
55 has been abandoned if, for a period of six months or longer:

56 (a) The parent has left the child under such circumstances that the identity of the child  
57 was unknown and could not be ascertained, despite diligent searching, and the parent has not  
58 come forward to claim the child; or

59 (b) The parent has, without good cause, left the child without any provision for parental  
60 support and without making arrangements to visit or communicate with the child, although able  
61 to do so;

62 (2) The child has been abused or neglected. In determining whether to terminate parental  
63 rights pursuant to this subdivision, the court shall consider and make findings on the following  
64 conditions or acts of the parent:

65 (a) A mental condition which is shown by competent evidence either to be permanent  
66 or such that there is no reasonable likelihood that the condition can be reversed and which  
67 renders the parent unable to knowingly provide the child the necessary care, custody and control;

68 (b) Chemical dependency which prevents the parent from consistently providing the  
69 necessary care, custody and control of the child and which cannot be treated so as to enable the  
70 parent to consistently provide such care, custody and control;

71 (c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child  
72 or any child in the family by the parent, including an act of incest, or by another under  
73 circumstances that indicate that the parent knew or should have known that such acts were being  
74 committed toward the child or any child in the family; or

75 (d) Repeated or continuous failure by the parent, although physically or financially able,  
76 to provide the child with adequate food, clothing, shelter, or education as defined by law, or other  
77 care and control necessary for the child's physical, mental, or emotional health and development.

78

79 Nothing in this subdivision shall be construed to permit discrimination on the basis of disability  
80 or disease;

81 (3) The child has been under the jurisdiction of the juvenile court for a period of one  
82 year, and the court finds that the conditions which led to the assumption of jurisdiction still  
83 persist, or conditions of a potentially harmful nature continue to exist, that there is little  
84 likelihood that those conditions will be remedied at an early date so that the child can be returned  
85 to the parent in the near future, or the continuation of the parent-child relationship greatly  
86 diminishes the child's prospects for early integration into a stable and permanent home. In  
87 determining whether to terminate parental rights under this subdivision, the court shall consider  
88 and make findings on the following:

89 (a) The terms of a social service plan entered into by the parent and the division and the  
90 extent to which the parties have made progress in complying with those terms;

91 (b) The success or failure of the efforts of the juvenile officer, the division or other  
92 agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to  
93 provide a proper home for the child;

94 (c) A mental condition which is shown by competent evidence either to be permanent  
95 or such that there is no reasonable likelihood that the condition can be reversed and which  
96 renders the parent unable to knowingly provide the child the necessary care, custody and control;

97 (d) Chemical dependency which prevents the parent from consistently providing the  
98 necessary care, custody and control over the child and which cannot be treated so as to enable  
99 the parent to consistently provide such care, custody and control; or

100 (4) The parent has been found guilty or pled guilty to a felony violation of chapter 566  
101 when the child or any child in the family was a victim, or a violation of section 568.020 when  
102 the child or any child in the family was a victim. As used in this subdivision, a "child" means  
103 any person who was under eighteen years of age at the time of the crime and who resided with  
104 such parent or was related within the third degree of consanguinity or affinity to such parent; or

105 (5) The child was conceived and born as a result of an act of forcible rape or rape in the  
106 first degree. When the biological father has pled guilty to, or is convicted of, the forcible rape  
107 or rape in the first degree of the birth mother, such a plea or conviction shall be conclusive  
108 evidence supporting the termination of the biological father's parental rights; or

109 (6) (a) The parent is unfit to be a party to the parent and child relationship because of  
110 a consistent pattern of committing a specific abuse including, but not limited to, specific  
111 conditions directly relating to the parent and child relationship which are determined by the court  
112 to be of a duration or nature that renders the parent unable for the reasonably foreseeable future  
113 to care appropriately for the ongoing physical, mental, or emotional needs of the child.

114 (b) It is presumed that a parent is unfit to be a party to the parent and child relationship  
115 upon a showing that:

116 a. Within a three-year period immediately prior to the termination adjudication, the  
117 parent's parental rights to one or more other children were involuntarily terminated pursuant to  
118 subsection 2 or 4 of this section or subdivision (1), (2), (3), or (4) of this subsection or similar  
119 laws of other states;

120 b. If the parent is the birth mother and within eight hours after the child's birth, the child's  
121 birth mother tested positive and over .08 blood alcohol content pursuant to testing under section  
122 577.020 for alcohol, or tested positive for cocaine, heroin, methamphetamine, a controlled  
123 substance as defined in section 195.010, or a prescription drug as defined in section 196.973,  
124 excepting those controlled substances or prescription drugs present in the mother's body as a  
125 result of medical treatment administered to the mother, and the birth mother is the biological  
126 mother of at least one other child who was adjudicated an abused or neglected minor by the  
127 mother or the mother has previously failed to complete recommended treatment services by the  
128 children's division through a family-centered services case;

129 c. If the parent is the birth mother and at the time of the child's birth or within eight hours  
130 after a child's birth the child tested positive for alcohol, cocaine, heroin, methamphetamine, a  
131 controlled substance as defined in section 195.010, or a prescription drug as defined in section  
132 196.973, excepting those controlled substances or prescription drugs present in the mother's body  
133 as a result of medical treatment administered to the mother, and the birth mother is the biological  
134 mother of at least one other child who was adjudicated an abused or neglected minor by the

135 mother or the mother has previously failed to complete recommended treatment services by the  
136 children's division through a family-centered services case; or

137 d. Within a three-year period immediately prior to the termination adjudication, the  
138 parent has pled guilty to or has been convicted of a felony involving the possession, distribution,  
139 or manufacture of cocaine, heroin, or methamphetamine, and the parent is the biological parent  
140 of at least one other child who was adjudicated an abused or neglected minor by such parent or  
141 such parent has previously failed to complete recommended treatment services by the children's  
142 division through a family-centered services case.

143 6. The juvenile court may terminate the rights of a parent to a child upon a petition filed  
144 by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court  
145 finds that the termination is in the best interest of the child and when it appears by clear, cogent  
146 and convincing evidence that grounds exist for termination pursuant to subsection 2, 4 or 5 of  
147 this section.

148 7. When considering whether to terminate the parent-child relationship pursuant to  
149 subsection 2 or 4 of this section or subdivision (1), (2), (3) or (4) of subsection 5 of this section,  
150 the court shall evaluate and make findings on the following factors, when appropriate and  
151 applicable to the case:

152 (1) The emotional ties to the birth parent;

153 (2) The extent to which the parent has maintained regular visitation or other contact with  
154 the child;

155 (3) The extent of payment by the parent for the cost of care and maintenance of the child  
156 when financially able to do so including the time that the child is in the custody of the division  
157 or other child-placing agency;

158 (4) Whether additional services would be likely to bring about lasting parental  
159 adjustment enabling a return of the child to the parent within an ascertainable period of time;

160 (5) The parent's disinterest in or lack of commitment to the child;

161 (6) The conviction of the parent of a felony offense that the court finds is of such a  
162 nature that the child will be deprived of a stable home for a period of years; provided, however,  
163 that incarceration in and of itself shall not be grounds for termination of parental rights;

164 (7) Deliberate acts of the parent or acts of another of which the parent knew or should  
165 have known that subjects the child to a substantial risk of physical or mental harm.

166 8. The court may attach little or no weight to infrequent visitations, communications, or  
167 contributions. It is irrelevant in a termination proceeding that the maintenance of the  
168 parent-child relationship may serve as an inducement for the parent's rehabilitation.

169           9. In actions for adoption pursuant to chapter 453, the court may hear and determine the  
170 issues raised in a petition for adoption containing a prayer for termination of parental rights filed  
171 with the same effect as a petition permitted pursuant to subsection 2, 4, or 5 of this section.

172           10. The disability or disease of a parent shall not constitute a basis for a determination  
173 that a child is a child in need of care, for the removal of custody of a child from the parent, or for  
174 the termination of parental rights without a specific showing that there is a causal relation  
175 between the disability or disease and harm to the child.

✓