

SECOND REGULAR SESSION

# HOUSE BILL NO. 2416

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHROER.

5276H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 211.071 as enacted by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session and section 211.071 as enacted by house bill no. 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular session, and to enact in lieu thereof one new section relating to the certification of juveniles for trial as adults, with a delayed effective date for a certain section.

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

Section A. Section 211.071 as enacted by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session and section 211.071 as enacted by house bill no. 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular session, are repealed and one new section enacted in lieu thereof, to be known as section 211.071, to read as follows:

211.071. 1. If a petition alleges that a child between the ages of twelve 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 child 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

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.

12 degree under section 570.023, distribution of drugs under section 195.211 as it existed prior to  
13 January 1, 2017, ~~or~~ the manufacturing of a controlled substance under section 579.055, **any**  
14 **offense under section 571.030, or any offense under section 571.015**, or has committed two  
15 or more prior unrelated offenses which would be felonies if committed by an adult, the court  
16 shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a  
17 court of general jurisdiction for prosecution under the general law.

18 2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly  
19 committed by any person between eighteen and twenty-one years of age over whom the juvenile  
20 court has retained continuing jurisdiction shall automatically terminate and that offense shall be  
21 dealt with in the court of general jurisdiction as provided in section 211.041.

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

26 4. Written notification of a transfer hearing shall be given to the juvenile and his or her  
27 custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the  
28 hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the  
29 hearing is to determine whether the child is a proper subject to be dealt with under the provisions  
30 of this chapter, and that if the court finds that the child is not a proper subject to be dealt with  
31 under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the  
32 child under the general law.

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

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

- 47 (1) The seriousness of the offense alleged and whether the protection of the community  
48 requires transfer to the court of general jurisdiction;
- 49 (2) Whether the offense alleged involved viciousness, force and violence;
- 50 (3) Whether the offense alleged was against persons or property with greater weight  
51 being given to the offense against persons, especially if personal injury resulted;
- 52 (4) Whether the offense alleged is a part of a repetitive pattern of offenses which  
53 indicates that the child may be beyond rehabilitation under the juvenile code;
- 54 (5) The record and history of the child, including experience with the juvenile justice  
55 system, other courts, supervision, commitments to juvenile institutions and other placements;
- 56 (6) The sophistication and maturity of the child as determined by consideration of his  
57 or her home and environmental situation, emotional condition and pattern of living;
- 58 (7) The age of the child;
- 59 (8) The program and facilities available to the juvenile court in considering disposition;
- 60 (9) Whether or not the child can benefit from the treatment or rehabilitative programs  
61 available to the juvenile court; and
- 62 (10) Racial disparity in certification.
- 63 7. If the court dismisses the petition to permit the child to be prosecuted under the  
64 general law, the court shall enter a dismissal order containing:
- 65 (1) Findings showing that the court had jurisdiction of the cause and of the parties;
- 66 (2) Findings showing that the child was represented by counsel;
- 67 (3) Findings showing that the hearing was held in the presence of the child and his or her  
68 counsel; and
- 69 (4) Findings showing the reasons underlying the court's decision to transfer jurisdiction.
- 70 8. A copy of the petition and order of the dismissal shall be sent to the prosecuting  
71 attorney.
- 72 9. When a petition has been dismissed thereby permitting a child to be prosecuted under  
73 the general law and the prosecution of the child results in a conviction, the jurisdiction of the  
74 juvenile court over that child is forever terminated, except as provided in subsection 10 of this  
75 section, for an act that would be a violation of a state law or municipal ordinance.
- 76 10. If a petition has been dismissed thereby permitting a child to be prosecuted under the  
77 general law and the child is found not guilty by a court of general jurisdiction, the juvenile court  
78 shall have jurisdiction over any later offense committed by that child which would be considered  
79 a misdemeanor or felony if committed by an adult, subject to the certification provisions of this  
80 section.

81           11. If the court does not dismiss the petition to permit the child to be prosecuted under  
82 the general law, it shall set a date for the hearing upon the petition as provided in section  
83 211.171.

211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen  
2 has committed an offense which would be considered a felony if committed by an adult, the court  
3 may, upon its own motion or upon motion by the juvenile officer, the child or the child's  
4 custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be  
5 transferred to the court of general jurisdiction and prosecuted under the general law; except that  
6 if a petition alleges that any child has committed an offense which would be considered first  
7 degree murder under section 565.020, second degree murder under section 565.021, first degree  
8 assault under section 565.050, forcible rape under section 566.030 as it existed prior to August  
9 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060  
10 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first  
11 degree robbery under section 570.023, ~~[or]~~ distribution of drugs under section 579.055, **any**  
12 **offense under section 571.030, or any offense under section 571.015**, or has committed two  
13 or more prior unrelated offenses which would be felonies if committed by an adult, the court  
14 shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a  
15 court of general jurisdiction for prosecution under the general law.

16           2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly  
17 committed by any person between seventeen and twenty-one years of age over whom the juvenile  
18 court has retained continuing jurisdiction shall automatically terminate and that offense shall be  
19 dealt with in the court of general jurisdiction as provided in section 211.041.

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

24           4. Written notification of a transfer hearing shall be given to the juvenile and his or her  
25 custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the  
26 hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the  
27 hearing is to determine whether the child is a proper subject to be dealt with under the provisions  
28 of this chapter, and that if the court finds that the child is not a proper subject to be dealt with  
29 under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the  
30 child under the general law.

31           5. The juvenile officer may consult with the office of prosecuting attorney concerning  
32 any offense for which the child could be certified as an adult under this section. The prosecuting  
33 or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile

34 officer, statements of witnesses and all other records or reports relating to the offense alleged to  
35 have been committed by the child. The prosecuting or circuit attorney shall have access to the  
36 disposition records of the child when the child has been adjudicated pursuant to subdivision (3)  
37 of subsection 1 of section 211.031. The prosecuting attorney shall not divulge any information  
38 regarding the child and the offense until the juvenile court at a judicial hearing has determined  
39 that the child is not a proper subject to be dealt with under the provisions of this chapter.

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

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46 requires transfer to the court of general jurisdiction;

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

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

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

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

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

56 (7) The age of the child;

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

58 (9) Whether or not the child can benefit from the treatment or rehabilitative programs  
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66 counsel; and

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69 attorney.

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71 the general law and the prosecution of the child results in a conviction, the jurisdiction of the  
72 juvenile court over that child is forever terminated, except as provided in subsection 10 of this  
73 section, for an act that would be a violation of a state law or municipal ordinance.

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75 general law and the child is found not guilty by a court of general jurisdiction, the juvenile court  
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77 a misdemeanor or felony if committed by an adult, subject to the certification provisions of this  
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79           11. If the court does not dismiss the petition to permit the child to be prosecuted under  
80 the general law, it shall set a date for the hearing upon the petition as provided in section  
81 211.171.

          Section B. The repeal and reenactment of the first occurrence of section 211.071 of this  
2 act shall become effective on January 1, 2021, and the repeal and reenactment of the second  
3 occurrence of section 211.071 of this act shall become effective on August 28, 2020.

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