

FIRST EXTRAORDINARY SESSION OF THE
SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 12
100TH GENERAL ASSEMBLY

5794H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 217.345, RSMo, 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 three new sections relating to the certification of juveniles for trial as adults, with an emergency clause for certain sections and a delayed effective date for a certain section.

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

Section A. Section 217.345, RSMo, 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by house bill no. 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular session, are repealed and three new sections enacted in lieu thereof, to be known as sections 211.071, 211.600, and 217.345, to read as follows:

211.071. 1. If a petition alleges that a child between the ages of ~~twelve~~ **sixteen** 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 sixteen 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,

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.

11 sodomy in the first degree under section 566.060, first degree robbery under section 569.020 as
12 it existed prior to January 1, 2017, or robbery in the first degree under section 570.023,
13 ~~[distribution of drugs under section 195.211 as it existed prior to January 1, 2017, or the~~
14 ~~manufacturing of a controlled substance under section 579.055,]~~ **armed criminal action under**
15 **section 571.015**, or has committed two or more prior unrelated offenses which would be felonies
16 if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the
17 petition and transfer the child to a court of general jurisdiction for prosecution under the general
18 law.

19 **2. Before the court holds a hearing authorized under subsection 1 of this section to**
20 **determine if a child should be transferred to the court of general jurisdiction and**
21 **prosecuted under the general law, the court shall hold an evidentiary probable cause**
22 **hearing to determine if probable cause exists to proceed with the allegations contained in**
23 **the petition. The probable cause hearing shall be held after the detention hearing but**
24 **before the hearing under subsection 1 of this section. The juvenile office shall have the**
25 **burden of proving probable cause to proceed by a preponderance of the evidence, and the**
26 **juvenile shall have the right to testify, present evidence, cross-examine witnesses, and**
27 **present arguments of law and fact with respect to the issue of probable cause.**

28 **3.** Upon apprehension and arrest, jurisdiction over the criminal offense allegedly
29 committed by any person between eighteen and twenty-one years of age over whom the juvenile
30 court has retained continuing jurisdiction shall automatically terminate and that offense shall be
31 dealt with in the court of general jurisdiction as provided in section 211.041.

32 ~~[3-]~~ **4.** Knowing and willful age misrepresentation by a juvenile subject shall not affect
33 any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained
34 during the period of time in which a child misrepresents his or her age may be used against the
35 child and will be subject only to rules of evidence applicable in adult proceedings.

36 ~~[4-]~~ **5.** Written notification of a transfer hearing shall be given to the juvenile and his or
37 her custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the
38 hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the
39 hearing is to determine whether the child is a proper subject to be dealt with under the provisions
40 of this chapter, and that if the court finds that the child is not a proper subject to be dealt with
41 under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the
42 child under the general law.

43 ~~[5-]~~ **6.** The juvenile officer may consult with the office of prosecuting attorney
44 concerning any offense for which the child could be certified as an adult under this section. The
45 prosecuting or circuit attorney shall have access to police reports, reports of the juvenile or
46 deputy juvenile officer, statements of witnesses and all other records or reports relating to the

47 offense alleged to have been committed by the child. The prosecuting or circuit attorney shall
48 have access to the disposition records of the child when the child has been adjudicated pursuant
49 to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney shall not divulge
50 any information regarding the child and the offense until the juvenile court at a judicial hearing
51 has determined that the child is not a proper subject to be dealt with under the provisions of this
52 chapter.

53 ~~[6.]~~ 7. A written report shall be prepared in accordance with this chapter developing fully
54 all available information relevant to the criteria which shall be considered by the court in
55 determining whether the child is a proper subject to be dealt with under the provisions of this
56 chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice
57 system. These criteria shall include but not be limited to:

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

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

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

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

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

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

69 (7) The age of the child;

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

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

73 (10) Racial disparity in certification.

74 ~~[7.]~~ 8. If the court dismisses the petition to permit the child to be prosecuted under the
75 general law, the court shall enter a dismissal order containing:

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

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

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

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

83 (5) Findings showing the reasons underlying the court's decision to transfer jurisdiction.
84 [8-] 9. A copy of the petition and order of the dismissal shall be sent to the prosecuting
85 attorney.

86 [9-] 10. When a petition has been dismissed thereby permitting a child to be prosecuted
87 under the general law and the prosecution of the child results in a conviction, the jurisdiction of
88 the juvenile court over that child is forever terminated, except as provided in subsection [10] 11
89 of this section, for an act that would be a violation of a state law or municipal ordinance.

90 [10-] 11. If a petition has been dismissed thereby permitting a child to be prosecuted
91 under the general law and the child is found not guilty by a court of general jurisdiction, the
92 juvenile court shall have jurisdiction over any later offense committed by that child which would
93 be considered a misdemeanor or felony if committed by an adult, subject to the certification
94 provisions of this section.

95 [11-] 12. If the court does not dismiss the petition to permit the child to be prosecuted
96 under the general law, it shall set a date for the hearing upon the petition as provided in section
97 211.171.

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

16 2. **Before the court holds a hearing authorized under subsection 1 of this section to**
17 **determine if a child should be transferred to the court of general jurisdiction and**
18 **prosecuted under the general law, the court shall hold an evidentiary probable cause**
19 **hearing to determine if probable cause exists to proceed with the allegations contained in**
20 **the petition. The probable cause hearing shall be held after the detention hearing but**
21 **before the hearing under subsection 1 of this section. The juvenile office shall have the**

22 **burden of proving probable cause to proceed by a preponderance of the evidence, and the**
23 **juvenile shall have the right to testify, present evidence, cross-examine witnesses, and**
24 **present arguments of law and fact with respect to the issue of probable cause.**

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

29 [3-] 4. Knowing and willful age misrepresentation by a juvenile subject shall not affect
30 any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained
31 during the period of time in which a child misrepresents his or her age may be used against the
32 child and will be subject only to rules of evidence applicable in adult proceedings.

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34 her custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the
35 hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the
36 hearing is to determine whether the child is a proper subject to be dealt with under the provisions
37 of this chapter, and that if the court finds that the child is not a proper subject to be dealt with
38 under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the
39 child under the general law.

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

50 [6-] 7. A written report shall be prepared in accordance with this chapter developing fully
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52 determining whether the child is a proper subject to be dealt with under the provisions of this
53 chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice
54 system. These criteria shall include but not be limited to:

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56 requires transfer to the court of general jurisdiction;

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

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

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

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

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

66 (7) The age of the child;

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

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

70 (10) Racial disparity in certification.

71 ~~[7.]~~ **8.** If the court dismisses the petition to permit the child to be prosecuted under the
72 general law, the court shall enter a dismissal order containing:

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

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75 (3) Findings showing that the hearing was held in the presence of the child and his
76 counsel; ~~[and]~~

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

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

81 ~~[8.]~~ **9.** A copy of the petition and order of the dismissal shall be sent to the prosecuting
82 attorney.

83 ~~[9.]~~ **10.** When a petition has been dismissed thereby permitting a child to be prosecuted
84 under the general law and the prosecution of the child results in a conviction, the jurisdiction of
85 the juvenile court over that child is forever terminated, except as provided in subsection ~~[10]~~ **11**
86 of this section, for an act that would be a violation of a state law or municipal ordinance.

87 ~~[10.]~~ **11.** If a petition has been dismissed thereby permitting a child to be prosecuted
88 under the general law and the child is found not guilty by a court of general jurisdiction, the
89 juvenile court shall have jurisdiction over any later offense committed by that child which would
90 be considered a misdemeanor or felony if committed by an adult, subject to the certification
91 provisions of this section.

92 [11.] 12. If the court does not dismiss the petition to permit the child to be prosecuted
93 under the general law, it shall set a date for the hearing upon the petition as provided in section
94 211.171.

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

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

4 (1) The number of certification petitions filed annually;

5 (2) The disposition of certification petitions filed annually;

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

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

8 and

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

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

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

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

11 3. [~~The department shall have the authority to promulgate rules pursuant to subsection~~
12 ~~2 of section 217.378 to establish correctional treatment programs for offenders under age~~
13 ~~eighteen. Such rules may include:~~

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

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

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

23 [5.] 4. The department shall develop and implement an evaluation process for all
24 juvenile offender programs.

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

 Section C. The repeal and reenactment of the first occurrence of section 211.071 of
2 section A of this act shall become effective on January 1, 2021.

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