

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 215**  
**94TH GENERAL ASSEMBLY**

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, May 9, 2007, with recommendation that the Senate Committee Substitute do pass.

0222S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, and 211.161, RSMo, and to enact in lieu thereof nine new sections relating to juvenile courts, with penalty provisions.

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

Section A. Sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, and 211.161, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 167.031, 211.021, 211.033, 211.041, 211.061, 211.071, 211.091, 211.101, and 211.161, to read as follows:

167.031. 1. Every parent, guardian or other person in this state having charge, control or custody of a child not enrolled in a public, private, parochial, parish school or full-time equivalent attendance in a combination of such schools and between the ages of seven years and the compulsory attendance age for the district is responsible for enrolling the child in a program of academic instruction which complies with subsection 2 of this section. Any parent, guardian or other person who enrolls a child between the ages of five and seven years in a public school program of academic instruction shall cause such child to attend the academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section. A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven years of age and the compulsory attendance age for the district shall cause the child to attend regularly some

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

15 public, private, parochial, parish, home school or a combination of such schools  
16 not less than the entire school term of the school which the child attends; except  
17 that:

18 (1) A child who, to the satisfaction of the superintendent of public schools  
19 of the district in which he resides, or if there is no superintendent then the chief  
20 school officer, is determined to be mentally or physically incapacitated may be  
21 excused from attendance at school for the full time required, or any part thereof;

22 (2) A child between fourteen years of age and the compulsory attendance  
23 age for the district may be excused from attendance at school for the full time  
24 required, or any part thereof, by the superintendent of public schools of the  
25 district, or if there is none then by a court of competent jurisdiction, when legal  
26 employment has been obtained by the child and found to be desirable, and after  
27 the parents or guardian of the child have been advised of the pending action; or

28 (3) A child between five and seven years of age shall be excused from  
29 attendance at school if a parent, guardian or other person having charge, control  
30 or custody of the child makes a written request that the child be dropped from the  
31 school's rolls.

32 2. (1) As used in sections 167.031 to 167.071, a "home school" is a school,  
33 whether incorporated or unincorporated, that:

34 (a) Has as its primary purpose the provision of private or religious-based  
35 instruction;

36 (b) Enrolls pupils between the ages of seven years and the compulsory  
37 attendance age for the district, of which no more than four are unrelated by  
38 affinity or consanguinity in the third degree; and

39 (c) Does not charge or receive consideration in the form of tuition, fees, or  
40 other remuneration in a genuine and fair exchange for provision of instruction.

41 (2) As evidence that a child is receiving regular instruction, the parent  
42 shall, except as otherwise provided in this subsection:

43 (a) Maintain the following records:

44 a. A plan book, diary, or other written record indicating subjects taught  
45 and activities engaged in; and

46 b. A portfolio of samples of the child's academic work; and

47 c. A record of evaluations of the child's academic progress; or

48 d. Other written, or credible evidence equivalent to subparagraphs a., b.  
49 and c.; and

50 (b) Offer at least one thousand hours of instruction, at least six hundred

51 hours of which will be in reading, language arts, mathematics, social studies and  
52 science or academic courses that are related to the aforementioned subject areas  
53 and consonant with the pupil's age and ability. At least four hundred of the six  
54 hundred hours shall occur at the regular home school location.

55 (3) The requirements of subdivision (2) of this subsection shall not apply  
56 to any pupil above the age of sixteen years.

57 3. Nothing in this section shall require a private, parochial, parish or  
58 home school to include in its curriculum any concept, topic, or practice in conflict  
59 with the school's religious doctrines or to exclude from its curriculum any concept,  
60 topic, or practice consistent with the school's religious doctrines. Any other  
61 provision of the law to the contrary notwithstanding, all departments or agencies  
62 of the state of Missouri shall be prohibited from dictating through rule, regulation  
63 or other device any statewide curriculum for private, parochial, parish or home  
64 schools.

65 4. A school year begins on the first day of July and ends on the thirtieth  
66 day of June following.

67 5. The production by a parent of a daily log showing that a home school  
68 has a course of instruction which satisfies the requirements of this section or, in  
69 the case of a pupil over the age of sixteen years who attended a metropolitan  
70 school district the previous year, a written statement that the pupil is attending  
71 home school in compliance with this section shall be a defense to any prosecution  
72 under this section and to any charge or action for educational neglect brought  
73 pursuant to chapter 210, RSMo.

74 6. As used in sections 167.031 to 167.051, the term "compulsory  
75 attendance age for the district" shall mean:

76 (1) Seventeen years of age for any metropolitan school district for which  
77 the school board adopts a resolution to establish such compulsory attendance age;  
78 provided that such resolution shall take effect no earlier than the school year  
79 next following the school year during which the resolution is adopted; and

80 (2) Sixteen years of age in all other cases.

81 The school board of a metropolitan school district for which the compulsory  
82 attendance age is seventeen years may adopt a resolution to lower the compulsory  
83 attendance age to sixteen years; provided that such resolution shall take effect  
84 no earlier than the school year next following the school year during which the  
85 resolution is adopted.

86 [7. The provisions of this section shall apply to any parent, guardian, or

87 other person in this state having charge, control, or custody of a child between  
88 the ages of fifteen and eighteen if such child has not received a high school  
89 diploma or its equivalent and a court order has been issued as to such child under  
90 section 211.034, RSMo.]

211.021. As used in this chapter, unless the context clearly requires  
2 otherwise:

3 (1) "Adult" means a person seventeen years of age or older **except for**  
4 **seventeen year old children as defined in this section;**

5 (2) "Child" means [a] **any** person under seventeen years of age **and shall**  
6 **mean, in addition, any person over seventeen but not yet eighteen years**  
7 **of age alleged to have committed a status offense;**

8 (3) "Juvenile court" means the juvenile division or divisions of the circuit  
9 court of the county, or judges while hearing juvenile cases assigned to them;

10 (4) "Legal custody" means the right to the care, custody and control of a  
11 child and the duty to provide food, clothing, shelter, ordinary medical care,  
12 education, treatment and discipline of a child. Legal custody may be taken from  
13 a parent only by court action and if the legal custody is taken from a parent  
14 without termination of parental rights, the parent's duty to provide support  
15 continues even though the person having legal custody may provide the  
16 necessities of daily living;

17 (5) "Parent" means either a natural parent or a parent by adoption and if  
18 the child is illegitimate, "parent" means the mother;

19 (6) "Shelter care" means the temporary care of juveniles in physically  
20 unrestricting facilities pending final court disposition. These facilities may  
21 include:

22 (a) "Foster home", the private home of foster parents providing  
23 twenty-four-hour care to one to three children unrelated to the foster parents by  
24 blood, marriage or adoption;

25 (b) "Group foster home", the private home of foster parents providing  
26 twenty-four-hour care to no more than six children unrelated to the foster parents  
27 by blood, marriage or adoption;

28 (c) "Group home", a child care facility which approximates a family  
29 setting, provides access to community activities and resources, and provides care  
30 to no more than twelve children;

31 (7) "Status offense", **any offense as described in subdivision (2)**  
32 **of subsection 1 of section 211.031.**

211.033. 1. No person under the age of seventeen years, except those  
2 transferred to the court of general jurisdiction under the provisions of section  
3 211.071 shall be detained in a jail or other adult detention facility as that term  
4 is defined in section 211.151. A traffic court judge may request the juvenile court  
5 to order the commitment of a person under the age of seventeen to a juvenile  
6 detention facility.

7       **2. Nothing in this section shall be construed as creating any civil**  
8 **or criminal liability for any law enforcement officer, juvenile officer,**  
9 **school personnel, or court personnel for any action taken or failure to**  
10 **take any action involving a minor child who remains under the**  
11 **jurisdiction of the juvenile court under this section if such action or**  
12 **failure to take action is based on a good faith belief by such officer or**  
13 **personnel that the minor child is not under the jurisdiction of the**  
14 **juvenile court.**

211.041. When jurisdiction over the person of a child has been acquired  
2 by the juvenile court under the provisions of this chapter in proceedings coming  
3 within the applicable provisions of section 211.031, the jurisdiction of the child  
4 may be retained for the purpose of this chapter until he **or she** has attained the  
5 age of twenty-one years, except in cases where he **or she** is committed to and  
6 received by the division of youth services, unless jurisdiction has been returned  
7 to the committing court by provisions of chapter 219, RSMo, through requests of  
8 the court to the division of youth services and except in any case where he **or she**  
9 has not paid an assessment imposed in accordance with section 211.181 or in  
10 cases where the judgment for restitution entered in accordance with section  
11 211.185 has not been satisfied. Every child over whose person the juvenile court  
12 retains jurisdiction shall be prosecuted under the general law for any violation  
13 of a state law or of a municipal ordinance which he **or she** commits after he **or**  
14 **she** becomes seventeen years of age. The juvenile court shall have no jurisdiction  
15 with respect to any such violation and, so long as it retains jurisdiction of the  
16 child, shall not exercise its jurisdiction in such a manner as to conflict with any  
17 other court's jurisdiction as to any such violation.

211.061. 1. When a child is taken into custody with or without warrant  
2 for an offense, the child, together with any information concerning [him] **the**  
3 **child** and the personal property found in [his] **the child's** possession, shall be  
4 taken immediately and directly before the juvenile court or delivered to the  
5 juvenile officer or person acting for him.

6           2. If any person is taken before a circuit or associate circuit judge not  
7 assigned to juvenile court or a municipal judge, and it is then, or at any time  
8 thereafter, ascertained that he **or she** was under the age of seventeen years at  
9 the time he **or she** is alleged to have committed the offense, or that he **or she**  
10 is subject to the jurisdiction of the juvenile court as provided by this chapter, it  
11 is the duty of the judge forthwith to transfer the case or refer the matter to the  
12 juvenile court, and direct the delivery of such person, together with information  
13 concerning him **or her** and the personal property found in his **or her** possession,  
14 to the juvenile officer or person acting as such.

15           3. When the juvenile court is informed that a child is in detention it shall  
16 examine the reasons therefor and shall immediately:

17           (1) Order the child released; or

18           (2) Order the child continued in detention until a detention hearing is  
19 held. An order to continue the child in detention shall only be entered upon the  
20 filing of a petition or motion to modify and a determination by the court that  
21 probable cause exists to believe that the child has committed acts specified in the  
22 petition or motion that bring the child within the jurisdiction of the court under  
23 subdivision (2) or (3) of subsection 1 of section 211.031.

24           4. A juvenile shall not remain in detention for a period greater than  
25 twenty-four hours unless the court orders a detention hearing. If such hearing  
26 is not held within three days, excluding Saturdays, Sundays and legal holidays,  
27 the juvenile shall be released from detention unless the court for good cause  
28 orders the hearing continued. The detention hearing shall be held within the  
29 judicial circuit at a date, time and place convenient to the court. Notice of the  
30 date, time and place of a detention hearing, and of the right to counsel, shall be  
31 given to the juvenile and his **or her** custodian in person, by telephone, or by such  
32 other expeditious method as is available.

211.071. 1. If a petition alleges that a child between the ages of twelve  
2 and seventeen has committed an offense which would be considered a felony if  
3 committed by an adult, the court may, upon its own motion or upon motion by the  
4 juvenile officer, the child or the child's custodian, order a hearing and may, in its  
5 discretion, dismiss the petition and such child may be transferred to the court of  
6 general jurisdiction and prosecuted under the general law; except that if a  
7 petition alleges that any child has committed an offense which would be  
8 considered first degree murder under section 565.020, RSMo, second degree  
9 murder under section 565.021, RSMo, first degree assault under section 565.050,

10 RSMo, forcible rape under section 566.030, RSMo, forcible sodomy under section  
11 566.060, RSMo, first degree robbery under section 569.020, RSMo, or distribution  
12 of drugs under section 195.211, RSMo, or has committed two or more prior  
13 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  
15 the child to a court of general jurisdiction for prosecution under the general law.

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

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

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

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

45         6. A written report shall be prepared in accordance with this chapter

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

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

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

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

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

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

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

66 (7) The age of the child;

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

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

71 (10) Racial disparity in certification.

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

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

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

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

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

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

82 prosecuting attorney.

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

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

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

          211.091. 1. The petition shall be entitled "In the interest of ....., a  
2 child under seventeen years of age"[. If a petition is filed pursuant to the  
3 provisions of subdivision (1) of subsection 1 of section 211.031, the petition shall  
4 be entitled] **or** "In the interest of ....., a child [under] seventeen years of age"  
5 [or "In the interest of ....., a person seventeen years of age"] **as**  
6 **appropriate to the subsection of section 211.031 that provides the basis**  
7 **for the filing of the petition.**

8           2. The petition shall set forth plainly:

9           (1) The facts which bring the child or person seventeen years of age within  
10 the jurisdiction of the court;

11          (2) The full name, birth date, and residence of the child [or person  
12 seventeen years of age];

13          (3) The names and residence of his **or her** parents, if living;

14          (4) The name and residence of his **or her** legal guardian if there be one,  
15 of the person having custody of the child [or person seventeen years of age] or of  
16 the nearest known relative if no parent or guardian can be found; and

17          (5) Any other pertinent data or information.

18           3. If any facts required in subsection 2 of this section are not known by  
19 the petitioner, the petition shall so state.

20           4. Prior to the voluntary dismissal of a petition filed under this section,  
21 the juvenile officer shall assess the impact of such dismissal on the best interests  
22 of the child, and shall take all actions practicable to minimize any negative

23 impact.

211.101. 1. After a petition has been filed, unless the parties appear  
2 voluntarily, the juvenile court shall issue a summons in the name of the state of  
3 Missouri requiring the person who has custody of the child [or person seventeen  
4 years of age] to appear personally and, unless the court orders otherwise, to bring  
5 the child [or person seventeen years of age] before the court, at the time and  
6 place stated.

7 2. If the person so summoned is other than a parent or guardian of the  
8 child [or person seventeen years of age], then the parent or guardian or both  
9 shall also be notified of the pendency of the case and of the time and place  
10 appointed.

11 3. If it appears that the child [or person seventeen years of age] is in such  
12 condition or surroundings that his **or her** welfare requires that his **or her**  
13 custody be immediately assumed by the court, the judge may order, by  
14 endorsement upon the summons, the officer serving it to take the child [or person  
15 seventeen years of age] into custody at once.

16 4. Subpoena may be issued requiring the appearance of any other person  
17 whose presence, in the opinion of the judge, is necessary.

211.161. 1. The court may cause any child [or person seventeen years of  
2 age] within its jurisdiction to be examined by a physician, psychiatrist or  
3 psychologist appointed by the court in order that the condition of the child [or  
4 person seventeen years of age] may be given consideration in the disposition of  
5 his case. The expenses of the examination when approved by the court shall be  
6 paid by the county, except that the county shall not be liable for the costs of  
7 examinations conducted by the department of mental health either directly or  
8 through contract.

9 2. The services of a state, county or municipally maintained hospital,  
10 institution, or psychiatric or health clinic may be used for the purpose of this  
11 examination and treatment.

12 3. A county may establish medical, psychiatric and other facilities, upon  
13 request of the juvenile court, to provide proper services for the court in the  
14 diagnosis and treatment of children [or persons seventeen years of age] coming  
15 before it and these facilities shall be under the administration and control of the  
16 juvenile court. The juvenile court may appoint and fix the compensation of such  
17 professional and other personnel as it deems necessary to provide the court  
18 proper diagnostic, clinical and treatment services for children [or persons

19 seventeen years of age] under its jurisdiction.

2 [211.034. 1. Any parent, legal guardian, or other person  
3 having legal custody of a minor child may, at any time after the  
4 minor child attains fifteen years of age and before the minor child  
5 attains eighteen years of age, petition the circuit court for the  
6 county where the minor child and parent, legal guardian, or other  
7 person having legal custody of the minor child reside to extend the  
8 jurisdiction of the juvenile court until the minor child reaches the  
age of eighteen years.

9 2. The petition shall be accompanied by verified proof of  
10 service on the minor child and certified copies of documents  
11 demonstrating that the petitioner is the parent, legal guardian, or  
12 other legal custodian of the minor child. If the petitioner is not the  
13 natural parent of the minor child, the petition shall be  
14 accompanied by:

15 (1) An affidavit from at least one of the child's natural  
16 parents consenting to the granting of the petition; or

17 (2) An affidavit from the petitioner stating that the natural  
18 parents:

19 (a) Are deceased;

20 (b) Have been declared legally incompetent;

21 (c) Have had their parental rights as to the minor child  
22 terminated by a court of competent jurisdiction;

23 (d) Have voluntarily surrendered their parental rights as  
24 to the minor child;

25 (e) Have abandoned the minor child;

26 (f) Are unknown; or

27 (g) Are otherwise unavailable, in which case, the affidavit  
28 shall state the reasons why the natural parents are unavailable.

29 In all cases where any parent, legal guardian, or other person  
30 having legal custody of a minor child petitions the court to extend  
31 the jurisdiction of the juvenile court until the minor child's  
32 eighteenth birthday, the court shall appoint an attorney to  
33 represent the minor child. An individual filing the petition shall  
34 pay the attorney fees of the minor child.

35 3. Upon the filing of a petition under this section and a

determination by the court in favor of the petitioner, the circuit court shall issue an order declaring that the minor child shall remain under the jurisdiction of the juvenile court for all purposes under state law until the minor child reaches eighteen years of age; except that, for purposes of criminal law and procedure, including arrest, prosecution, trial, and punishment, if the minor is certified as an adult, the minor shall remain a certified adult despite the issuance of a court order under this section. Such minor child shall be subject to the compulsory school attendance requirements of section 167.031, RSMo, until the minor child receives a high school diploma or its equivalent, or reaches eighteen years of age. The court order shall be filed with the circuit clerk for the county where the petitioner resides.

4. Nothing in this section shall be construed as creating any civil or criminal liability for any law enforcement officer, juvenile officer, school personnel, or court personnel for any action taken or failure to take any action involving a minor child who remains under the jurisdiction of the juvenile court under this section if such action or failure to take action is based on a good faith belief by such officer or personnel that the minor child is not under the jurisdiction of the juvenile court.]

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