

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 618
98TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 25, 2016, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 618, adopted April 6, 2016.

Taken up for Perfection April 6, 2016. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

4658S.06P

AN ACT

To repeal sections 211.033, 211.071, 211.151, 221.044, and 221.240, RSMo, and to enact in lieu thereof seven new sections relating to criminal offenders, with an effective date for certain sections.

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

Section A. Sections 211.033, 211.071, 211.151, 221.044, and 221.240, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 211.033, 211.071, 211.151, 211.436, 217.151, 221.044, and 221.240, to read as follows:

211.033. 1. No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071 **who have been sentenced to serve an adult criminal sentence or those placed by the court in one of the department of corrections' one hundred twenty-day programs under subsection 4 of section 559.036, or as otherwise provided in subsection 13 of section 211.071**, shall be detained in a jail or other adult detention facility as that term is defined in section 211.151. A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility.

2. 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

15 under this section if such action or failure to take action is based on a good faith
16 belief by such officer or personnel that the minor child is not under the
17 jurisdiction of the juvenile court.

18 3. The amendments to subsection 2 of this section, as provided for in this
19 act, shall not take effect until such time as the provisions of section 211.021 shall
20 take effect in accordance with subsection 2 of section 211.021.

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, second degree murder
9 under section 565.021, first degree assault under section 565.050, forcible rape
10 under section 566.030 as it existed prior to August 28, 2013, rape in the first
11 degree under section 566.030, forcible sodomy under section 566.060 as it existed
12 prior to August 28, 2013, sodomy in the first degree under section 566.060, first
13 degree robbery under section 569.020, or distribution of drugs under section
14 195.211, or has committed two or more prior unrelated offenses which would be
15 felonies if committed by an adult, the court shall order a hearing, and may in its
16 discretion, dismiss the petition and transfer the child to a court of general
17 jurisdiction for prosecution under the general law.

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

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

28 4. Written notification of a transfer hearing shall be given to the juvenile
29 and his or her custodian in the same manner as provided in sections 211.101 and
30 211.111. Notice of the hearing may be waived by the custodian. Notice shall

31 contain a statement that the purpose of the hearing is to determine whether the
32 child is a proper subject to be dealt with under the provisions of this chapter, and
33 that if the court finds that the child is not a proper subject to be dealt with under
34 the provisions of this chapter, the petition will be dismissed to allow for
35 prosecution of the child under the general law.

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

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

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

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

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

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

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

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

67 pattern of living;

68 (7) The age of the child;

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

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

73 (10) Racial disparity in certification.

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

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

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

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

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

83 8. A copy of the petition and order of the dismissal shall be sent to the
84 prosecuting attorney.

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

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

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

99 **12. Any child certified under this section on or after January 1,**
100 **2018, and held in secure custody prior to the disposition of his or her**
101 **case shall be detained in an alternative detention facility, which**
102 **adheres to standards set forth by the workgroup established under**

103 subsection 5 of section 211.151, except as provided in subsection 13 of
104 this section. Upon turning seventeen years of age, any certified child
105 held in an alternative detention facility shall be transferred to a jail or
106 other adult detention facility, as the term "jail or other adult detention
107 facility" is defined under section 211.151.

108 13. The court in which the criminal matter is pending may order
109 a certified child transferred from an alternative detention facility as
110 defined in subdivision (3) of subsection 4 of section 211.151 to a jail or
111 other adult detention facility pending disposition of the criminal case
112 upon a petition by the director of the alternative detention facility and
113 a showing of good cause.

211.151. 1. Pending disposition of a case, the juvenile court may order in
2 writing the detention of a child in one of the following places:

- 3 (1) A juvenile detention facility provided by the county;
- 4 (2) A shelter care facility, subject to the supervision of the court;
- 5 (3) A suitable place of detention maintained by an association having for
6 one of its objects the care and protection of children;
- 7 (4) Such other suitable custody as the court may direct.

8 2. A child, **including a child transferred to the court of general**
9 **jurisdiction on or after January 1, 2018, pursuant to the provisions of**
10 **section 211.071**, shall not be detained in a jail or other adult detention facility
11 pending disposition of a case, **except as provided in subsection 13 of section**
12 **211.071**.

13 3. Law enforcement officers shall take fingerprints and photographs of a
14 child taken into custody for offenses that would be considered felonies if
15 committed by adults, without the approval of the juvenile judge. A child taken
16 into custody as a victim of abuse or neglect or as a status offender pursuant to
17 subdivision (1) or (2) of subsection 1 of section 211.031 or for an offense that
18 would be considered a misdemeanor if committed by an adult may be
19 fingerprinted or photographed with the consent of the juvenile judge. Records of
20 a child who has been fingerprinted and photographed after being taken into
21 custody shall be closed records as provided under section 610.100 if a petition has
22 not been filed within thirty days of the date that the child was taken into custody;
23 and if a petition for the child has not been filed within one year of the date the
24 child was taken into custody, any records relating to the child concerning the
25 alleged offense may be expunged under the procedures in sections 610.122 to

26 610.126.

27 4. (1) As used in this section, the term "jail or other adult detention
28 facility" means any locked facility administered by state, county or local law
29 enforcement and correctional agencies, a primary purpose of which is to detain
30 adults charged with violating a criminal law pending trial, including facilities of
31 a temporary nature which do not hold persons after they have been formally
32 charged, or to confine adults convicted of an offense. The term "jail or other adult
33 detention facility" does not include a juvenile detention facility.

34 (2) As used in this section, the term "juvenile detention facility" means a
35 place, institution, building or part thereof, set of buildings or area, whether or not
36 enclosing a building or set of buildings, which has been designated by the juvenile
37 court as a place of detention for juveniles and which is operated, administered
38 and staffed separately and independently of a jail or other detention facility for
39 adults and used exclusively for the lawful custody and treatment of
40 juveniles. The facility may be owned or operated by public or private agencies.
41 A juvenile detention facility may be located in the same building or grounds as
42 a jail or other adult detention facility if there is spatial separation between the
43 facilities which prevents haphazard or accidental contact between juvenile and
44 adult detainees; there is separation between juvenile and adult program
45 activities; and there are separate juvenile and adult staff other than specialized
46 support staff who have infrequent contact with detainees.

47 **(3) As used in this section, the term "alternative detention**
48 **facility" means any secure facility administered by state, county, or**
49 **local law enforcement and correctional agencies, whose purpose is to**
50 **detain a child certified as an adult under section 211.071 who has been**
51 **charged with violating a criminal law pending trial and which adheres**
52 **to standards of operation as defined by the workgroup established in**
53 **subsection 5 of this section.**

54 **5. The division of youth services in collaboration with the office**
55 **of state courts administrator shall establish the "Certified Youth Jail**
56 **Removal Workgroup":**

57 **(1) The purpose of the workgroup shall be to develop by January**
58 **1, 2018, a formal plan for removal of certified children under the age of**
59 **seventeen years of age from adult jail pending trial and**
60 **sentencing. The workgroup shall consist of, but not be limited to, the**
61 **following members: two members from the division of youth services**

62 appointed by the director of the division of youth services; two
63 members from the office of state courts administrator, one juvenile
64 officer from an urban jurisdiction, one juvenile officer from a rural
65 jurisdiction, one superintendent of a juvenile detention center from an
66 urban jurisdiction, one superintendent of a juvenile detention center
67 from a rural jurisdiction, and one juvenile officer from a jurisdiction
68 having no juvenile detention facility, all of whom are appointed by the
69 office of state courts administrator; the director of the department of
70 corrections or his or her designee; the executive director of the
71 Missouri association of counties or his or her designee; the executive
72 director of the Missouri office of prosecution services or his or her
73 designee; the executive director of the Missouri Sheriffs' Association or
74 his or her designee; the director of the department of elementary and
75 secondary education or his or her designee; the director of the
76 department of mental health or his or her designee; the director of the
77 Missouri state public defender or his or her designee; the executive
78 director of the Missouri juvenile justice association or his or her
79 designee; the president of Families and Friends Organizing for Reform
80 of Juvenile Justice or his or her designee; one juvenile detention center
81 chaplain or a member of the faith-based community appointed by the
82 president pro tempore of the senate; one young adult who was
83 incarcerated as a child appointed by the speaker of the house of
84 representatives; two members from the Missouri house of
85 representatives appointed by the speaker of the house of
86 representatives; and two members from the Missouri senate appointed
87 by the president pro tempore of the senate;

88 (2) By January 1, 2017, the workgroup shall make
89 recommendations to the general assembly regarding alternative
90 detention facilities for secure custody of a child who has been certified
91 under section 211.071 pending disposition of his or her case as well as
92 standards for operating said alternative detention facilities. The
93 recommendations submitted to the general assembly shall address the
94 following:

95 (a) The appropriate facility description including physical
96 structure and location;

97 (b) The appropriate funding mechanism for implementation and
98 ongoing financial support of alternative detention facilities in

99 compliance with the provisions of article X, section 16 of the Missouri
100 Constitution;

101 (c) Programming and services elements including education,
102 mental health services, transition planning, and youth development of
103 incarcerated certified youth;

104 (d) Operational and administrative elements including
105 transportation to court proceedings, and training requirements for
106 facility staff;

107 (e) Defining what is "good cause" to return the child to an adult
108 jail prior to sentencing under subsection 13 of section 211.071;

109 (f) Funding of programs and services that coincide with
110 Missouri's fiscal appropriation calendar; and

111 (g) Additional recommendations that are within the scope and
112 purpose of the workgroup.

113 (3) The workgroup shall automatically terminate on September
114 1, 2018, unless previously reauthorized by the general
115 assembly. Members of the workgroup shall serve without
116 compensation.

211.436. 1. When a court of jurisdiction in juvenile cases has a
2 local court rule or otherwise mandates that a juvenile shall be
3 restrained during court proceedings using either handcuffs, chains,
4 irons, or a straitjacket, the juvenile's attorney shall have the right to
5 be heard on the issue of the necessity of restraints on the juvenile and
6 request that the restraints on the juvenile not be used. The juvenile's
7 attorney may present evidence that the juvenile is not a flight risk,
8 poses no safety risk to himself or herself or others, or has no history of
9 disruptive courtroom behavior.

10 2. If the court orders that restraints shall be used on the
11 juvenile, the court shall make findings of fact in support of such use.

217.151. 1. For purposes of this section, "extraordinary
2 circumstances" exist when a doctor treating the pregnant or
3 postpartum offender makes an individualized determination that
4 restraints are necessary to prevent a pregnant or postpartum offender
5 from escaping or seriously injuring herself, medical or correctional
6 personnel, or others.

7 2. The necessary health care standards for pregnant and
8 postpartum offenders shall include:

9 **(1) Except in extraordinary circumstances, no restraints of any**
10 **kind may be used on offenders during the second and third trimesters**
11 **of pregnancy or for forty-eight hours post-delivery, whether during**
12 **transportation to and from visits to health care providers and court**
13 **proceedings or during labor and delivery;**

14 **(2) Pregnant and postpartum offenders shall be transported to**
15 **and from visits to health care providers and court proceedings in**
16 **vehicles with seatbelts;**

17 **(3) Any time restraints are used on a pregnant or postpartum**
18 **offender, the restraints shall be the least restrictive available and the**
19 **most reasonable under the circumstances. In no case shall leg or waist**
20 **restraints be used on any pregnant or postpartum offender; and**

21 **(4) If a doctor, nurse, or other health care provider treating the**
22 **pregnant or postpartum offender requests that restraints not be used,**
23 **the corrections officer accompanying the pregnant or postpartum**
24 **offender shall immediately remove all restraints.**

25 **3. In the event a doctor determines that extraordinary**
26 **circumstances exist and restraints are used, the doctor shall fully**
27 **document in writing within seven days of the incident the reasons he**
28 **or she determined such extraordinary circumstances existed, the kind**
29 **of restraints used, and the reasons those restraints were considered the**
30 **least restrictive available and the most reasonable under the**
31 **circumstances.**

32 **4. The sentencing and corrections oversight commission**
33 **established under section 217.147, and the advisory committee**
34 **established under section 217.015, shall conduct biannual reviews of**
35 **every report written on the use of restraints on a pregnant or**
36 **postpartum offender in accordance with subsection 3 of this section to**
37 **determine compliance with this section. The written reports shall be**
38 **kept on file by the department for five years.**

39 **5. The chief administrative officer of each correctional center**
40 **shall:**

41 **(1) Ensure that employees of the correctional center who come**
42 **in contact with pregnant or postpartum offenders are provided with**
43 **training, which may include online training, on the provisions of this**
44 **section; and**

45 **(2) Inform female offenders of the policies and practices**

46 **developed in accordance with this section upon admission to the**
47 **correctional center, including the policies and practices in the offender**
48 **handbook, and post the policies and practices in locations in the**
49 **correctional center where such notices are commonly posted and will**
50 **be seen by female offenders, including common housing areas and**
51 **health care facilities.**

221.044. 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, **who have been sentenced to serve an adult criminal sentence**
4 **or those placed by the court in one of the department of corrections'**
5 **one hundred twenty-day programs under subsection 4 of section**
6 **559.036, or as otherwise provided in subsection 13 of section 211.071,**
7 shall be detained in a jail or other adult detention facility as that term is defined
8 in section 211.151. A traffic court judge may request the juvenile court to order
9 the commitment of a person under the age of seventeen to a juvenile detention
10 facility.

221.240. When any person shall be committed to jail **or alternative**
2 **detention facility as defined in subdivision (3) of subsection 4 of section**
3 **211.151,** in conformity to section 221.230, it shall be the duty of the sheriff of the
4 county in which said jail **or alternative detention facility** is situated to take,
5 or cause to be taken, the person thus committed, together with the day and cause
6 of his **or her** capture and detention, before the circuit court of the county
7 appointed for the trial of such prisoner, at such time as the cause is set for trial
8 and at such other times as the court shall direct.

Section B. The repeal and reenactment of sections 211.033, 221.044, and
2 221.240 of this act shall become effective January 1, 2018.

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