

SECOND REGULAR SESSION

SENATE BILL NO. 1054

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time January 30, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4702S.021

AN ACT

To repeal sections 167.031, 211.021, 211.033, 211.041, 211.061, 211.071, 211.091, 211.101, 211.161, and 565.084, RSMo, and to enact in lieu thereof ten new sections relating to juvenile courts, with penalty provisions.

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

Section A. Sections 167.031, 211.021, 211.033, 211.041, 211.061, 211.071, 211.091, 211.101, 211.161, and 565.084, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 167.031, 211.021, 211.033, 211.041, 211.061, 211.071, 211.091, 211.101, 211.161, and 565.084, 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 public, private, parochial, parish, home school or a combination of such schools

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

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. 1. 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
18 if 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.

33 2. The provisions of this section shall not take effect until such

34 **time as spending by the state for juvenile officers and offices, no matter**
35 **the use to which such funds may be put by those officers and offices,**
36 **shall exceed by three million eight hundred thousand dollars the**
37 **amount spent by the state for such officers and offices in fiscal year**
38 **2007.**

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.**

15 **3. The provisions of this section shall not take effect until such**
16 **time as the provisions of section 211.021 shall take effect in accordance**
17 **with subject 2 of section 211.021.**

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

9 2. The petition shall set forth plainly:

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

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

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

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

18 (5) Any other pertinent data or information.

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

21 4. Prior to the voluntary dismissal of a petition filed under this section,
22 the juvenile officer shall assess the impact of such dismissal on the best interests
23 of the child, and shall take all actions practicable to minimize any negative
24 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.

 565.084. 1. A person commits the crime of tampering with a judicial
2 officer if, with the purpose to harass, intimidate or influence a judicial officer in
3 the performance of such officer's official duties, [he] **such person**:

4 (1) Threatens or causes harm to such judicial officer or members of such
5 judicial officer's family;

6 (2) Uses force, threats, or deception against or toward such judicial officer
7 or members of such judicial officer's family;

8 (3) Offers, conveys or agrees to convey any benefit direct or indirect upon
9 such judicial officer or such judicial officer's family;

10 (4) Engages in conduct reasonably calculated to harass or alarm such
11 judicial officer or such judicial officer's family, including stalking pursuant to
12 section 565.225.

13 2. A judicial officer for purposes of this section shall be a judge, arbitrator,
14 special master, **juvenile officer, deputy juvenile officer**, juvenile court
15 commissioner, state probation or parole officer, or referee.

16 3. A judicial officer's family for purposes of this section shall be:

17 (1) [His] **Such officer's** spouse; or

18 (2) [His or his] **Such officer or such officer's** spouse's ancestor or
19 descendant by blood or adoption; or

20 (3) [His] **Such officer's** stepchild, while the marriage creating that
21 relationship exists.

22 4. Tampering with a judicial officer is a class C felony.

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