

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 36

AN ACT

To repeal sections 211.071 and 211.073, RSMo, and to enact in lieu thereof three new sections relating to juvenile criminal offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 211.071 and 211.073, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as
3 sections 211.069, 211.071, and 211.073, to read as follows:

4 211.069. Sections 211.071 and 211.073 shall be known and
5 may be cited as "Jonathan's Law".

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

1 section 565.021, first degree assault under section 565.050,
2 forcible rape under section 566.030, forcible sodomy under
3 section 566.060, first degree robbery under section 569.020, or
4 distribution of drugs under section 195.211, or has committed two
5 or more prior unrelated offenses which would be felonies if
6 committed by an adult, the court shall order a hearing, and may
7 in its discretion, dismiss the petition and transfer the child to
8 a court of general jurisdiction for prosecution under the general
9 law.

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

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

22 4. Written notification of a transfer hearing shall be
23 given to the juvenile and his or her custodian in the same manner
24 as provided in sections 211.101 and 211.111. Notice of the
25 hearing may be waived by the custodian. Notice shall contain a
26 statement that the purpose of the hearing is to determine whether
27 the child is a proper subject to be dealt with under the
28 provisions of this chapter, and that if the court finds that the

1 child is not a proper subject to be dealt with under the
2 provisions of this chapter, the petition will be dismissed to
3 allow for prosecution of the child under the general law.

4 5. The juvenile officer may consult with the office of
5 prosecuting attorney concerning any offense for which the child
6 could be certified as an adult under this section. The
7 prosecuting or circuit attorney shall have access to police
8 reports, reports of the juvenile or deputy juvenile officer,
9 statements of witnesses and all other records or reports relating
10 to the offense alleged to have been committed by the child. The
11 prosecuting or circuit attorney shall have access to the
12 disposition records of the child when the child has been
13 adjudicated pursuant to subdivision (3) of subsection 1 of
14 section 211.031. The prosecuting attorney shall not divulge any
15 information regarding the child and the offense until the
16 juvenile court at a judicial hearing has determined that the
17 child is not a proper subject to be dealt with under the
18 provisions of this chapter.

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

27 (1) The seriousness of the offense alleged and whether the
28 protection of the community requires transfer to the court of

1 general jurisdiction;

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

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

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

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

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

17 (7) The age of the child;

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

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

22 (10) Racial disparity in certification.

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

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

28 (2) Findings showing that the child was represented by

1 counsel;

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

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

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

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

14 10. If a petition has been dismissed thereby permitting a
15 child to be prosecuted under the general law and the child is
16 found not guilty by a court of general jurisdiction, the juvenile
17 court shall have jurisdiction over any later offense committed by
18 that child which would be considered a misdemeanor or felony if
19 committed by an adult, subject to the certification provisions of
20 this section.

21 11. If the court does not dismiss the petition to permit
22 the child to be prosecuted under the general law, it shall set a
23 date for the hearing upon the petition as provided in section
24 211.171.

25 211.073. 1. The court [may] shall, in a case when the
26 offender is under seventeen years and six months of age and has
27 been transferred to a court of general jurisdiction pursuant to
28 section 211.071, and whose prosecution results in a conviction or

1 a plea of guilty, [invoke] consider dual jurisdiction of both the
2 criminal and juvenile codes, as set forth in this section. The
3 court is authorized to impose a juvenile disposition under this
4 chapter and simultaneously impose an adult criminal sentence, the
5 execution of which shall be suspended pursuant to the provisions
6 of this section. Successful completion of the juvenile
7 disposition ordered shall be a condition of the suspended adult
8 criminal sentence. The court may order an offender into the
9 custody of the division of youth services pursuant to this
10 section [if:

11 (1) A facility is designed and built by the division of
12 youth services specifically for offenders sentenced pursuant to
13 this section and if the division determines that there is space
14 available, based on design capacity, in the facility; and

15 (2)]:

16 (1) Upon agreement of the division of youth services; and

17 (2) If the division of youth services determines that there
18 is space available in a facility designed to serve offenders
19 sentenced under this section.

20 If the division of youth services agrees to accept a youth and
21 the court does not impose a juvenile disposition, the court shall
22 make findings on the record as to why the division of youth
23 services was not appropriate for the offender prior to imposing
24 the adult criminal sentence.

25 2. If there is probable cause to believe that the offender
26 has violated a condition of the suspended sentence or committed a
27 new offense, the court shall conduct a hearing on the violation
28 charged, unless the offender waives such hearing. If the

1 violation is established and found the court may continue or
2 revoke the juvenile disposition, impose the adult criminal
3 sentence, or enter such other order as it may see fit.

4 3. When an offender has received a suspended sentence
5 pursuant to this section and the division determines the child is
6 beyond the scope of its treatment programs, the division of youth
7 services may petition the court for a transfer of custody of the
8 offender. The court shall hold a hearing and shall:

9 (1) Revoke the suspension and direct that the offender be
10 taken into immediate custody of the department of corrections; or

11 (2) Direct that the offender be placed on probation.

12 4. When an offender who has received a suspended sentence
13 reaches the age of seventeen, the court shall hold a hearing.

14 The court shall:

15 (1) Revoke the suspension and direct that the offender be
16 taken into immediate custody of the department of corrections;

17 (2) Direct that the offender be placed on probation; or

18 (3) Direct that the offender remain in the custody of the
19 division of youth services if the division agrees to such
20 placement.

21 5. The division of youth services shall petition the court
22 for a hearing before it releases an offender who comes within
23 subsection 1 of this section at any time before the offender
24 reaches the age of twenty-one years. The court shall:

25 (1) Revoke the suspension and direct that the offender be
26 taken into immediate custody of the department of corrections; or

27 (2) Direct that the offender be placed on probation.

28 6. If the suspension of the adult criminal sentence is

revoked, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence imposed.

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