

SECOND REGULAR SESSION

# SENATE BILL NO. 618

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR WALLINGFORD.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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### AN ACT

To repeal sections 211.033, 211.071, 211.151, and 221.044, RSMo, and to enact in lieu thereof four new sections relating to the detention of persons under the age of seventeen in adult facilities, with an effective date for certain sections.

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

Section A. Sections 211.033, 211.071, 211.151, and 221.044, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 211.033, 211.071, 211.151, and 221.044, to read as follows: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

3. The amendments to subsection 2 of this section, as provided for in this act, shall not take effect until such time as the provisions of section 211.021 shall 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 who has not yet**  
100 **reached his or her seventeenth birthday and is being held prior to the**  
101 **disposition of his or her case shall be detained in a juvenile facility,**  
102 **which adheres to current Missouri juvenile detention standards. Upon**  
103 **turning seventeen years of age, he or she may be detained in a jail or**  
104 **other adult detention facility, as the term "jail or other adult detention**  
105 **facility" is defined under section 211.151. No certified child shall be**  
106 **held prior to his or her seventeenth birthday in a jail or other adult**  
107 **detention facility unless the child has been sentenced to serve an adult**  
108 **criminal sentence.**

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 shall not be detained in a jail or other adult detention facility  
9 pending disposition of a case.

10 3. Law enforcement officers shall take fingerprints and photographs of a  
11 child taken into custody for offenses that would be considered felonies if  
12 committed by adults, without the approval of the juvenile judge. A child taken  
13 into custody as a victim of abuse or neglect or as a status offender pursuant to  
14 subdivision (1) or (2) of subsection 1 of section 211.031 or for an offense that  
15 would be considered a misdemeanor if committed by an adult may be  
16 fingerprinted or photographed with the consent of the juvenile judge. Records of  
17 a child who has been fingerprinted and photographed after being taken into  
18 custody shall be closed records as provided under section 610.100 if a petition has  
19 not been filed within thirty days of the date that the child was taken into custody;  
20 and if a petition for the child has not been filed within one year of the date the  
21 child was taken into custody, any records relating to the child concerning the  
22 alleged offense may be expunged under the procedures in sections 610.122 to  
23 610.126.

24 4. (1) As used in this section, the term "jail or other adult detention  
25 facility" means any locked facility administered by state, county or local law  
26 enforcement and correctional agencies, a primary purpose of which is to detain  
27 adults charged with violating a criminal law pending trial, including facilities of  
28 a temporary nature which do not hold persons after they have been formally  
29 charged, or to confine adults convicted of an offense. The term "jail or other adult  
30 detention facility" does not include a juvenile detention facility.

31 (2) As used in this section, the term "juvenile detention facility" means a  
32 place, institution, building or part thereof, set of buildings or area, whether or not  
33 enclosing a building or set of buildings, which has been designated by the juvenile  
34 court as a place of detention for juveniles and which is operated, administered  
35 and staffed separately and independently of a jail or other detention facility for  
36 adults and used exclusively for the lawful custody and treatment of  
37 juveniles. The facility may be owned or operated by public or private agencies.

38 A juvenile detention facility may be located in the same building or grounds as  
39 a jail or other adult detention facility if there is spatial separation between the  
40 facilities which prevents haphazard or accidental contact between juvenile and  
41 adult detainees; there is separation between juvenile and adult program  
42 activities; and there are separate juvenile and adult staff other than specialized  
43 support staff who have infrequent contact with detainees.

44 **5. The division of youth services in collaboration with the office**  
45 **of state courts administrator shall establish a task force, which shall**  
46 **include, but not be limited to, members from the division of youth**  
47 **services and office of state courts administrator. The task force shall**  
48 **make recommendations on the system and process design to be used to**  
49 **divert children who have been certified under section 211.071 from jails**  
50 **or other adult detention facilities pending disposition of their cases by**  
51 **January 1, 2017. Any child certified under section 211.071 on or after**  
52 **August 28, 2016, who has not yet reached his or her seventeenth**  
53 **birthday and is being held prior to the disposition of his or her case**  
54 **shall be detained in a juvenile detention facility that adheres to current**  
55 **Missouri juvenile detention standards. Upon turning seventeen years**  
56 **of age, he or she may be detained in a jail or other adult detention**  
57 **facility.**

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 shall be detained in a jail or other adult detention facility as that term is defined  
5 in section 211.151. A traffic court judge may request the juvenile court to order  
6 the commitment of a person under the age of seventeen to a juvenile detention  
7 facility.

Section B. Sections 211.033, 211.071, and 221.044 of this act shall become  
2 effective January 1, 2017.

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