

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 433

AN ACT

To repeal section 556.061, RSMo, section 211.071 as enacted by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session, and section 211.071 as enacted by house bill no. 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular session, and to enact in lieu thereof four new sections relating to the offense of vehicle hijacking, with penalty provisions.

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

Section A. Section 556.061, RSMo, section 211.071 as enacted by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general assembly, second regular session, and section 211.071 as enacted by house bill no. 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular session, are repealed and four new sections enacted in lieu thereof, to be known as sections 211.071, 556.061, and 570.027, to read as follows:

211.071. 1. If a petition alleges that a child between the ages of twelve and eighteen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any

child has committed an offense which would be considered first degree murder under section 565.020, second degree murder under section 565.021, first degree assault under section 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section 569.020 as it existed prior to January 1, 2017, or robbery in the first degree under section 570.023, distribution of drugs under section 195.211 as it existed prior to January 1, 2017, [or] the manufacturing of a controlled substance under section 579.055, or vehicle hijacking under section 570.027, or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

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

3. Knowing and willful age misrepresentation by a juvenile subject shall not affect any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained during the period of time in which a child misrepresents his or her age

may be used against the child and will be subject only to rules of evidence applicable in adult proceedings.

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

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

6. A written report shall be prepared in accordance with

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

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

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

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

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

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

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

(7) The age of the child;

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

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

(10) Racial disparity in certification.

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

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

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

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

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

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

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

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

this section.

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

211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any child has committed an offense which would be considered first degree murder under section 565.020, second degree murder under section 565.021, first degree assault under section 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section 570.023, [or] distribution of drugs under section 579.055, or vehicle hijacking under section 570.027 or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

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

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

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

5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section. The prosecuting or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile officer, statements of witnesses and all other records or reports relating

to the offense alleged to have been committed by the child. The prosecuting or circuit attorney shall have access to the disposition records of the child when the child has been adjudicated pursuant to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney shall not divulge any information regarding the child and the offense until the juvenile court at a judicial hearing has determined that the child is not a proper subject to be dealt with under the provisions of this chapter.

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

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

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

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

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



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

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

(7) The age of the child;

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

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

(10) Racial disparity in certification.

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

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

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

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

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9. When a petition has been dismissed thereby permitting a child to be prosecuted under the general law and the prosecution

of the child results in a conviction, the jurisdiction of the juvenile court over that child is forever terminated, except as provided in subsection 10 of this section, for an act that would be a violation of a state law or municipal ordinance.

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

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

556.061. In this code, unless the context requires a different definition, the following terms shall mean:

(1) "Access", to instruct, communicate with, store data in, retrieve or extract data from, or otherwise make any use of any resources of, a computer, computer system, or computer network;

(2) "Affirmative defense":

(a) The defense referred to is not submitted to the trier of fact unless supported by evidence; and

(b) If the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not;

(3) "Burden of injecting the issue":

(a) The issue referred to is not submitted to the trier of

fact unless supported by evidence; and

(b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue;

(4) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(5) "Computer", the box that houses the central processing unit (CPU), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, computer refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a computer system including both software applications and data;

(6) "Computer equipment", computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network;

(7) "Computer hardware", all equipment which can collect,

analyze, create, display, convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or data. Hardware includes, but is not limited to, any data processing devices, such as central processing units, memory typewriters and self-contained laptop or notebook computers; internal and peripheral storage devices, transistor-like binary devices and other memory storage devices, such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two or more computers connected together to a central computer server via cable or modem; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices and electronic tone-generating devices; as well as any devices, mechanisms or parts that can be used to restrict access to computer hardware, such as physical keys and locks;

(8) "Computer network", two or more interconnected computers or computer systems;

(9) "Computer program", a set of instructions, statements, or related data that directs or is intended to direct a computer to perform certain functions;

(10) "Computer software", digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic,

magnetic, optical or other digital form. The term commonly includes programs to run operating systems and applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters and communications programs;

(11) "Computer-related documentation", written, recorded, printed or electronically stored material which explains or illustrates how to configure or use computer hardware, software or other related items;

(12) "Computer system", a set of related, connected or unconnected, computer equipment, data, or software;

(13) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

- a. A court orders the person's release; or
- b. The person is released on bail, bond, or recognizance, personal or otherwise; or
- c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;

(b) A person is not in confinement if:

- a. The person is on probation or parole, temporary or otherwise; or
- b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport

the person to or from a place of confinement;

(14) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(15) "Controlled substance", a drug, substance, or immediate precursor in schedules I through V as defined in chapter 195;

(16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(17) "Custody", a person is in custody when he or she has been arrested but has not been delivered to a place of confinement;

(18) "Damage", when used in relation to a computer system or network, means any alteration, deletion, or destruction of any part of the computer system or network;

(19) "Dangerous felony", the felonies of arson in the first degree, assault in the first degree, attempted rape in the first

degree if physical injury results, attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical injury results, attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of such assault is a special victim as defined in subdivision (14) of section 565.002, kidnapping in the first degree, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, vehicle hijacking punished as a class A felony, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, child molestation in the first or second degree, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section 568.060, child kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153, and an "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such terms are defined in section 577.001;

(20) "Dangerous instrument", any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical

injury;

(21) "Data", a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer or computer network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and as may be stored in the memory of a computer;

(22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal knuckles;

(23) "Digital camera", a camera that records images in a format which enables the images to be downloaded into a computer;

(24) "Disability", a mental, physical, or developmental impairment that substantially limits one or more major life activities or the ability to provide adequately for one's care or protection, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings;

(25) "Elderly person", a person sixty years of age or older;

(26) "Felony", an offense so designated or an offense for which persons found guilty thereof may be sentenced to death or imprisonment for a term of more than one year;

(27) "Forcible compulsion" either:

(a) Physical force that overcomes reasonable resistance; or

(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping



of such person or another person;

(28) "Incapacitated", a temporary or permanent physical or mental condition in which a person is unconscious, unable to appraise the nature of his or her conduct, or unable to communicate unwillingness to an act;

(29) "Infraction", a violation defined by this code or by any other statute of this state if it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction;

(30) "Inhabitable structure", a vehicle, vessel or structure:

(a) Where any person lives or carries on business or other calling; or

(b) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(c) Which is used for overnight accommodation of persons.

Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually present. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an inhabitable structure of another;

(31) "Knowingly", when used with respect to:

(a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or

(b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result;

(32) "Law enforcement officer", any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(33) "Misdemeanor", an offense so designated or an offense for which persons found guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year or less;

(34) "Of another", property that any entity, including but not limited to any natural person, corporation, limited liability company, partnership, association, governmental subdivision or instrumentality, other than the actor, has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement;

(35) "Offense", any felony or misdemeanor;

(36) "Physical injury", slight impairment of any function of the body or temporary loss of use of any part of the body;

(37) "Place of confinement", any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(38) "Possess" or "possessed", having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion

or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(39) "Property", anything of value, whether real or personal, tangible or intangible, in possession or in action;

(40) "Public servant", any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(41) "Purposely", when used with respect to a person's conduct or to a result thereof, means when it is his or her conscious object to engage in that conduct or to cause that result;

(42) "Recklessly", consciously disregarding a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(43) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall

be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

(44) "Serious physical injury", physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(45) "Services", when used in relation to a computer system or network, means use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage or retrieval functions;

(46) "Sexual orientation", male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender;

(47) "Vehicle", a self-propelled mechanical device designed to carry a person or persons, excluding vessels or aircraft;

(48) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not such motor or machinery is a principal source of propulsion used or capable of being used as a means of transportation on water, or any boat or craft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, and used or capable of being used as a means of transportation on water, but not any boat or craft having, as the only means of propulsion, a paddle or oars;

(49) "Voluntary act":

(a) A bodily movement performed while conscious as a result of effort or determination. Possession is a voluntary act if the

possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his or her control for a sufficient time to have enabled him or her to dispose of it or terminate his or her control; or

(b) An omission to perform an act of which the actor is physically capable. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law;

(50) "Vulnerable person", any person in the custody, care, or control of the department of mental health who is receiving services from an operated, funded, licensed, or certified program.

570.027. 1. A person commits the offense of vehicle hijacking when he or she knowingly uses or explicitly or implicitly threatens the use of physical force upon another person or persons to seize or attempt to seize possession or control of a vehicle from the immediate possession or control of another person or persons.

2. The offense of vehicle hijacking is a class B felony unless it meets one of the criteria listed in subsection 3 of this section.

3. The following circumstances shall make the offense of vehicle hijacking punished as a class A felony:

- (1) The person is armed with a deadly weapon; or
- (2) The person uses or threatens the immediate use of a dangerous instrument against any person; or
- (3) The person displays or threatens the use of what

appears to be a deadly weapon or dangerous instrument; or

(4) The person causes serious physical injury to any person in immediate possession, control, or presence of the vehicle; or

(5) Any victim of such vehicle hijacking is a child or a special victim, as defined in section 565.002.