

FIRST EXTRAORDINARY SESSION

# SENATE BILL NO. 17

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

Read 1st time July 28, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5859S.011

## AN ACT

To repeal section 211.211, RSMo, and to enact in lieu thereof one new section relating to a child's right to counsel.

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

Section A. Section 211.211, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 211.211, to read as follows:

211.211. 1. A child is entitled to be represented by counsel in all  
2 proceedings under subdivision (2) or (3) of subsection 1 of section 211.031 and by  
3 a guardian ad litem in all proceedings under subdivision (1) of subsection 1 of  
4 section 211.031.

5 2. The court shall appoint counsel for a child prior to the filing of a  
6 petition if a request is made therefor to the court and the court finds that the  
7 child is the subject of a juvenile court proceeding and that the child making the  
8 request is indigent.

9 3. **(1)** When a petition has been filed under subdivision (2) or (3) of  
10 subsection 1 of section 211.031, the court shall appoint counsel for the child  
11 except if private counsel has entered his or her appearance on behalf of the child  
12 or if counsel has been waived in accordance with law; **except that, counsel**  
13 **shall not be waived for any proceeding specified under subsection 10**  
14 **of this section.**

15 **(2)** If a child waives his or her right to counsel, such waiver shall  
16 be made in open court and be recorded and in writing and shall be  
17 made knowingly, intelligently, and voluntarily. In determining whether  
18 a child has knowingly, intelligently, and voluntarily waived his or her  
19 right to counsel, the court shall look to the totality of the circumstances  
20 including, but not limited to, the child's age, intelligence, background,

21 **and experience generally and in the court system specifically; the**  
22 **child's emotional stability; and the complexity of the proceedings.**

23 4. When a petition has been filed and the child's custodian appears before  
24 the court without counsel, the court shall appoint counsel for the custodian if it  
25 finds:

26 (1) That the custodian is indigent; and

27 (2) That the custodian desires the appointment of counsel; and

28 (3) That a full and fair hearing requires appointment of counsel for the  
29 custodian.

30 5. Counsel shall be allowed a reasonable time in which to prepare to  
31 represent his **or her** client.

32 6. Counsel shall serve for all stages of the proceedings, including appeal,  
33 unless relieved by the court for good cause shown. If no appeal is taken, services  
34 of counsel are terminated following the entry of an order of disposition.

35 7. The child and his **or her** custodian may be represented by the same  
36 counsel except where a conflict of interest exists. Where it appears to the court  
37 that a conflict exists, it shall order that the child and his **or her** custodian be  
38 represented by separate counsel, and it shall appoint counsel if required by  
39 subsection 3 or 4 of this section.

40 8. When a petition has been filed, a child may waive his **or her** right to  
41 counsel only with the approval of the court **and if such waiver is not**  
42 **prohibited under subsection 10 of this section. If a child waives his or**  
43 **her right to counsel for any proceeding except proceedings under**  
44 **subsection 10 of this section, the waiver shall only apply to that**  
45 **proceeding. In any subsequent proceeding, the child shall be informed**  
46 **of his or her right to counsel.**

47 9. Waiver of counsel by a child may be withdrawn at any stage of the  
48 proceeding, in which event the court shall appoint counsel for the child if required  
49 by subsection 3 of this section.

50 **10. A child's right to be represented by counsel shall not be**  
51 **waived in any of the following proceedings:**

52 (1) **At a detention hearing under Missouri supreme court rule**  
53 **127.08;**

54 (2) **At a certification hearing under section 211.071 or a dismissal**  
55 **hearing under Missouri supreme court rule 129.04;**

56 (3) **At an adjudication hearing under Missouri supreme court**

57 rule 128.02 for any misdemeanor or felony offense, including the  
58 acceptance of an admission;

59 (4) At a dispositional hearing under Missouri supreme court rule  
60 128.03; or

61 (5) At a hearing on a motion to modify or revoke supervision  
62 under subdivision (2) or (3) of subsection 1 of section 211.031.

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