

FIRST EXTRAORDINARY SESSION

SENATE BILL NO. 3

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

Read 1st time July 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5836S.01I

AN ACT

To repeal sections 568.045 and 571.060, 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 weapons offenses, with penalty provisions and an emergency clause.

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

Section A. Sections 568.045 and 571.060, RSMo, section 211.071 as enacted
2 by senate bill no. 793 merged with senate bill no. 800, ninety-ninth general
3 assembly, second regular session, and section 211.071 as enacted by house bill no.
4 215 merged with senate bill no. 36, ninety-seventh general assembly, first regular
5 session, are repealed and four new sections enacted in lieu thereof, to be known as
6 sections 211.071, 211.071, 568.045, and 571.060, to read as follows:

211.071. 1. If a petition alleges that a child between the ages of twelve
2 and eighteen 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

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

12 prior to August 28, 2013, sodomy in the first degree under section 566.060, first
13 degree robbery under section 569.020 as it existed prior to January 1, 2017, or
14 robbery in the first degree under section 570.023, distribution of drugs under
15 section 195.211 as it existed prior to January 1, 2017, [or] the manufacturing of
16 a controlled substance under section 579.055, **any offense under section**
17 **571.030, any offense under section 571.015**, or has committed two or more
18 prior unrelated offenses which would be felonies if committed by an adult, the
19 court shall order a hearing, and may in its discretion, dismiss the petition and
20 transfer the child to a court of general jurisdiction for prosecution under the
21 general law.

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

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

32 4. Written notification of a transfer hearing shall be given to the juvenile
33 and his or her custodian in the same manner as provided in sections 211.101 and
34 211.111. Notice of the hearing may be waived by the custodian. Notice shall
35 contain a statement that the purpose of the hearing is to determine whether the
36 child is a proper subject to be dealt with under the provisions of this chapter, and
37 that if the court finds that the child is not a proper subject to be dealt with under
38 the provisions of this chapter, the petition will be dismissed to allow for
39 prosecution of the child under the general law.

40 5. The juvenile officer may consult with the office of prosecuting attorney
41 concerning any offense for which the child could be certified as an adult under
42 this section. The prosecuting or circuit attorney shall have access to police
43 reports, reports of the juvenile or deputy juvenile officer, statements of witnesses
44 and all other records or reports relating to the offense alleged to have been
45 committed by the child. The prosecuting or circuit attorney shall have access to
46 the disposition records of the child when the child has been adjudicated pursuant
47 to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney

48 shall not divulge any information regarding the child and the offense until the
49 juvenile court at a judicial hearing has determined that the child is not a proper
50 subject to be dealt with under the provisions of this chapter.

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

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

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

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

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

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

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

72 (7) The age of the child;

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

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

77 (10) Racial disparity in certification.

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

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

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

83 (3) Findings showing that the hearing was held in the presence of the

84 child and his or her counsel; and

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

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

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

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

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

103 **12. The provisions of this section shall become effective on**
104 **January 1, 2021.**

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 570.023, [or] **any offense under section 571.030,**
14 **any offense under section 571.015,** distribution of drugs under section
15 579.055, or has committed two or more prior unrelated offenses which would be

16 felonies if committed by an adult, the court shall order a hearing, and may in its
17 discretion, dismiss the petition and transfer the child to a court of general
18 jurisdiction for prosecution under the general law.

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

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

29 4. Written notification of a transfer hearing shall be given to the juvenile
30 and his or her custodian in the same manner as provided in sections 211.101 and
31 211.111. Notice of the hearing may be waived by the custodian. Notice shall
32 contain a statement that the purpose of the hearing is to determine whether the
33 child is a proper subject to be dealt with under the provisions of this chapter, and
34 that if the court finds that the child is not a proper subject to be dealt with under
35 the provisions of this chapter, the petition will be dismissed to allow for
36 prosecution of the child under the general law.

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

48 6. A written report shall be prepared in accordance with this chapter
49 developing fully all available information relevant to the criteria which shall be
50 considered by the court in determining whether the child is a proper subject to
51 be dealt with under the provisions of this chapter and whether there are

52 reasonable prospects of rehabilitation within the juvenile justice system. These
53 criteria shall include but not be limited to:

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

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

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

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

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

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

69 (7) The age of the child;

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

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

74 (10) Racial disparity in certification.

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

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78 the parties;

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

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

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83 transfer jurisdiction.

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

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

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

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

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

100 **12. The provisions of this section shall expire on December 31,**
101 **2020.**

568.045. 1. A person commits the offense of endangering the welfare of
2 a child in the first degree if he or she:

3 (1) Knowingly acts in a manner that creates a substantial risk to the life,
4 body, or health of a child less than seventeen years of age; or

5 (2) Knowingly engages in sexual conduct with a person under the age of
6 seventeen years over whom the person is a parent, guardian, or otherwise
7 charged with the care and custody;

8 (3) Knowingly encourages, aids or causes a child less than seventeen years
9 of age to engage in any conduct which violates the provisions of chapter **571 or**
10 **chapter 579;**

11 (4) In the presence of a child less than seventeen years of age or in a
12 residence where a child less than seventeen years of age resides, unlawfully
13 manufactures, or attempts to manufacture compounds, possesses, produces,
14 prepares, sells, transports, tests or analyzes amphetamine or methamphetamine
15 or any of their analogues.

16 2. The offense of endangering the welfare of a child in the first degree is
17 a class D felony unless the offense:

18 (1) Is committed as part of an act or series of acts performed by two or
19 more persons as part of an established or prescribed pattern of activity, or where
20 physical injury to the child results, or the offense is a second or subsequent
21 offense under this section, in which case the offense is a class C felony;

22 (2) Results in serious physical injury to the child, in which case the

23 offense is a class B felony; or

24 (3) Results in the death of a child, in which case the offense is a class A
25 felony.

571.060. 1. A person commits the offense of unlawful transfer of weapons
2 if he **or she**:

3 (1) Knowingly sells, leases, loans, gives away or delivers a firearm or
4 ammunition for a firearm to any person who, under the provisions of section
5 571.070, is not lawfully entitled to possess such;

6 (2) **Knowingly sells, leases, loans, gives away, or delivers any**
7 **firearm to a person less than eighteen years of age without the consent**
8 **of the child's custodial parent or guardian; provided, that this does not**
9 **prohibit the delivery of such weapons to any peace officer or member**
10 **of the Armed Forces or National Guard while performing his official**
11 **duty;**

12 (3) Knowingly sells, leases, loans, gives away or delivers a blackjack to
13 a person less than eighteen years old without the consent of the child's custodial
14 parent or guardian, or recklessly, as defined in section 562.016, [sells, leases,
15 loans, gives away or delivers any firearm to a person less than eighteen years old
16 without the consent of the child's custodial parent or guardian; provided, that this
17 does not prohibit the delivery of such weapons to any peace officer or member of
18 the Armed Forces or National Guard while performing his official duty]; or

19 [(3)] (4) Recklessly, as defined in section 562.016, sells, leases, loans,
20 gives away or delivers a firearm or ammunition for a firearm to a person who is
21 intoxicated.

22 2. Unlawful transfer of weapons under [subdivision] **subdivisions (1) or**
23 **(2)** of subsection 1 of this section is a class E felony; unlawful transfer of weapons
24 under [subdivisions (2) and] **subdivisions (3) or (4)** of subsection 1 of this
25 section is a class A misdemeanor.

Section B. Because of the necessity of protecting the citizens of Missouri
2 from violent crime, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace, and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

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