

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 440

AN ACT

To amend chapters 211 and 547, RSMo, by adding thereto two new sections relating to criminal procedure.

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

Section A. Chapters 211 and 547, RSMo, are amended by adding thereto two new sections, to be known as sections 211.072 and 547.031, to read as follows:

211.072. 1. A juvenile, under the age of eighteen, who has been certified to stand trial as an adult for offenses pursuant to section 211.071, if currently placed in a secure juvenile detention facility, shall remain in a secure juvenile detention facility, pending finalization of the judgment and completion of appeal, if any, of the judgment dismissing the juvenile petition to allow for prosecution under the general law unless otherwise ordered by the juvenile court. Upon the judgment dismissing the petition to allow prosecution under the general laws becoming final, and adult charges being filed, if the juvenile is currently in a secure juvenile detention facility, the juvenile shall remain in such facility unless the juvenile posts bond or the juvenile is transferred to an adult jail. If the juvenile officer does not believe detention would be the appropriate placement or would continue to serve as the appropriate placement, the juvenile officer may file a motion in the adult criminal case, requesting that the juvenile be transferred from a secure juvenile detention facility to an adult jail. The court shall hear evidence relating to the appropriateness of the juvenile remaining in a secure juvenile detention facility

or being transferred to an adult jail. At said hearing, the following shall have the right to be present and have the opportunity to present evidence and recommendations at such hearing: the juvenile; the juvenile's parents; the juvenile's counsel, the prosecuting attorney, the juvenile officer or their designee for the circuit in which the juvenile was certified; the juvenile officer or their designee for the circuit in which the pre-trial certified juvenile is proposed to be held, if different, counsel for the juvenile officer, and representatives of the county proposed to have custody of the pre-trial certified juvenile.

2. Following said hearing, the court shall order that the juvenile continue to be held in a secure juvenile detention facility subject to all Missouri juvenile detention standards or shall order that the pre-trial certified juvenile be held in an adult jail, but only after the court has made findings that it would be in the best interest of justice to move the pre-trial certified juvenile to an adult jail. The court shall weigh the following factors when deciding whether to detain a certified juvenile in an adult facility:

(1) The certified juvenile's age;

(2) The certified juvenile's physical and mental maturity;

(3) The certified juvenile's present mental state, including whether they present an imminent risk of self-harm;

(4) The nature and circumstances of the charges;

(5) The certified juvenile's history of delinquency;

(6) The relative ability of the available adult and juvenile facilities to both meet the needs of the certified juvenile but to protect the public and other youth in their custody;

(7) The opinion of the juvenile officer in the circuit of the proposed placement as to the ability of that juvenile detention facility to provide for appropriate care, custody, and control of the pre-trial certified juvenile;

(8) Any other relevant factor.

3. In the event the court finds that it is in the best interest of justice to require the certified juvenile to be held in an adult jail, the court shall hold a hearing once every thirty days to determine whether the placement of the certified juvenile in an adult jail is still in the best interests of justice.

4. A certified juvenile cannot be held in an adult jail for more than one hundred eighty days unless the court finds, for good cause, that an extension is necessary or the juvenile, through counsel, waives the one hundred eighty day maximum period.

5. Effective December 21, 2021, all previously pre-trial, certified juveniles, under the age of eighteen, who had been certified prior to August 28, 2021, shall be transferred from adult jail to a secure juvenile detention facility, unless a hearing is held and the court finds, based upon the factors in subsection 2 of this section, that it would be in the best interest of justice to keep the juvenile in the adult jail.

6. All pre-trial, certified juveniles, under the age of eighteen years, who are held in adult jails pursuant to the best interest of justice exception shall continue to be subject to the protections of the Prison Rape Elimination Act (PREA) and shall be physically separated from adult inmates.

7. If the certified juvenile remains in juvenile detention, the juvenile officer may file a motion to reconsider placement. The court shall consider the factors

set out in subsection 2 of this section and the individuals set forth in subsection 1 of this section shall have a right to be present and present evidence. The court may amend its earlier order in light of the evidence and arguments presented at the hearing if the court finds that it would not be in the best interest of justice for the juvenile to remain in a secure juvenile detention facility.

8. Issues related to the setting of, and posting of, bond along with any bond forfeiture proceedings shall be held in the pre-trial certified juvenile's adult criminal case.

9. Upon attaining age of eighteen years or upon conviction on the adult charges, the juvenile shall be transferred from juvenile detention to the appropriate adult facility.

10. Any responsibility for transportation of the certified juvenile who remains in a secure juvenile detention facility shall be handled in the same manner as in all other adult criminal cases where the defendant is in custody.

11. The per diem provisions as set forth in section 211.156 shall apply to certified juveniles who are being held in a secure juvenile detention facility.

547.031. 1. A prosecuting or circuit attorney, in the jurisdiction in which a person was convicted of an offense, may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been erroneously convicted. The circuit court in which the person was convicted shall have jurisdiction and authority to consider, hear, and decide the motion.

2. Upon the filing of a motion to vacate or set aside the judgment, the court shall order a hearing and shall

issue findings of fact and conclusions of law on all issues presented. The attorney general shall be given notice of hearing of such a motion by the circuit clerk and shall be permitted to appear, question witnesses, and make arguments in a hearing of such a motion.

3. The court shall grant the motion of the prosecuting or circuit attorney to vacate or set aside the judgment where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment. In considering the motion, the court shall take into consideration the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions; and the information and evidence presented at the hearing on the motion.

4. The prosecuting attorney, circuit attorney, or the defendant shall have the authority and right to file and maintain an appeal of the denial or disposal of such a motion. The attorney general shall also have the right to intervene in any appeal filed by the prosecuting or circuit attorney or the defendant.