

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 264
90TH GENERAL ASSEMBLY

Reported from the Committee on Civil and Administrative Law, April 20, 1999, with recommendation that the House Committee Substitute for Senate Bill No. 264 Do Pass.

ANNE C. WALKER, Chief Clerk

L1215.02C

AN ACT

To repeal sections 211.073, 452.423 and 452.490 RSMo Supp. 1998, relating to juveniles, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 211.073, 452.423 and 452.490, RSMo Supp. 1998, are repealed and three new section enacted in lieu thereof, to be known as sectionS 211.073, 452.423 and 452.490, to read as follows:

211.073. 1. The court may, in a case when the offender is under seventeen years of age and has been transferred to a court of general jurisdiction pursuant to section 211.071, and whose prosecution results in a conviction or a plea of guilty, invoke dual jurisdiction of both the criminal and juvenile codes, as set forth in this section. The court is authorized to impose a juvenile disposition under this chapter and simultaneously impose an adult criminal sentence, the execution of which shall be suspended pursuant to the provisions of this section. **In all cases the court retains jurisdiction over offenders whose cases are disposed of pursuant to this section, so long as the offender remains in the custody of the division of youth services under a dual jurisdiction disposition. Notwithstanding any provision of law which prohibits or otherwise restricts the granting of probation or the suspension of the execution of sentence of offenders convicted of certain offenses, the court may simultaneously suspend the execution of the adult sentence imposed for such offenses and impose a juvenile disposition pursuant to this section.** Successful completion of the juvenile disposition ordered shall be a condition of the suspended adult criminal sentence. The court may order an offender into the custody of the division of youth services pursuant to this section if:

(1) A facility is designed and built by the division of youth services specifically for offenders sentenced pursuant to this section and if the division determines that there is space available, based on design capacity, in the facility; and

(2) Upon agreement of the division.

2. If there is probable cause to believe that the offender has violated a condition of the suspended sentence or committed a new offense, the court shall conduct a hearing on the violation charged, unless the offender waives such hearing. If the violation is established and found the court [may continue or revoke the juvenile disposition, impose the adult criminal

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

sentence, or enter such other order as it may see fit.] **shall:**

(1) Revoke the suspension and direct that the offender be taken into immediate custody of the department of corrections;

(2) Direct that the offender be placed on probation; or

(3) Direct that the offender remain in the custody of the division of youth services if the division agrees to such placement.

3. When an offender has received a suspended sentence pursuant to this section and the division determines the child is beyond the scope of its treatment programs, the division of youth services may petition the court for a transfer of custody of the offender. The court shall hold a hearing and shall:

(1) Revoke the suspension and direct that the offender be taken into immediate custody of the department of corrections; or

(2) Direct that the offender be placed on probation.

Under no circumstances shall an offender remain in the division's custody after reaching age twenty-one.

4. When an offender who has received a suspended sentence reaches the age of seventeen, the court shall hold a hearing. The court shall:

(1) Revoke the suspension and direct that the offender be taken into immediate custody of the department of corrections;

(2) Direct that the offender be placed on probation; or

(3) Direct that the offender remain in the custody of the division of youth services if the division agrees to such placement.

5. The division of youth services shall petition the court for a hearing before it releases an offender who comes within subsection 1 of this section at any time before the offender reaches the age of twenty-one years. The court shall:

(1) Revoke the suspension and direct that the offender be taken into immediate custody of the department of corrections; or

(2) Direct that the offender be placed on probation.

6. If the suspension of the adult criminal sentence is revoked, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence imposed.

7. In cases where the offender has violated a condition of the suspended sentence, committed a new offense, or is determined by the division to be beyond the scope of the division's treatment program, the division director or the director's designee is authorized to issue a warrant for the arrest of the offender pending a hearing required by subsection 2 or 3 of this section. The arrest warrant will outline the circumstances of the alleged violation including the circumstances of the division's beyond the scope determination and will be addressed to the appropriate law enforcement officer to effect the arrest of the offender. The arrest warrant delivered with the offender to the official in charge of any jail or detention facility shall be sufficient authority for detaining the offender pending a hearing required pursuant to subsection 2 or 3 of this section. The division director or the director's designee is also authorized to issue an arrest warrant as described above for the arrest of any offender who has escaped or run away from the division's custody.

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal

separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged. [Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to chapter 210, RSMo, or this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.]

2. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed;

(3) Request the juvenile officer to cause a petition to be filed in the juvenile division of the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is in danger.

3. The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem shall be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or such child's family members. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

452.490. 1. The court may order any party to the proceeding who is in this state to appear personally before the court. If the court finds the physical presence of the child in court to be in the best interests of the child, the court may order that the party who has physical custody of the child appear personally with the child.

2. If a party to the proceeding whose presence is desired by the court is outside this state, with or without the child, the court may order that the notice given [under] **pursuant to** section 452.460 include a statement directing that party to appear personally with or without the child.

3. If a party to the proceeding who is outside this state is directed to appear [under] **pursuant to** subsection 1 of this section or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

4. If the court finds it to be in the best interest of the child that a guardian ad litem be appointed, the court may appoint a guardian ad litem for the child. The guardian ad litem so appointed shall be an attorney licensed to practice law in the state of Missouri. [Disqualification of a guardian ad litem shall be ordered in any legal proceeding pursuant to chapter 210, RSMo, or this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.] The guardian ad litem may, for the purpose of determining custody of the child only, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

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