

FIRST REGULAR SESSION

SENATE BILL NO. 36

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WALLINGFORD AND SATER.

Pre-filed December 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0165L.01I

AN ACT

To repeal sections 211.071 and 211.073, RSMo, and to enact in lieu thereof three new sections relating to Jonathan's Law.

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

Section A. Sections 211.071 and 211.073, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 211.069, 211.071,
3 and 211.073, to read as follows:

**211.069. The amendments to sections 211.071 and 211.073 enacted
2 by the ninety-sixth general assembly, second regular session, shall be
3 known and may be cited as "Jonathan's Law".**

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, forcible sodomy under section 566.060, first degree robbery
11 under section 569.020, or distribution of drugs under section 195.211, or has
12 committed two or more prior unrelated offenses which would be felonies if
13 committed by an adult, the court shall order a hearing, and may in its discretion,
14 dismiss the petition and transfer the child to a court of general jurisdiction for
15 prosecution under the general law.

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

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

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

26 4. Written notification of a transfer hearing shall be given to the juvenile
27 and his or her custodian in the same manner as provided in sections 211.101 and
28 211.111. Notice of the hearing may be waived by the custodian. Notice shall
29 contain a statement that the purpose of the hearing is to determine whether the
30 child is a proper subject to be dealt with under the provisions of this chapter, and
31 that if the court finds that the child is not a proper subject to be dealt with under
32 the provisions of this chapter, the petition will be dismissed to allow for
33 prosecution of the child under the general law.

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

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

51 (1) The seriousness of the offense alleged and whether the protection of

52 the community requires transfer to the court of general jurisdiction;

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

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

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

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

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

66 (7) The age of the child;

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

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

71 (10) Racial disparity in certification.

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

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

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

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

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

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

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

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

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

211.073. 1. The court [may] **shall**, in a case when the offender is under
2 seventeen years **and six months** of age and has been transferred to a court of
3 general jurisdiction pursuant to section 211.071, and whose prosecution results
4 in a conviction or a plea of guilty, [invoke] **consider** dual jurisdiction of both the
5 criminal and juvenile codes, as set forth in this section. The court is authorized
6 to impose a juvenile disposition under this chapter and simultaneously impose an
7 adult criminal sentence, the execution of which shall be suspended pursuant to
8 the provisions of this section. Successful completion of the juvenile disposition
9 ordered shall be a condition of the suspended adult criminal sentence. The court
10 may order an offender into the custody of the division of youth services pursuant
11 to this section [if:

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

16 (2)];

17 **(1) Upon agreement of the division of youth services; and**

18 **(2) If the division of youth services determines that there is**
19 **space available in a facility designed to serve offenders sentenced**
20 **under this section.**

21 **If the division of youth services agrees to accept a youth and the court**
22 **does not impose a juvenile disposition, the court shall make findings on**
23 **the record as to why the division of youth services was not appropriate**
24 **for the offender prior to imposing the adult criminal sentence.**

25 2. If there is probable cause to believe that the offender has violated a
26 condition of the suspended sentence or committed a new offense, the court shall
27 conduct a hearing on the violation charged, unless the offender waives such

28 hearing. If the violation is established and found the court may continue or
29 revoke the juvenile disposition, impose the adult criminal sentence, or enter such
30 other order as it may see fit.

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

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

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

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

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

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

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

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

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

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

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

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