

SECOND REGULAR SESSION

# HOUSE BILL NO. 2640

## 102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WEST.

5434H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 211.033, 211.071, 211.072, 219.021, 221.044, and 571.070, RSMo, and to enact in lieu thereof six new sections relating to juvenile proceedings, with penalty provisions.

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

Section A. Sections 211.033, 211.071, 211.072, 219.021, 221.044, and 571.070, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 211.033, 211.071, 211.072, 219.021, 221.044, and 571.070, to read as follows:

211.033. 1. No person under the age of eighteen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071, shall be detained in a jail or other adult detention facility as that term is defined in section 211.151. ~~[A traffic court judge may request the juvenile court to order the commitment of a person under the age of eighteen to a juvenile detention facility.]~~

2. Nothing in this section shall be construed as creating any civil or criminal liability for any law enforcement officer, juvenile officer, school personnel, or court personnel for any action taken or failure to take any action involving a minor child who remains under the jurisdiction of the juvenile court under this section if such action or failure to take action is based on a good faith belief by such officer or personnel that the minor child is not under the jurisdiction of the juvenile court.

211.071. 1. If a petition **or motion to modify** alleges that a child between the ages of twelve and eighteen has committed an offense ~~[which]~~ **that** would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child, or the child's custodian, order a hearing and may, in its discretion, dismiss

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 the petition **or motion to modify** and such child may be transferred to the court of general  
6 jurisdiction and prosecuted under the general law; except that, if a petition alleges that any  
7 child has committed an offense [~~which~~] **that** would be considered first degree murder under  
8 section 565.020, second degree murder under section 565.021, first degree assault under  
9 section 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013,  
10 rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it  
11 existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first  
12 degree robbery under section 569.020 as it existed prior to January 1, 2017, [~~or~~] robbery in  
13 the first degree under section 570.023, distribution of drugs under section 195.211 as it  
14 existed prior to January 1, 2017, or the manufacturing of a controlled substance under section  
15 579.055, or has committed two or more prior unrelated offenses [~~which~~] **that** would be  
16 felonies if committed by an adult, the court shall order a hearing, and may, in its discretion,  
17 dismiss the petition **or motion to modify** 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 allegedly  
20 committed by any person between eighteen and twenty-one years of age over whom the  
21 juvenile court has retained continuing jurisdiction shall automatically terminate and that  
22 offense shall be dealt with in the court of general jurisdiction as provided in section 211.041.

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

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

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

42 judicial hearing has determined that the child is not a proper subject to be dealt with under the  
43 provisions of this chapter.

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

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

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

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

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

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

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

60 (7) The age of the child;

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

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

65 (10) Racial disparity in certification.

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

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

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

70 (3) Findings showing that the hearing was held in the presence of the child and his or  
71 her counsel; and

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

74 8. A copy of the petition **or motion to modify** and order of the dismissal shall be sent  
75 to the prosecuting attorney.

76 9. When a petition **or motion to modify** has been dismissed thereby permitting a  
77 child to be prosecuted under the general law and the prosecution of the child results in a  
78 conviction, the jurisdiction of the juvenile court over that child is forever terminated, except

79 as provided in subsection 10 of this section, for an act that would be a violation of a state law  
80 or municipal ordinance.

81         10. If a petition **or motion to modify** has been dismissed thereby permitting a child to  
82 be prosecuted under the general law and the child is found not guilty by a court of general  
83 jurisdiction, the juvenile court shall have jurisdiction over any later offense committed by that  
84 child which would be considered a misdemeanor or felony if committed by an adult, subject  
85 to the certification provisions of this section.

86         11. If the court does not dismiss the petition **or motion to modify** to permit the child  
87 to be prosecuted under the general law, it shall set a date for the hearing upon the petition as  
88 provided in section 211.171.

211.072. 1. A juvenile under eighteen years of age who has been certified to stand  
2 trial as an adult for offenses pursuant to section 211.071, if currently placed in a secure  
3 juvenile detention facility, shall remain in a secure juvenile detention facility pending  
4 finalization of the judgment and completion of appeal, if any, of the judgment dismissing the  
5 juvenile petition to allow for prosecution under the general law unless otherwise ordered by  
6 the juvenile court. Upon the judgment dismissing the petition to allow prosecution under the  
7 general laws becoming final and adult charges being filed, if the juvenile is currently in a  
8 secure juvenile detention facility, the juvenile shall remain in such facility unless the juvenile  
9 posts bond or the juvenile is transferred to an adult jail. If the juvenile officer does not  
10 believe juvenile detention would be the appropriate placement or would continue to serve as  
11 the appropriate placement, the juvenile officer may file a motion in the adult criminal case  
12 requesting that the juvenile be transferred from a secure juvenile detention facility to an adult  
13 jail. The court shall hear evidence relating to the appropriateness of the juvenile remaining in  
14 a secure juvenile detention facility or being transferred to an adult jail. At such hearing, the  
15 following shall have the right to be present and have the opportunity to present evidence and  
16 recommendations at such hearing: the juvenile; the juvenile's parents; the juvenile's counsel;  
17 the prosecuting attorney; the juvenile officer or his or her designee for the circuit in which the  
18 juvenile was certified; the juvenile officer or his or her designee for the circuit in which the  
19 pretrial-certified juvenile is proposed to be held, if different from the circuit in which the  
20 juvenile was certified; counsel for the juvenile officer; and representatives of the county  
21 proposed to have custody of the pretrial-certified juvenile.

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

- 28 (1) The certified juvenile's age;
- 29 (2) The certified juvenile's physical and mental maturity;
- 30 (3) The certified juvenile's present mental state, including whether he or she presents  
31 an imminent risk of self-harm;
- 32 (4) The nature and circumstances of the charges;
- 33 (5) The certified juvenile's history of delinquency;
- 34 (6) The relative ability of the available adult and juvenile facilities to both meet the  
35 needs of the certified juvenile and to protect the public and other youth in their custody;
- 36 (7) The opinion of the juvenile officer in the circuit of the proposed placement as to  
37 the ability of that juvenile detention facility to provide for appropriate care, custody, and  
38 control of the pretrial-certified juvenile; and
- 39 (8) Any other relevant factor.

40 3. In the event the court finds that it is in the best interest of justice to require the  
41 certified juvenile to be held in an adult jail, the court shall hold a hearing once every thirty  
42 days to determine whether the placement of the certified juvenile in an adult jail is still in the  
43 best interests of justice. **If a pretrial-certified juvenile under eighteen years of age is  
44 ordered released on the juvenile's adult criminal case from an adult jail following a  
45 transfer order under subsection 2 of this section and the juvenile is detained on violation  
46 of the conditions of release or bond, the juvenile shall return to the custody of the adult  
47 jail pending further court order.**

48 4. A certified juvenile cannot be held in an adult jail for more than one hundred eighty  
49 days unless the court finds, for good cause, that an extension is necessary or the juvenile,  
50 through counsel, waives the one hundred eighty day maximum period. If no extension is  
51 granted under this subsection, the certified juvenile shall be transferred from the adult jail to a  
52 secure juvenile detention facility. **If an extension is granted under this subsection, the  
53 court shall hold a hearing once every thirty days to determine whether the placement of  
54 the certified juvenile in an adult jail is still in the best interests of justice.**

55 5. Effective December 31, 2021, all previously pretrial-certified juveniles under  
56 eighteen years of age who had been certified prior to August 28, 2021, shall be transferred  
57 from adult jail to a secure juvenile detention facility, unless a hearing is held and the court  
58 finds, based upon the factors in subsection 2 of this section, that it would be in the best  
59 interest of justice to keep the juvenile in the adult jail.

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

64 7. If the certified juvenile remains in juvenile detention, the juvenile officer may file a  
65 motion to reconsider placement. The court shall consider the factors set out in subsection 2 of  
66 this section and the individuals set forth in subsection 1 of this section shall have a right to be  
67 present and present evidence. The court may amend its earlier order in light of the evidence  
68 and arguments presented at the hearing if the court finds that it would not be in the best  
69 interest of justice for the juvenile to remain in a secure juvenile detention facility.

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

72 9. Upon attaining eighteen years of age or upon **a plea of guilty or** conviction on the  
73 adult charges, the juvenile shall be transferred from juvenile detention to the appropriate adult  
74 facility.

75 10. Any responsibility for transportation of and contracted service for the certified  
76 juvenile who remains in a secure juvenile detention facility shall be handled **by county jail**  
77 **staff** in the same manner as in all other adult criminal cases where the defendant is in custody.

78 11. **The county jail staff shall designate a liaison assigned to each pretrial-**  
79 **certified juvenile while housed in a juvenile detention facility, who shall assist in**  
80 **communication with the juvenile detention facility on the needs of the juvenile**  
81 **including, but not limited to, visitation, legal case status, medical and mental health**  
82 **needs, and phone contact.**

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

219.021. 1. Except as provided in subsections 2 and 3 of this section, any child may  
2 be committed to the custody of the division when the juvenile court determines a suitable  
3 community-based treatment service does not exist, or has proven ineffective; and when the  
4 child is adjudicated pursuant to the provisions of subdivision (3) of subsection 1 of section  
5 211.031 or when the child is adjudicated pursuant to subdivision (2) of subsection 1 of section  
6 211.031 and is currently under court supervision for adjudication under subdivision (2) or (3)  
7 of subsection 1 of section 211.031. The division shall not keep any youth beyond his  
8 ~~[eighteenth birth date]~~ **or her nineteenth birthday**, except upon petition and a showing of  
9 just cause in which case the division may maintain custody until the youth's twenty-first birth  
10 date. Notwithstanding any other provision of law to the contrary, the committing court shall  
11 review the treatment plan to be provided by the division. The division shall notify the court  
12 of original jurisdiction from which the child was committed at least three weeks prior to the  
13 child's release to aftercare supervision. The notification shall include a summary of the  
14 treatment plan and progress of the child that has resulted in the planned release. The court  
15 may formally object to the director of the division in writing, stating its reasons in opposition  
16 to the release. The director shall review the court's objection in consideration of its final

17 approval for release. The court's written objection shall be made within a one-week period  
18 after it receives notification of the division's planned release; otherwise the division may  
19 assume court agreement with the release. The division director's written response to the court  
20 shall occur within five working days of service of the court's objection and preferably prior to  
21 the release of the child. The division shall not place a child directly into a precare setting  
22 immediately upon commitment from the court until it advises the court of such placement.

23         2. No child who has been diagnosed as having a mental disease or a communicable or  
24 contagious disease shall be committed to the division; except the division may, by regulation,  
25 when services for the proper care and treatment of persons having such diseases are available  
26 at any of the facilities under its control, authorize the commitment of children having such  
27 diseases to it for treatment in such institution. Notice of any such regulation shall be  
28 promptly mailed to the judges and juvenile officers of all courts having jurisdiction of cases  
29 involving children.

30         3. When a child has been committed to the division, the division shall forthwith  
31 examine the individual and investigate all pertinent circumstances of his background for the  
32 purpose of facilitating the placement and treatment of the child in the most appropriate  
33 program or residential facility to assure the public safety and the rehabilitation of the child;  
34 except that, no child committed under the provisions of subdivision (2) of subsection 1 of  
35 section 211.031 may be placed in the residential facilities designated by the division as a  
36 maximum security facility, unless the juvenile is subsequently adjudicated under subdivision  
37 (3) of subsection 1 of section 211.031.

38         4. The division may transfer any child under its jurisdiction to any other institution  
39 for children if, after careful study of the child's needs, it is the judgment of the division that  
40 the transfer should be effected. If the division determines that the child requires treatment by  
41 another state agency, it may transfer the physical custody of the child to that agency, and that  
42 agency shall accept the child if the services are available by that agency.

43         5. The division shall make periodic reexaminations of all children committed to its  
44 custody for the purpose of determining whether existing dispositions should be modified or  
45 continued. Reexamination shall include a study of all current circumstances of such child's  
46 personal and family situation and an evaluation of the progress made by such child since the  
47 previous study. Reexamination shall be conducted as frequently as the division deems  
48 necessary, but in any event, with respect to each such child, at intervals not to exceed six  
49 months. Reports of the results of such examinations shall be sent to the child's committing  
50 court and to his parents or guardian.

51         6. Failure of the division to examine a child committed to it or to reexamine him  
52 within six months of a previous examination shall not of itself entitle the child to be  
53 discharged from the custody of the division but shall entitle the child, his parent, guardian, or

54 agency to which the child may be placed by the division to petition for review as provided in  
55 section 219.051.

56 7. The division is hereby authorized to establish, build, repair, maintain, and operate,  
57 from funds appropriated or approved by the legislature for these purposes, facilities and  
58 programs necessary to implement the provisions of this chapter. Such facilities or programs  
59 may include, but not be limited to, the establishment and operation of training schools,  
60 maximum security facilities, moderate care facilities, group homes, day treatment programs,  
61 family foster homes, aftercare, counseling services, educational services, and such other  
62 services as may be required to meet the needs of children committed to it. The division may  
63 terminate any facility or program no longer needed to meet the needs of children.

64 8. The division may institute day release programs for children committed to it. The  
65 division may arrange with local schools, public or private agencies, or persons approved by  
66 the division for the release of children committed to the division on a daily basis to the  
67 custody of such schools, agencies, or persons for participation in programs.

68 9. The division shall make all reasonable efforts to ensure that any outstanding  
69 judgment entered in accordance with section 211.185 or any outstanding assessments ordered  
70 in accordance with section 211.181 be paid while a child is in the care, custody or control of  
71 the division.

221.044. No person under the age of eighteen years, except those transferred to the  
2 court of general jurisdiction under the provisions of section 211.071, shall be detained in a jail  
3 or other adult detention facility as that term is defined in section 211.151. ~~[A traffic court~~  
4 ~~judge may request the juvenile court to order the commitment of a person under the age of~~  
5 ~~eighteen to a juvenile detention facility.] **If a person is eighteen years of age or older or**  
6 **attains the age of eighteen while in detention, upon a motion filed by the juvenile officer,**  
7 **the court may order that the person be detained in a jail or other adult detention facility**  
8 **as that term is defined in section 211.151 until the disposition of that person's juvenile**  
9 **court case.**~~

571.070. 1. A person commits the offense of unlawful possession of a firearm if such  
2 person knowingly has any firearm in his or her possession and:

3 (1) Such person has been convicted of a felony under the laws of this state, or of a  
4 crime under the laws of any state or of the United States which, if committed within this state,  
5 would be a felony; ~~[or]~~

6 (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged  
7 condition, or is currently adjudged mentally incompetent; or

8 (3) **Such person is under eighteen years of age and has previously been**  
9 **adjudicated delinquent for what would be a felony if committed by an adult.**



10           2. Unlawful possession of a firearm is a class D felony, unless a person has been  
11 convicted of a dangerous felony as defined in section 556.061, in which case it is a class C  
12 felony.

13           3. The provisions of subdivision (1) of subsection 1 of this section shall not apply to  
14 the possession of an antique firearm.

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