

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE NO. 3 FOR

SENATE BILL NO. 22

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

0870S.05P

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 211.031, 211.071, 217.345, and 217.690, RSMo, and to enact in lieu thereof five new sections relating to criminal procedures involving juveniles, with an emergency clause for certain sections.

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

Section A. Sections 211.031, 211.071, 217.345, and
2 217.690, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 211.031, 211.071, 211.600,
4 217.345, and 217.690, to read as follows:

211.031. 1. Except as otherwise provided in this
2 chapter, the juvenile court or the family court in circuits
3 that have a family court as provided in chapter 487 shall
4 have exclusive original jurisdiction in proceedings:

5 (1) Involving any child who may be a resident of or
6 found within the county and who is alleged to be in need of
7 care and treatment because:

8 (a) The parents, or other persons legally responsible
9 for the care and support of the child, neglect or refuse to
10 provide proper support, education which is required by law,
11 medical, surgical or other care necessary for his or her
12 well-being; except that reliance by a parent, guardian or
13 custodian upon remedial treatment other than medical or

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

14 surgical treatment for a child shall not be construed as
15 neglect when the treatment is recognized or permitted
16 pursuant to the laws of this state;

17 (b) The child is otherwise without proper care,
18 custody or support;

19 (c) The child was living in a room, building or other
20 structure at the time such dwelling was found by a court of
21 competent jurisdiction to be a public nuisance pursuant to
22 section 195.130; or

23 (d) The child is in need of mental health services and
24 the parent, guardian or custodian is unable to afford or
25 access appropriate mental health treatment or care for the
26 child;

27 (2) Involving any child who may be a resident of or
28 found within the county and who is alleged to be in need of
29 care and treatment because:

30 (a) The child while subject to compulsory school
31 attendance is repeatedly and without justification absent
32 from school;

33 (b) The child disobeys the reasonable and lawful
34 directions of his or her parents or other custodian and is
35 beyond their control;

36 (c) The child is habitually absent from his or her
37 home without sufficient cause, permission, or justification;

38 (d) The behavior or associations of the child are
39 otherwise injurious to his or her welfare or to the welfare
40 of others; or

41 (e) The child is charged with an offense not
42 classified as criminal, or with an offense applicable only
43 to children; except that, the juvenile court shall not have
44 jurisdiction over any child fifteen years of age who is
45 alleged to have violated a state or municipal traffic

46 ordinance or regulation, the violation of which does not
47 constitute a felony, or any child who is alleged to have
48 violated a state or municipal ordinance or regulation
49 prohibiting possession or use of any tobacco product;

50 (3) Involving any child who is alleged to have
51 violated a state law or municipal ordinance, or any person
52 who is alleged to have violated a state law or municipal
53 ordinance prior to attaining the age of eighteen years, in
54 which cases jurisdiction may be taken by the court of the
55 circuit in which [the child or person resides or may be
56 found or in which] the violation is alleged to have
57 occurred, **except as provided in subsection 2 of this**
58 **section;** except that, the juvenile court shall not have
59 jurisdiction over any child fifteen years of age who is
60 alleged to have violated a state or municipal traffic
61 ordinance or regulation, the violation of which does not
62 constitute a felony, and except that the juvenile court
63 shall have concurrent jurisdiction with the municipal court
64 over any child who is alleged to have violated a municipal
65 curfew ordinance, and except that the juvenile court shall
66 have concurrent jurisdiction with the circuit court on any
67 child who is alleged to have violated a state or municipal
68 ordinance or regulation prohibiting possession or use of any
69 tobacco product;

70 (4) For the adoption of a person;

71 (5) For the commitment of a child to the guardianship
72 of the department of social services as provided by law;

73 (6) Involving an order of protection pursuant to
74 chapter 455 when the respondent is less than eighteen years
75 of age; and

76 (7) Involving a child who has been a victim of sex
77 trafficking or sexual exploitation.

78 2. Transfer of a matter, proceeding, jurisdiction or
79 supervision for a child who resides in a county of this
80 state shall be made as follows:

81 (1) Prior to the filing of a petition and upon request
82 of any party or at the discretion of the juvenile officer,
83 the matter in the interest of a child may be transferred by
84 the juvenile officer, with the prior consent of the juvenile
85 officer of the receiving court, to the county of the child's
86 residence or the residence of the person eighteen years of
87 age for future action;

88 (2) Upon the motion of any party or on its own motion
89 prior to final disposition on the pending matter, the court
90 in which a proceeding is commenced may transfer the
91 proceeding of a child to the court located in the county of
92 the child's residence, or the county in which the offense
93 pursuant to subdivision (3) of subsection 1 of this section
94 is alleged to have occurred for further action;

95 (3) Upon motion of any party or on its own motion, the
96 court in which jurisdiction has been taken pursuant to
97 subsection 1 of this section may at any time thereafter
98 transfer jurisdiction of a child to the court located in the
99 county of the child's residence for further action with the
100 prior consent of the receiving court;

101 (4) Upon motion of any party or upon its own motion at
102 any time following a judgment of disposition or treatment
103 pursuant to section 211.181, the court having jurisdiction
104 of the cause may place the child under the supervision of
105 another juvenile court within or without the state pursuant
106 to section 210.570 with the consent of the receiving court;

107 (5) Upon motion of any child or his or her parent, the
108 court having jurisdiction shall grant one change of judge
109 pursuant to Missouri supreme court rules;

110 (6) Upon the transfer of any matter, proceeding,
111 jurisdiction or supervision of a child, certified copies of
112 all legal and social documents and records pertaining to the
113 case on file with the clerk of the transferring juvenile
114 court shall accompany the transfer.

115 3. In any proceeding involving any child taken into
116 custody in a county other than the county of the child's
117 residence, the juvenile court of the county of the child's
118 residence shall be notified of such taking into custody
119 within seventy-two hours.

120 4. When an investigation by a juvenile officer
121 pursuant to this section reveals that the only basis for
122 action involves an alleged violation of section 167.031
123 involving a child who alleges to be home schooled, the
124 juvenile officer shall contact a parent or parents of such
125 child to verify that the child is being home schooled and
126 not in violation of section 167.031 before making a report
127 of such a violation. Any report of a violation of section
128 167.031 made by a juvenile officer regarding a child who is
129 being home schooled shall be made to the prosecuting
130 attorney of the county where the child legally resides.

131 5. The disability or disease of a parent shall not
132 constitute a basis for a determination that a child is a
133 child in need of care or for the removal of custody of a
134 child from the parent without a specific showing that there
135 is a causal relation between the disability or disease and
136 harm to the child.

211.071. 1. If a petition alleges that a child
2 between the ages of [twelve] **fourteen** and eighteen has
3 committed an offense which would be considered a felony if
4 committed by an adult, the court may, upon its own motion or
5 upon motion by the juvenile officer, the child or the

6 child's custodian, order a hearing and may, in its
7 discretion, dismiss the petition and such child may be
8 transferred to the court of general jurisdiction and
9 prosecuted under the general law; except that if a petition
10 alleges that [any] a child **between the ages of twelve and**
11 **eighteen** has committed an offense which would be considered
12 first degree murder under section 565.020, second degree
13 murder under section 565.021, first degree assault under
14 section 565.050, forcible rape under section 566.030 as it
15 existed prior to August 28, 2013, rape in the first degree
16 under section 566.030, forcible sodomy under section 566.060
17 as it existed prior to August 28, 2013, sodomy in the first
18 degree under section 566.060, first degree robbery under
19 section 569.020 as it existed prior to January 1, 2017, or
20 robbery in the first degree under section 570.023,
21 distribution of drugs under section 195.211 as it existed
22 prior to January 1, 2017, or the manufacturing of a
23 controlled substance under section 579.055, **a dangerous**
24 **felony as defined in section 556.061**, or has committed two
25 or more prior unrelated offenses which would be felonies if
26 committed by an adult, the court shall order a hearing, and
27 may in its discretion, dismiss the petition and transfer the
28 child to a court of general jurisdiction for prosecution
29 under the general law.

30 2. Upon apprehension and arrest, jurisdiction over the
31 criminal offense allegedly committed by any person between
32 eighteen and twenty-one years of age over whom the juvenile
33 court has retained continuing jurisdiction shall
34 automatically terminate and that offense shall be dealt with
35 in the court of general jurisdiction as provided in section
36 211.041.

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

44 4. Written notification of a transfer hearing shall be
45 given to the juvenile and his or her custodian in the same
46 manner as provided in sections 211.101 and 211.111. Notice
47 of the hearing may be waived by the custodian. Notice shall
48 contain a statement that the purpose of the hearing is to
49 determine whether the child is a proper subject to be dealt
50 with under the provisions of this chapter, and that if the
51 court finds that the child is not a proper subject to be
52 dealt with under the provisions of this chapter, the
53 petition will be dismissed to allow for prosecution of the
54 child under the general law.

55 5. The juvenile officer may consult with the office of
56 prosecuting attorney concerning any offense for which the
57 child could be certified as an adult under this section.
58 The prosecuting or circuit attorney shall have access to
59 police reports, reports of the juvenile or deputy juvenile
60 officer, statements of witnesses and all other records or
61 reports relating to the offense alleged to have been
62 committed by the child. The prosecuting or circuit attorney
63 shall have access to the disposition records of the child
64 when the child has been adjudicated pursuant to subdivision
65 (3) of subsection 1 of section 211.031. The prosecuting
66 attorney shall not divulge any information regarding the
67 child and the offense until the juvenile court at a judicial
68 hearing has determined that the child is not a proper

69 subject to be dealt with under the provisions of this
70 chapter.

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

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

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

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

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

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

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

98 (7) The age of the child;

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

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

104 (10) Racial disparity in certification.

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

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

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

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

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

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

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

125 10. If a petition has been dismissed thereby
126 permitting a child to be prosecuted under the general law
127 and the child is found not guilty by a court of general
128 jurisdiction, the juvenile court shall have jurisdiction
129 over any later offense committed by that child which would
130 be considered a misdemeanor or felony if committed by an
131 adult, subject to the certification provisions of this
132 section.

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

**211.600. 1. The office of state courts administrator
2 shall collect information related to the filing and
3 disposition of petitions to certify juveniles pursuant to
4 section 211.071.**

**2. The data collected pursuant to this section shall
6 include the following:**

**(1) The number of certification petitions filed
8 annually;**

**(2) The disposition of certification petitions filed
10 annually;**

**(3) The offenses for which certification petitions are
12 filed annually;**

**(4) The race of the juveniles for whom the
14 certification petitions are filed annually; and**

**(5) The number of juveniles who have waived their
16 right to counsel.**

**3. The data collected pursuant to this section shall
18 be made publicly available annually.**

 217.345. 1. Correctional treatment programs for first
2 offenders **and offenders eighteen years of age or younger** in
3 the department shall be established, subject to the control
4 and supervision of the director, and shall include such
5 programs deemed necessary and sufficient for the successful
6 rehabilitation of offenders.

 2. [Correctional treatment programs for offenders who
8 are younger than eighteen years of age shall be established,
9 subject to the control and supervision of the director. By
10 January 1, 1998, such] Programs **established pursuant to this**

11 **section** shall include physical separation of offenders who
12 are younger than eighteen years of age from offenders who
13 are eighteen years of age or older **and shall include**
14 **educational programs that award a high school diploma or its**
15 **equivalent.**

16 3. The department shall have the authority to
17 promulgate rules pursuant to subsection 2 of section 217.378
18 to establish correctional treatment programs for offenders
19 under age eighteen. Such rules may include:

20 (1) Establishing separate housing units for such
21 offenders; and

22 (2) Providing housing and program space in existing
23 housing units for such offenders that is not accessible to
24 adult offenders.

25 4. The department shall have the authority to
26 determine the number of juvenile offenders participating in
27 any treatment program depending on available
28 appropriations. The department may contract with any
29 private or public entity for the provision of services and
30 facilities for offenders under age eighteen. The department
31 shall apply for and accept available federal, state and
32 local public funds including project demonstration funds as
33 well as private moneys to fund such services and facilities.

34 5. The department shall develop and implement an
35 evaluation process for all juvenile offender programs.

217.690. 1. All releases or paroles shall issue upon
2 order of the parole board, duly adopted.

3 2. Before ordering the parole of any offender, the
4 parole board shall conduct a validated risk and needs
5 assessment and evaluate the case under the rules governing
6 parole that are promulgated by the parole board. The parole
7 board shall then have the offender appear before a hearing

8 panel and shall conduct a personal interview with him or
9 her, unless waived by the offender, or if the guidelines
10 indicate the offender may be paroled without need for an
11 interview. The guidelines and rules shall not allow for the
12 waiver of a hearing if a victim requests a hearing. The
13 appearance or presence may occur by means of a
14 videoconference at the discretion of the parole board. A
15 parole may be ordered for the best interest of society when
16 there is a reasonable probability, based on the risk
17 assessment and indicators of release readiness, that the
18 person can be supervised under parole supervision and
19 successfully reintegrated into the community, not as an
20 award of clemency; it shall not be considered a reduction of
21 sentence or a pardon. Every offender while on parole shall
22 remain in the legal custody of the department but shall be
23 subject to the orders of the parole board.

24 3. The division of probation and parole has
25 discretionary authority to require the payment of a fee, not
26 to exceed sixty dollars per month, from every offender
27 placed under division supervision on probation, parole, or
28 conditional release, to waive all or part of any fee, to
29 sanction offenders for willful nonpayment of fees, and to
30 contract with a private entity for fee collections
31 services. All fees collected shall be deposited in the
32 inmate fund established in section 217.430. Fees collected
33 may be used to pay the costs of contracted collections
34 services. The fees collected may otherwise be used to
35 provide community corrections and intervention services for
36 offenders. Such services include substance abuse assessment
37 and treatment, mental health assessment and treatment,
38 electronic monitoring services, residential facilities
39 services, employment placement services, and other offender

40 community corrections or intervention services designated by
41 the division of probation and parole to assist offenders to
42 successfully complete probation, parole, or conditional
43 release. The division of probation and parole shall adopt
44 rules not inconsistent with law, in accordance with section
45 217.040, with respect to sanctioning offenders and with
46 respect to establishing, waiving, collecting, and using fees.

47 4. The parole board shall adopt rules not inconsistent
48 with law, in accordance with section 217.040, with respect
49 to the eligibility of offenders for parole, the conduct of
50 parole hearings or conditions to be imposed upon paroled
51 offenders. Whenever an order for parole is issued it shall
52 recite the conditions of such parole.

53 5. When considering parole for an offender with
54 consecutive sentences, the minimum term for eligibility for
55 parole shall be calculated by adding the minimum terms for
56 parole eligibility for each of the consecutive sentences,
57 except the minimum term for parole eligibility shall not
58 exceed the minimum term for parole eligibility for an
59 ordinary life sentence.

60 6. Any offender sentenced to a term of imprisonment
61 amounting to fifteen years or more or multiple terms of
62 imprisonment that, taken together, amount to fifteen or more
63 years who was under eighteen years of age at the time of the
64 commission of the offense or offenses may be eligible for
65 parole after serving fifteen years of incarceration,
66 regardless of whether the case is final for the purposes of
67 appeal, and may be eligible for reconsideration hearings in
68 accordance with regulations promulgated by the parole board.

69 7. The provisions of subsection 6 of this section
70 shall not apply to an offender found guilty of [murder in
71 the first degree or] capital murder, **murder in the first**

72 **degree or murder in the second degree, when murder in the**
73 **second degree is committed pursuant to subdivision (1) of**
74 **subsection 1 of section 565.021,** who was under eighteen
75 years of age when the offender committed the offense or
76 offenses who may be found ineligible for parole or whose
77 parole eligibility may be controlled by section 558.047 or
78 565.033.

79 8. Any offender under a sentence for first degree
80 murder who has been denied release on parole after a parole
81 hearing shall not be eligible for another parole hearing
82 until at least three years from the month of the parole
83 denial; however, this subsection shall not prevent a release
84 pursuant to subsection 4 of section 558.011.

85 9. A victim who has requested an opportunity to be
86 heard shall receive notice that the parole board is
87 conducting an assessment of the offender's risk and
88 readiness for release and that the victim's input will be
89 particularly helpful when it pertains to safety concerns and
90 specific protective measures that may be beneficial to the
91 victim should the offender be granted release.

92 10. Parole hearings shall, at a minimum, contain the
93 following procedures:

94 (1) The victim or person representing the victim who
95 attends a hearing may be accompanied by one other person;

96 (2) The victim or person representing the victim who
97 attends a hearing shall have the option of giving testimony
98 in the presence of the inmate or to the hearing panel
99 without the inmate being present;

100 (3) The victim or person representing the victim may
101 call or write the parole board rather than attend the
102 hearing;

103 (4) The victim or person representing the victim may
104 have a personal meeting with a parole board member at the
105 parole board's central office;

106 (5) The judge, prosecuting attorney or circuit
107 attorney and a representative of the local law enforcement
108 agency investigating the crime shall be allowed to attend
109 the hearing or provide information to the hearing panel in
110 regard to the parole consideration; and

111 (6) The parole board shall evaluate information listed
112 in the juvenile sex offender registry pursuant to section
113 211.425, provided the offender is between the ages of
114 seventeen and twenty-one, as it impacts the safety of the
115 community.

116 11. The parole board shall notify any person of the
117 results of a parole eligibility hearing if the person
118 indicates to the parole board a desire to be notified.

119 12. The parole board may, at its discretion, require
120 any offender seeking parole to meet certain conditions
121 during the term of that parole so long as said conditions
122 are not illegal or impossible for the offender to perform.
123 These conditions may include an amount of restitution to the
124 state for the cost of that offender's incarceration.

125 13. Special parole conditions shall be responsive to
126 the assessed risk and needs of the offender or the need for
127 extraordinary supervision, such as electronic monitoring.
128 The parole board shall adopt rules to minimize the
129 conditions placed on low-risk cases, to frontload conditions
130 upon release, and to require the modification and reduction
131 of conditions based on the person's continuing stability in
132 the community. Parole board rules shall permit parole
133 conditions to be modified by parole officers with review and
134 approval by supervisors.

135 14. Nothing contained in this section shall be
136 construed to require the release of an offender on parole
137 nor to reduce the sentence of an offender heretofore
138 committed.

139 15. Beginning January 1, 2001, the parole board shall
140 not order a parole unless the offender has obtained a high
141 school diploma or its equivalent, or unless the parole board
142 is satisfied that the offender, while committed to the
143 custody of the department, has made an honest good-faith
144 effort to obtain a high school diploma or its equivalent;
145 provided that the director may waive this requirement by
146 certifying in writing to the parole board that the offender
147 has actively participated in mandatory education programs or
148 is academically unable to obtain a high school diploma or
149 its equivalent.

150 16. Any rule or portion of a rule, as that term is
151 defined in section 536.010, that is created under the
152 authority delegated in this section shall become effective
153 only if it complies with and is subject to all of the
154 provisions of chapter 536 and, if applicable, section
155 536.028. This section and chapter 536 are nonseverable and
156 if any of the powers vested with the general assembly
157 pursuant to chapter 536 to review, to delay the effective
158 date, or to disapprove and annul a rule are subsequently
159 held unconstitutional, then the grant of rulemaking
160 authority and any rule proposed or adopted after August 28,
161 2005, shall be invalid and void.

 Section B. Because immediate action is necessary to
2 further equip and enhance our criminal justice system to
3 fight violent crime in Missouri and protect our citizens and
4 residents due to the recent unprecedented wave of violent
5 crime across our nation and state, the repeal and

6 reenactment of sections 211.071 and 217.345 and the
7 enactment of section 211.600 of this act is deemed necessary
8 for the immediate preservation of the public health,
9 welfare, peace, and safety, and is hereby declared to be an
10 emergency act within the meaning of the constitution, and
11 the repeal and reenactment of sections 211.071 and 217.345
12 and the enactment of section 211.600 of this act shall be in
13 full force and effect upon its passage and approval.

✓