

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1550
94TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary February 25, 2008 with recommendation that House Committee Substitute for House Bill No. 1550 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4041L.03C

AN ACT

To repeal sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, and 211.161, RSMo, and to enact in lieu thereof ten new sections relating to juvenile courts, with penalty provisions.

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

Section A. Sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071,
2 211.091, 211.101, and 211.161, RSMo, are repealed and ten new sections enacted in lieu thereof,
3 to be known as sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071,
4 211.091, 211.101, and 211.161, to read as follows:

167.031. 1. Every parent, guardian or other person in this state having charge, control
2 or custody of a child not enrolled in a public, private, parochial, parish school or full-time
3 equivalent attendance in a combination of such schools and between the ages of seven years and
4 the compulsory attendance age for the district is responsible for enrolling the child in a program
5 of academic instruction which complies with subsection 2 of this section. Any parent, guardian
6 or other person who enrolls a child between the ages of five and seven years in a public school
7 program of academic instruction shall cause such child to attend the academic program on a
8 regular basis, according to this section. Nonattendance by such child shall cause such parent,
9 guardian or other responsible person to be in violation of the provisions of section 167.061,
10 except as provided by this section. A parent, guardian or other person in this state having charge,
11 control, or custody of a child between the ages of seven years of age and the compulsory

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.

12 attendance age for the district shall cause the child to attend regularly some public, private,
13 parochial, parish, home school or a combination of such schools not less than the entire school
14 term of the school which the child attends; except that:

15 (1) A child who, to the satisfaction of the superintendent of public schools of the district
16 in which he resides, or if there is no superintendent then the chief school officer, is determined
17 to be mentally or physically incapacitated may be excused from attendance at school for the full
18 time required, or any part thereof;

19 (2) A child between fourteen years of age and the compulsory attendance age for the
20 district may be excused from attendance at school for the full time required, or any part thereof,
21 by the superintendent of public schools of the district, or if there is none then by a court of
22 competent jurisdiction, when legal employment has been obtained by the child and found to be
23 desirable, and after the parents or guardian of the child have been advised of the pending action;
24 or

25 (3) A child between five and seven years of age shall be excused from attendance at
26 school if a parent, guardian or other person having charge, control or custody of the child makes
27 a written request that the child be dropped from the school's rolls.

28 2. (1) As used in sections 167.031 to 167.071, a "home school" is a school, whether
29 incorporated or unincorporated, that:

30 (a) Has as its primary purpose the provision of private or religious-based instruction;

31 (b) Enrolls pupils between the ages of seven years and the compulsory attendance age
32 for the district, of which no more than four are unrelated by affinity or consanguinity in the third
33 degree; and

34 (c) Does not charge or receive consideration in the form of tuition, fees, or other
35 remuneration in a genuine and fair exchange for provision of instruction.

36 (2) As evidence that a child is receiving regular instruction, the parent shall, except as
37 otherwise provided in this subsection:

38 (a) Maintain the following records:

39 a. A plan book, diary, or other written record indicating subjects taught and activities
40 engaged in; and

41 b. A portfolio of samples of the child's academic work; and

42 c. A record of evaluations of the child's academic progress; or

43 d. Other written, or credible evidence equivalent to subparagraphs a., b. and c.; and

44 (b) Offer at least one thousand hours of instruction, at least six hundred hours of which
45 will be in reading, language arts, mathematics, social studies and science or academic courses
46 that are related to the aforementioned subject areas and consonant with the pupil's age and

47 ability. At least four hundred of the six hundred hours shall occur at the regular home school
48 location.

49 (3) The requirements of subdivision (2) of this subsection shall not apply to any pupil
50 above the age of sixteen years.

51 3. Nothing in this section shall require a private, parochial, parish or home school to
52 include in its curriculum any concept, topic, or practice in conflict with the school's religious
53 doctrines or to exclude from its curriculum any concept, topic, or practice consistent with the
54 school's religious doctrines. Any other provision of the law to the contrary notwithstanding, all
55 departments or agencies of the state of Missouri shall be prohibited from dictating through rule,
56 regulation or other device any statewide curriculum for private, parochial, parish or home
57 schools.

58 4. A school year begins on the first day of July and ends on the thirtieth day of June
59 following.

60 5. The production by a parent of a daily log showing that a home school has a course of
61 instruction which satisfies the requirements of this section or, in the case of a pupil over the age
62 of sixteen years who attended a metropolitan school district the previous year, a written
63 statement that the pupil is attending home school in compliance with this section shall be a
64 defense to any prosecution under this section and to any charge or action for educational neglect
65 brought pursuant to chapter 210, RSMo.

66 6. As used in sections 167.031 to 167.051, the term "compulsory attendance age for the
67 district" shall mean:

68 (1) Seventeen years of age for any metropolitan school district for which the school
69 board adopts a resolution to establish such compulsory attendance age; provided that such
70 resolution shall take effect no earlier than the school year next following the school year during
71 which the resolution is adopted; and

72 (2) Sixteen years of age in all other cases.

73

74 The school board of a metropolitan school district for which the compulsory attendance age is
75 seventeen years may adopt a resolution to lower the compulsory attendance age to sixteen years;
76 provided that such resolution shall take effect no earlier than the school year next following the
77 school year during which the resolution is adopted.

78 [7. The provisions of this section shall apply to any parent, guardian, or other person in
79 this state having charge, control, or custody of a child between the ages of fifteen and eighteen
80 if such child has not received a high school diploma or its equivalent and a court order has been
81 issued as to such child under section 211.034, RSMo.]

211.021. 1. As used in this chapter, unless the context clearly requires otherwise:

2 (1) "Adult" means a person seventeen years of age or older **except for seventeen year**
3 **old children as defined in this section;**

4 (2) "Child" means [a] **any** person under seventeen years of age **and shall mean, in**
5 **addition, any person over seventeen but not yet eighteen years of age alleged to have**
6 **committed a status offense;**

7 (3) "Juvenile court" means the juvenile division or divisions of the circuit court of the
8 county, or judges while hearing juvenile cases assigned to them;

9 (4) "Legal custody" means the right to the care, custody and control of a child and the
10 duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline
11 of a child. Legal custody may be taken from a parent only by court action and if the legal
12 custody is taken from a parent without termination of parental rights, the parent's duty to provide
13 support continues even though the person having legal custody may provide the necessities of
14 daily living;

15 (5) "Parent" means either a natural parent or a parent by adoption and if the child is
16 illegitimate, "parent" means the mother;

17 (6) "Shelter care" means the temporary care of juveniles in physically unrestricting
18 facilities pending final court disposition. These facilities may include:

19 (a) "Foster home", the private home of foster parents providing twenty-four-hour care
20 to one to three children unrelated to the foster parents by blood, marriage or adoption;

21 (b) "Group foster home", the private home of foster parents providing twenty-four-hour
22 care to no more than six children unrelated to the foster parents by blood, marriage or adoption;

23 (c) "Group home", a child care facility which approximates a family setting, provides
24 access to community activities and resources, and provides care to no more than twelve children;

25 (7) "Status offense", **any offense as described in subdivision (2) of subsection 1 of**
26 **section 211.031.**

27 **2. The provisions of this section shall not take effect until such time as spending by**
28 **the state for juvenile officers and offices, no matter the use to which such funds may be put**
29 **by those officers and offices, shall exceed by three million eight hundred thousand dollars**
30 **the amount spent by the state for such officers and offices in fiscal year 2007.**

211.033. 1. No person under the age of seventeen 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 judge
4 may request the juvenile court to order the commitment of a person under the age of seventeen
5 to a juvenile detention facility.

6 **2. Nothing in this section shall be construed as creating any civil or criminal**
7 **liability for any law enforcement officer, juvenile officer, school personnel, or court**

8 personnel for any action taken or failure to take any action involving a minor child who
9 remains under the jurisdiction of the juvenile court under this section if such action or
10 failure to take action is based on a good faith belief by such officer or personnel that the
11 minor child is not under the jurisdiction of the juvenile court.

12 3. The provisions of this section shall not take effect until such time as the
13 provisions of section 211.021 shall take effect in accordance with subsection 2 of section
14 211.021.

211.034. 1. Any parent, legal guardian, or other person having legal custody of a minor
2 child may, at any time after the minor child attains fifteen years of age and before the minor child
3 attains eighteen years of age, petition the circuit court for the county where the minor child and
4 parent, legal guardian, or other person having legal custody of the minor child reside to extend
5 the jurisdiction of the juvenile court until the minor child reaches the age of eighteen years.

6 2. The petition shall be accompanied by verified proof of service on the minor child and
7 certified copies of documents demonstrating that the petitioner is the parent, legal guardian, or
8 other legal custodian of the minor child. If the petitioner is not the natural parent of the minor
9 child, the petition shall be accompanied by:

10 (1) An affidavit from at least one of the child's natural parents consenting to the granting
11 of the petition; or

12 (2) An affidavit from the petitioner stating that the natural parents:

13 (a) Are deceased;

14 (b) Have been declared legally incompetent;

15 (c) Have had their parental rights as to the minor child terminated by a court of
16 competent jurisdiction;

17 (d) Have voluntarily surrendered their parental rights as to the minor child;

18 (e) Have abandoned the minor child;

19 (f) Are unknown; or

20 (g) Are otherwise unavailable, in which case, the affidavit shall state the reasons why
21 the natural parents are unavailable.

22

23 In all cases where any parent, legal guardian, or other person having legal custody of a minor
24 child petitions the court to extend the jurisdiction of the juvenile court until the minor child's
25 eighteenth birthday, the court shall appoint an attorney to represent the minor child. An
26 individual filing the petition shall pay the attorney fees of the minor child.

27 3. Upon the filing of a petition under this section and a determination by the court in
28 favor of the petitioner, the circuit court shall issue an order declaring that the minor child shall
29 remain under the jurisdiction of the juvenile court for all purposes under state law until the minor

30 child reaches eighteen years of age; except that, for purposes of criminal law and procedure,
31 including arrest, prosecution, trial, and punishment, if the minor is certified as an adult, the minor
32 shall remain a certified adult despite the issuance of a court order under this section. Such minor
33 child shall be subject to the compulsory school attendance requirements of section 167.031,
34 RSMo, until the minor child receives a high school diploma or its equivalent, or reaches eighteen
35 years of age. The court order shall be filed with the circuit clerk for the county where the
36 petitioner resides.

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

43 **5. The provisions of this section shall expire when the provisions enacted by**
44 **subsection 2 of section 211.021 take effect as enacted by house committee substitute for**
45 **house bill no. 1550, second regular session of the ninety-fourth general assembly.**

211.041. When jurisdiction over the person of a child has been acquired by the juvenile
2 court under the provisions of this chapter in proceedings coming within the applicable provisions
3 of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter
4 until he **or she** has attained the age of twenty-one years, except in cases where he **or she** is
5 committed to and received by the division of youth services, unless jurisdiction has been returned
6 to the committing court by provisions of chapter 219, RSMo, through requests of the court to the
7 division of youth services and except in any case where he **or she** has not paid an assessment
8 imposed in accordance with section 211.181 or in cases where the judgment for restitution
9 entered in accordance with section 211.185 has not been satisfied. Every child over whose
10 person the juvenile court retains jurisdiction shall be prosecuted under the general law for any
11 violation of a state law or of a municipal ordinance which he **or she** commits after he **or she**
12 becomes seventeen years of age. The juvenile court shall have no jurisdiction with respect to any
13 such violation and, so long as it retains jurisdiction of the child, shall not exercise its jurisdiction
14 in such a manner as to conflict with any other court's jurisdiction as to any such violation.

211.061. 1. When a child is taken into custody with or without warrant for an offense,
2 the child, together with any information concerning [him] **the child** and the personal property
3 found in [his] **the child's** possession, shall be taken immediately and directly before the juvenile
4 court or delivered to the juvenile officer or person acting for him.

5 2. If any person is taken before a circuit or associate circuit judge not assigned to
6 juvenile court or a municipal judge, and it is then, or at any time thereafter, ascertained that he

7 **or she** was under the age of seventeen years at the time he **or she** is alleged to have committed
8 the offense, or that he **or she** is subject to the jurisdiction of the juvenile court as provided by this
9 chapter, it is the duty of the judge forthwith to transfer the case or refer the matter to the juvenile
10 court, and direct the delivery of such person, together with information concerning him **or her**
11 and the personal property found in his **or her** possession, to the juvenile officer or person acting
12 as such.

13 3. When the juvenile court is informed that a child is in detention it shall examine the
14 reasons therefor and shall immediately:

15 (1) Order the child released; or

16 (2) Order the child continued in detention until a detention hearing is held. An order to
17 continue the child in detention shall only be entered upon the filing of a petition or motion to
18 modify and a determination by the court that probable cause exists to believe that the child has
19 committed acts specified in the petition or motion that bring the child within the jurisdiction of
20 the court under subdivision (2) or (3) of subsection 1 of section 211.031.

21 4. A juvenile shall not remain in detention for a period greater than twenty-four hours
22 unless the court orders a detention hearing. If such hearing is not held within three days,
23 excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention
24 unless the court for good cause orders the hearing continued. The detention hearing shall be held
25 within the judicial circuit at a date, time and place convenient to the court. Notice of the date,
26 time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile
27 and his **or her** custodian in person, by telephone, or by such other expeditious method as is
28 available.

211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen
2 has committed an offense which would be considered a felony if committed by an adult, the court
3 may, upon its own motion or upon motion by the juvenile officer, the child or the child's
4 custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be
5 transferred to the court of general jurisdiction and prosecuted under the general law; except that
6 if a petition alleges that any child has committed an offense which would be considered first
7 degree murder under section 565.020, RSMo, second degree murder under section 565.021,
8 RSMo, first degree assault under section 565.050, RSMo, forcible rape under section 566.030,
9 RSMo, forcible sodomy under section 566.060, RSMo, first degree robbery under section
10 569.020, RSMo, or distribution of drugs under section 195.211, RSMo, or has committed two
11 or more prior unrelated offenses which would be felonies if committed by an adult, the court
12 shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a
13 court of general jurisdiction for prosecution under the general law.

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

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

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

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

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

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

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

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

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

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

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

54 (7) The age of the child;

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

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

58 (10) Racial disparity in certification.

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

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

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

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

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

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

68 9. When a petition has been dismissed thereby permitting a child to be prosecuted under
69 the general law, the jurisdiction of the juvenile court over that child is forever terminated, except
70 as provided in subsection 10 of this section, for an act that would be a violation of a state law or
71 municipal ordinance.

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

77 11. If the court does not dismiss the petition to permit the child to be prosecuted under
78 the general law, it shall set a date for the hearing upon the petition as provided in section
79 211.171.

211.091. 1. The petition shall be entitled "In the interest of, a child under
2 seventeen years of age"[. If a petition is filed pursuant to the provisions of subdivision (1) of
3 subsection 1 of section 211.031, the petition shall be entitled] **or** "In the interest of, a
4 child [under] seventeen years of age" [or "In the interest of, a person seventeen years
5 of age"] **as appropriate to the subsection of section 211.031 that provides the basis for the**
6 **filing of the petition.**

7 2. The petition shall set forth plainly:

8 (1) The facts which bring the child or person seventeen years of age within the
9 jurisdiction of the court;

10 (2) The full name, birth date, and residence of the child [or person seventeen years of
11 age];

12 (3) The names and residence of his **or her** parents, if living;

13 (4) The name and residence of his **or her** legal guardian if there be one, of the person
14 having custody of the child [or person seventeen years of age] or of the nearest known relative
15 if no parent or guardian can be found; and

16 (5) Any other pertinent data or information.

17 3. If any facts required in subsection 2 of this section are not known by the petitioner,
18 the petition shall so state.

19 4. Prior to the voluntary dismissal of a petition filed under this section, the juvenile
20 officer shall assess the impact of such dismissal on the best interests of the child, and shall take
21 all actions practicable to minimize any negative impact.

211.101. 1. After a petition has been filed, unless the parties appear voluntarily, the
2 juvenile court shall issue a summons in the name of the state of Missouri requiring the person
3 who has custody of the child [or person seventeen years of age] to appear personally and, unless
4 the court orders otherwise, to bring the child [or person seventeen years of age] before the court,
5 at the time and place stated.

6 2. If the person so summoned is other than a parent or guardian of the child [or person
7 seventeen years of age], then the parent or guardian or both shall also be notified of the pendency
8 of the case and of the time and place appointed.

9 3. If it appears that the child [or person seventeen years of age] is in such condition or
10 surroundings that his **or her** welfare requires that his **or her** custody be immediately assumed
11 by the court, the judge may order, by endorsement upon the summons, the officer serving it to
12 take the child [or person seventeen years of age] into custody at once.

13 4. Subpoena may be issued requiring the appearance of any other person whose presence,
14 in the opinion of the judge, is necessary.

211.161. 1. The court may cause any child [or person seventeen years of age] within its
2 jurisdiction to be examined by a physician, psychiatrist or psychologist appointed by the court
3 in order that the condition of the child [or person seventeen years of age] may be given
4 consideration in the disposition of his case. The expenses of the examination when approved
5 by the court shall be paid by the county, except that the county shall not be liable for the costs
6 of examinations conducted by the department of mental health either directly or through contract.

7 2. The services of a state, county or municipally maintained hospital, institution, or
8 psychiatric or health clinic may be used for the purpose of this examination and treatment.

9 3. A county may establish medical, psychiatric and other facilities, upon request of the
10 juvenile court, to provide proper services for the court in the diagnosis and treatment of children
11 [or persons seventeen years of age] coming before it and these facilities shall be under the
12 administration and control of the juvenile court. The juvenile court may appoint and fix the
13 compensation of such professional and other personnel as it deems necessary to provide the court
14 proper diagnostic, clinical and treatment services for children [or persons seventeen years of age]
15 under its jurisdiction.

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