

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 268, Page 1, Section A, Line 2, by inserting immediately after said section
2 and line the following:

3
4 "211.033. 1. No person under the age of seventeen years, except those transferred to the
5 court of general jurisdiction under the provisions of section 211.071, who has been sentenced to
6 serve an adult criminal sentence or those placed by the court in one of the department of corrections'
7 one-hundred-twenty-day programs under subsection 4 of section 559.036, or as otherwise provided
8 in subsection 13 of section 211.071, shall be detained in a jail or other adult detention facility as that
9 term is defined in section 211.151. A traffic court judge may request the juvenile court to order the
10 commitment of a person under the age of seventeen to a juvenile detention facility.

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

17 3. The amendments to subsection 2 of this section, as provided for in this act, shall not take
18 effect until such time as the provisions of section 211.021 shall take effect in accordance with
19 subsection 2 of section 211.021.

20 211.071. 1. If a petition alleges that a child between the ages of twelve and seventeen has
21 committed an offense which would be considered a felony if committed by an adult, the court may,
22 upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order
23 a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the
24 court of general jurisdiction and prosecuted under the general law; except that if a petition alleges
25 that any child has committed an offense which would be considered first degree murder under
26 section 565.020, second degree murder under section 565.021, first degree assault under section
27 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first
28 degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August
29 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section
30 569.020, or distribution of drugs under section 195.211, or has committed two or more prior
31 unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing,
32 and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction
33 for prosecution under the general law.

34 2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly committed
35 by any person between seventeen and twenty-one years of age over whom the juvenile court has
36 retained continuing jurisdiction shall automatically terminate and that offense shall be dealt with in

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1 the court of general jurisdiction as provided in section 211.041.

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

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

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

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

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

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

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

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

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

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

38 (7) The age of the child;

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

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

42 (10) Racial disparity in certification.

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

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

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

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

48 and

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

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

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

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

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

12. Any child certified under this section on or after January 1, 2020, and held in secure custody prior to the disposition of his or her case shall be detained in an alternative detention facility that adheres to standards set forth by the workgroup established under subsection 5 of section 211.151, except as provided in subsection 13 of this section. Upon turning seventeen years of age, any certified child held in an alternative detention facility shall be transferred to a jail or other adult detention facility, as the term "jail or other adult detention facility" is defined under section 211.151.

13. The court in which the criminal matter is pending may order a certified child transferred from an alternative detention facility as defined in subdivision (3) of subsection 4 of section 211.151 to a jail or other adult detention facility pending disposition of the criminal case upon a petition by the director of the alternative detention facility and a showing of good cause.

211.151. 1. Pending disposition of a case, the juvenile court may order in writing the detention of a child in one of the following places:

(1) A juvenile detention facility provided by the county;

(2) A shelter care facility, subject to the supervision of the court;

(3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;

(4) Such other suitable custody as the court may direct.

2. A child, including a child transferred to the court of general jurisdiction on or after January 1, 2020, under the provisions of section 211.071, shall not be detained in a jail or other adult detention facility pending disposition of a case, except as provided in subsection 13 of section 211.071.

3. Law enforcement officers shall take fingerprints and photographs of a child taken into custody for offenses that would be considered felonies if committed by adults, without the approval of the juvenile judge. A child taken into custody as a victim of abuse or neglect or as a status offender pursuant to subdivision (1) or (2) of subsection 1 of section 211.031 or for an offense that would be considered a misdemeanor if committed by an adult may be fingerprinted or photographed with the consent of the juvenile judge. Records of a child who has been fingerprinted and photographed after being taken into custody shall be closed records as provided under section 610.100 if a petition has not been filed within thirty days of the date that the child was taken into custody; and if a petition for the child has not been filed within one year of the date the child was taken into custody, any records relating to the child concerning the alleged offense may be expunged under the procedures in sections 610.122 to 610.126.

4. (1) As used in this section, the term "alternative detention facility" means any secure facility administered by state, county, or local law enforcement and correctional agencies, whose

1 purpose is to detain a child certified as an adult under section 211.071 who has been charged with
 2 violating a criminal law pending trial and which adheres to standards of operation as defined by the
 3 workgroup established in subsection 5 of this section.

4 (2) As used in this section, the term "jail or other adult detention facility" means any locked
 5 facility administered by state, county or local law enforcement and correctional agencies, a primary
 6 purpose of which is to detain adults charged with violating a criminal law pending trial, including
 7 facilities of a temporary nature which do not hold persons after they have been formally charged, or
 8 to confine adults convicted of an offense. The term "jail or other adult detention facility" does not
 9 include a juvenile detention facility.

10 [(2)] (3) As used in this section, the term "juvenile detention facility" means a place,
 11 institution, building or part thereof, set of buildings or area, whether or not enclosing a building or
 12 set of buildings, which has been designated by the juvenile court as a place of detention for
 13 juveniles and which is operated, administered and staffed separately and independently of a jail or
 14 other detention facility for adults and used exclusively for the lawful custody and treatment of
 15 juveniles. The facility may be owned or operated by public or private agencies. A juvenile
 16 detention facility may be located in the same building or grounds as a jail or other adult detention
 17 facility if there is spatial separation between the facilities which prevents haphazard or accidental
 18 contact between juvenile and adult detainees; there is separation between juvenile and adult program
 19 activities; and there are separate juvenile and adult staff other than specialized support staff who
 20 have infrequent contact with detainees.

21 5. The division of youth services in collaboration with the office of state courts
 22 administrator shall establish the "Certified Youth Jail Removal Workgroup":

23 (1) The purpose of the workgroup shall be to develop by January 1, 2020, a formal plan for
 24 removal of certified children under seventeen years of age from adult jail pending trial and
 25 sentencing. The workgroup shall consist of, but not be limited to, the following members: two
 26 members from the division of youth services appointed by the director of the division of youth
 27 services; two members from the office of state courts administrator, one juvenile officer from an
 28 urban jurisdiction, one juvenile officer from a rural jurisdiction, one superintendent of a juvenile
 29 detention center from an urban jurisdiction, one superintendent of a juvenile detention center from a
 30 rural jurisdiction, and one juvenile officer from a jurisdiction having no juvenile detention facility,
 31 all of whom are appointed by the office of state courts administrator; the director of the department
 32 of corrections or his or her designee; the executive director of the Missouri Association of Counties
 33 or his or her designee; the executive director of the Missouri office of prosecution services or his or
 34 her designee; the executive director of the Missouri Sheriffs' Association or his or her designee; the
 35 commissioner of education or his or her designee; the director of the department of mental health or
 36 his or her designee; the director of the Missouri state public defender or his or her designee; the
 37 executive director of the Missouri Juvenile Justice Association or his or her designee; the president
 38 of Families and Friends Organizing for Reform of Juvenile Justice or his or her designee; one
 39 juvenile detention center chaplain or a member of the faith-based community appointed by the
 40 president pro tempore of the senate; one young adult who was incarcerated as a child appointed by
 41 the speaker of the house of representatives; two members from the Missouri house of
 42 representatives appointed by the speaker of the house of representatives; and two members from the
 43 Missouri senate appointed by the president pro tempore of the senate;

44 (2) By January 1, 2020, the workgroup shall make recommendations to the general
 45 assembly regarding alternative detention facilities for secure custody of a child who has been
 46 certified under section 211.071 pending disposition of his or her case as well as standards for
 47 operating such alternative detention facilities. The recommendations submitted to the general
 48 assembly shall address the following:

- 1 (a) The appropriate facility description, including physical structure and location;
2 (b) The appropriate funding mechanism for implementation and ongoing financial support
3 of alternative detention facilities in compliance with the provisions of article X, section 16 of the
4 Constitution of Missouri;
5 (c) Programming and services elements, including education, mental health services,
6 transition planning, and youth development of incarcerated certified youth;
7 (d) Operational and administrative elements, including transportation to court proceedings
8 and training requirements for facility staff;
9 (e) Defining what is good cause to return the child to an adult jail prior to sentencing under
10 subsection 13 of section 211.071;
11 (f) Funding of programs and services that coincides with Missouri's fiscal appropriation
12 calendar; and
13 (g) Additional recommendations that are within the scope and purpose of the workgroup;
14 (3) The workgroup shall automatically terminate on September 1, 2020, unless previously
15 reauthorized by the general assembly. Members of the workgroup shall serve without
16 compensation.
- 17 211.436. 1. If a court of jurisdiction in juvenile cases has a local court rule or otherwise
18 mandates that a juvenile shall be restrained during court proceedings using either handcuffs, chains,
19 irons, or a straitjacket, the juvenile's attorney shall have the right to be heard on the issue of the
20 necessity of restraints on the juvenile and request that the restraints on the juvenile not be used. The
21 juvenile's attorney may present evidence that the juvenile is not a flight risk, poses no safety risk to
22 himself or herself or others, or has no history of disruptive courtroom behavior.
- 23 2. If the court orders that restraints shall be used on the juvenile, the court shall make
24 findings of fact in support of such use.
- 25 217.152. 1. This section shall be known and may be cited as the "Pregnant Offender
26 Transportation, Evaluation, and Correctional Treatment Act", or the "ProTECT Act".
- 27 2. For purposes of this section, "extraordinary circumstances" exist when a chief
28 administrative officer or his or her designee or a physician providing treatment in a hospital makes a
29 determination that restraints are necessary to prevent a pregnant or postpartum offender from
30 escaping or seriously injuring herself, her unborn or newborn child, medical or correctional
31 personnel, or others and that such restraints are in accordance with state or federal law or
32 regulations pursuant to such law. A chief administrative officer or his or her designee or a physician
33 providing treatment in a hospital who makes such a determination in good faith shall not be held
34 liable. For purposes of this section, "postpartum" is the period of recovery immediately following
35 childbirth, which is six weeks for a vaginal birth or eight weeks for a cesarean birth, or longer if so
36 determined by a physician or nurse.
- 37 3. The department shall establish, by rule under section 217.040, policies and procedures for
38 the transportation, evaluation, and treatment of pregnant and postpartum offenders consistent with
39 the statutes of this state. The department shall consult with physicians, nursing, correctional, and
40 other professional organizations in establishing such rules. Such rules shall include, but need not be
41 limited to:
- 42 (1) Any time restraints are used on a pregnant offender during the third trimester or on a
43 postpartum offender for forty-eight hours post-delivery, the restraints shall be the least restrictive
44 available and the most reasonable under the circumstances. If wrist restraints are used on a pregnant
45 offender, they shall be applied in the front so she is able to protect herself and her unborn child in
46 the event of a forward fall. In no case shall leg, ankle, or waist restraints be used during labor and
47 delivery, or during immediate post-delivery recuperation;
48 (2) Except in extraordinary circumstances, no restraints of any kind shall be used on

1 offenders during the third trimester of pregnancy or for forty-eight hours post-delivery, whether
 2 during transportation to and from visits to health care providers outside of the correctional center,
 3 court proceedings, or other places, or during labor and delivery;

4 (3) Pregnant and postpartum offenders shall be transported to and from visits to health care
 5 providers outside of the correctional center, court proceedings, or other places in vehicles with
 6 seatbelts;

7 (4) If a doctor, nurse, or other health care provider treating a pregnant or postpartum
 8 offender in a hospital or health care facility requests that restraints not be used in such hospital or
 9 health care facility, the corrections officer accompanying the pregnant or postpartum offender shall
 10 immediately remove all restraints, unless there are extraordinary circumstances as determined by the
 11 physician providing treatment in such hospital or health care facility;

12 (5) Upon intake, a pregnant or postpartum offender shall be evaluated and treated for:

13 (a) Overall maternal health and, if necessary, provided dietary supplements for pregnant and
 14 breast-feeding offenders. Readily available and regularly scheduled obstetric care, beginning in
 15 early pregnancy and continuing through the postpartum period, shall be provided. The department
 16 shall, with the assistance of the department of social services and consent of the pregnant offender,
 17 consider enrolling an unborn child in the show-me healthy babies program under section 208.662;

18 (b) Substance abuse, and provided treatment, including, if necessary, provided opioid-
 19 assisted therapy for offenders who are opioid-dependent;

20 (c) Infection with human immunodeficiency virus (HIV), and if HIV positive, provided
 21 treatment for maternal health and to prevent perinatal HIV transmission; and

22 (d) Depression or mental stress during pregnancy and for postpartum depression after
 23 delivery, and provided treatment as needed; and

24 (6) Required activities with a high risk of falling shall be avoided. Pregnant and postpartum
 25 offenders shall be given a bottom bunk during pregnancy and the postpartum period.

26 4. In the event a chief administrative officer or his or her designee determines that
 27 extraordinary circumstances exist and restraints are used, the chief administrative officer or his or
 28 her designee shall fully document in writing within seven days of the incident the reasons he or she
 29 determined such extraordinary circumstances existed, the kind of restraints used, and the reasons
 30 those restraints were considered the least restrictive available and the most reasonable under the
 31 circumstances.

32 5. The sentencing and corrections oversight commission established under section 217.147,
 33 and the advisory committee established under section 217.015, shall conduct biannual reviews of
 34 every report written on the use of restraints on a pregnant or postpartum offender in accordance with
 35 subsection 4 of this section to determine compliance with this section. The written reports shall be
 36 kept on file by the department for five years.

37 6. The chief administrative officer of each correctional center that houses pregnant and
 38 postpartum offenders shall:

39 (1) Ensure the employees of the correctional center who come in contact with pregnant or
 40 postpartum offenders are provided with training, which may include online training, on the
 41 provisions of this section; and

42 (2) Inform female offenders of the policies and procedures developed in accordance with
 43 this section upon admission to the correctional center, including the policies and procedures in the
 44 offender handbook, and post the policies and procedures in locations in the correctional center
 45 where such notices are commonly posted and will be seen by female offenders, including common
 46 housing areas and health care facilities."; and

47
 48 Further amend said bill, Page 2, Section 217.243, Line 23, by inserting immediately after said

1 section and line the following:
2

3 "221.044. No person under the age of seventeen years, except those transferred to the court
4 of general jurisdiction under the provisions of section 211.071, who has been sentenced to serve an
5 adult criminal sentence or those placed by the court in one of the department of corrections' one-
6 hundred-twenty-day programs under subsection 4 of section 559.036, or as otherwise provided in
7 subsection 13 of section 211.071, shall be detained in a jail or other adult detention facility as that
8 term is defined in section 211.151. A traffic court judge may request the juvenile court to order the
9 commitment of a person under the age of seventeen to a juvenile detention facility.

10 221.240. When any person shall be committed to jail or alternative detention facility as
11 defined in subdivision (3) of subsection 4 of section 211.151, in conformity to section 221.230, it
12 shall be the duty of the sheriff of the county in which said jail or alternative detention facility is
13 situated to take, or cause to be taken, the person thus committed, together with the day and cause of
14 his or her capture and detention, before the circuit court of the county appointed for the trial of such
15 prisoner, at such time as the cause is set for trial and at such other times as the court shall direct.

16 Section B. The repeal and reenactment of sections 211.033, 221.044, and 221.240 of this act
17 shall become effective January 1, 2020."; and
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19 Further amend said bill by amending the title, enacting clause, and intersectional references
20 accordingly.