

SECOND REGULAR SESSION

# HOUSE BILL NO. 2881

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LOVASCO.

5962H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 211.031, 211.071, 211.321, and 571.070, RSMo, and to enact in lieu thereof five new sections relating to juvenile offenses, with penalty provisions.

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

Section A. Sections 211.031, 211.071, 211.321, and 571.070, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 211.031, 211.071, 211.321,  
3 571.070, and 571.077, to read as follows:

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

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

6 (a) The parents, or other persons legally responsible for the care and support of the  
7 child, neglect or refuse to provide proper support, education which is required by law,  
8 medical, surgical or other care necessary for his or her well-being; except that reliance by a  
9 parent, guardian or custodian upon remedial treatment other than medical or surgical  
10 treatment for a child shall not be construed as neglect when the treatment is recognized or  
11 permitted pursuant to the laws of this state;

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

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

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.

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

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

21 (a) The child while subject to compulsory school attendance is repeatedly and without  
22 justification absent from school;

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

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

27 (d) The behavior or associations of the child are otherwise injurious to his or her  
28 welfare or to the welfare of others; or

29 (e) The child is charged with an offense not classified as criminal, or with an offense  
30 applicable only to children; except that, the juvenile court shall not have jurisdiction over any  
31 child fifteen years of age who is alleged to have violated a state or municipal traffic ordinance  
32 or regulation, the violation of which does not constitute a felony, or any child who is alleged  
33 to have violated a state or municipal ordinance or regulation prohibiting possession or use of  
34 any tobacco product;

35 (3) Involving any child who is alleged to have violated a state law or municipal  
36 ordinance, or any person who is alleged to have violated a state law or municipal ordinance  
37 prior to attaining the age of eighteen years, in which cases jurisdiction may be taken by the  
38 court of the circuit in which the child or person resides or may be found or in which the  
39 violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction  
40 over any child fifteen years of age who is alleged to have violated a state or municipal traffic  
41 ordinance or regulation, the violation of which does not constitute a felony, and except that  
42 the juvenile court:

43 (a) Shall have concurrent jurisdiction with the municipal court over any child who is  
44 alleged to have violated a municipal curfew ordinance~~[-, and except that the juvenile court];~~

45 (b) Shall have concurrent jurisdiction with the circuit court on any child who is  
46 alleged to have violated a state or municipal ordinance or regulation prohibiting possession or  
47 use of any tobacco product; **and**

48 (c) **Shall have concurrent jurisdiction with the circuit court on any child who is**  
49 **alleged to have committed an offense that would be classified as a class B felony or**  
50 **higher if committed by an adult;**

51 (4) For the adoption of a person;

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

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

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

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

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

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

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

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

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

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

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

84 4. When an investigation by a juvenile officer pursuant to this section reveals that the  
85 only basis for action involves an alleged violation of section 167.031 involving a child who  
86 alleges to be home schooled, the juvenile officer shall contact a parent or parents of such child  
87 to verify that the child is being home schooled and not in violation of section 167.031 before  
88 making a report of such a violation. Any report of a violation of section 167.031 made by a

89 juvenile officer regarding a child who is being home schooled shall be made to the  
90 prosecuting attorney of the county where the child legally resides.

91 5. The disability or disease of a parent shall not constitute a basis for a determination  
92 that a child is a child in need of care or for the removal of custody of a child from the parent  
93 without a specific showing that there is a causal relation between the disability or disease and  
94 harm to the child.

211.071. 1. If a petition alleges that a child between the ages of twelve and eighteen  
2 has committed an offense which would be considered a felony if committed by an adult, the  
3 court 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  
5 be transferred to the court of general jurisdiction and prosecuted under the general law; except  
6 that if a petition alleges that any child has committed **the offense of unlawful possession of a**  
7 **firearm under subdivision (3) of subsection 1 of section 571.070** or an offense which  
8 would be considered first degree murder under section 565.020, second degree murder under  
9 section 565.021, first degree assault under section 565.050, forcible rape under section  
10 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030,  
11 forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the  
12 first degree under section 566.060, first degree robbery under section 569.020 as it existed  
13 prior to January 1, 2017, ~~[or]~~ robbery in the first degree under section 570.023, distribution of  
14 drugs under section 195.211 as it existed prior to January 1, 2017, or the manufacturing of a  
15 controlled substance under section 579.055, **if committed by an adult, or has committed an**  
16 **offense in which the child used a firearm in the commission of the offense and such**  
17 **offense would be considered a felony offense if committed by an adult**, or has committed  
18 two or more prior unrelated offenses which would be felonies if committed by an adult, the  
19 court shall order a hearing, and may in its discretion, dismiss the petition and transfer the  
20 child to a court of general jurisdiction for prosecution under the general law.

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

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

29 4. Written notification of a transfer hearing shall be given to the juvenile and his or  
30 her custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the  
31 hearing may be waived by the custodian. Notice shall contain a statement that the purpose of

32 the hearing is to determine whether the child is a proper subject to be dealt with under the  
33 provisions of this chapter, and that if the court finds that the child is not a proper subject to be  
34 dealt with under the provisions of this chapter, the petition will be dismissed to allow for  
35 prosecution of the child under the general law.

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

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

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

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

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

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

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

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

62 (7) The age of the child;

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

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

67 (10) Racial disparity in certification.

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

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

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

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

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

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

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

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

87           11. If the court does not dismiss the petition to permit the child to be prosecuted under  
88 the general law, it shall set a date for the hearing upon the petition as provided in section  
89 211.171.

211.321. 1. Records of juvenile court proceedings as well as all information obtained  
2 and social records prepared in the discharge of official duty for the court shall not be open to  
3 inspection or their contents disclosed, except by order of the court to persons having a  
4 legitimate interest therein, unless a petition or motion to modify is sustained which charges  
5 the child with an offense which, if committed by an adult, would be a class A felony under the  
6 criminal code of Missouri, or capital murder, first degree murder, or second degree murder or  
7 except as provided in subsection 2 **or** 3 of this section. In addition, whenever a report is  
8 required under section 557.026, there shall also be included a complete list of certain  
9 violations of the juvenile code for which the defendant had been adjudicated a delinquent  
10 while a juvenile. This list shall be made available to the probation officer and shall be  
11 included in the presentence report. The violations to be included in the report are limited to  
12 the following: rape, sodomy, murder, kidnapping, robbery, arson, burglary or any acts  
13 involving the rendering or threat of serious bodily harm. The supreme court may promulgate  
14 rules to be followed by the juvenile courts in separating the records.

15           2. In all proceedings under subdivision (2) of subsection 1 of section 211.031, the  
16 records of the juvenile court as well as all information obtained and social records prepared in  
17 the discharge of official duty for the court shall be kept confidential and shall be open to  
18 inspection only by order of the judge of the juvenile court or as otherwise provided by statute.  
19 In all proceedings under subdivision (3) of subsection 1 of section 211.031 the records of the  
20 juvenile court as well as all information obtained and social records prepared in the discharge  
21 of official duty for the court shall be kept confidential and may be open to inspection without  
22 court order only as follows:

23           (1) The juvenile officer is authorized at any time:

24           (a) To provide information to or discuss matters concerning the child, the violation of  
25 law or the case with the victim, witnesses, officials at the child's school, law enforcement  
26 officials, prosecuting attorneys, any person or agency having or proposed to have legal or  
27 actual care, custody or control of the child, or any person or agency providing or proposed to  
28 provide treatment of the child. Information received pursuant to this paragraph shall not be  
29 released to the general public, but shall be released only to the persons or agencies listed in  
30 this paragraph;

31           (b) To make public information concerning the offense, the substance of the petition,  
32 the status of proceedings in the juvenile court and any other information which does not  
33 specifically identify the child or the child's family;

34           (2) After a child has been adjudicated delinquent pursuant to subdivision (3) of  
35 subsection 1 of section 211.031, for an offense which would be a felony if committed by an  
36 adult, the records of the dispositional hearing and proceedings related thereto shall be open to  
37 the public to the same extent that records of criminal proceedings are open to the public.  
38 However, the social summaries, investigations or updates in the nature of presentence  
39 investigations, and status reports submitted to the court by any treating agency or individual  
40 after the dispositional order is entered shall be kept confidential and shall be opened to  
41 inspection only by order of the judge of the juvenile court;

42           (3) As otherwise provided by statute;

43           (4) In all other instances, only by order of the judge of the juvenile court.

44           3. **The name and photograph of a child may be released to the public if the child**  
45 **escapes from the custody of a juvenile detention facility while the child is in the custody**  
46 **of the juvenile detention facility for an offense that would be considered a felony offense**  
47 **if committed by an adult.**

48           4. Peace officers' records, if any are kept, of children shall be kept separate from the  
49 records of persons eighteen years of age or over and shall not be open to inspection or their  
50 contents disclosed, except by order of the court. This subsection does not apply to children  
51 who are transferred to courts of general jurisdiction as provided by section 211.071 or to

52 juveniles convicted under the provisions of sections 578.421 to 578.437. This subsection  
53 does not apply to the inspection or disclosure of the contents of the records of peace officers  
54 for the purpose of pursuing a civil forfeiture action pursuant to the provisions of section  
55 195.140.

56 ~~[4-]~~ 5. Nothing in this section shall be construed to prevent the release of information  
57 and data to persons or organizations authorized by law to compile statistics relating to  
58 juveniles. The court shall adopt procedures to protect the confidentiality of children's names  
59 and identities.

60 ~~[5-]~~ 6. The court may, either on its own motion or upon application by the child or his  
61 or her representative, or upon application by the juvenile officer, enter an order to destroy all  
62 social histories, records, and information, other than the official court file, and may enter an  
63 order to seal the official court file, as well as all peace officers' records, at any time after the  
64 child has reached his or her eighteenth birthday if the court finds that it is in the best interest  
65 of the child that such action or any part thereof be taken, unless the jurisdiction of the court is  
66 continued beyond the child's eighteenth birthday, in which event such action or any part  
67 thereof may be taken by the court at any time after the closing of the child's case.

68 ~~[6-]~~ 7. Nothing in this section shall be construed to prevent the release of general  
69 information regarding the informal adjustment or formal adjudication of the disposition of a  
70 child's case to a victim or a member of the immediate family of a victim of any offense  
71 committed by the child. Such general information shall not be specific as to location and  
72 duration of treatment or detention or as to any terms of supervision.

73 ~~[7-]~~ 8. Records of juvenile court proceedings as well as all information obtained and  
74 social records prepared in the discharge of official duty for the court shall be disclosed to the  
75 child fatality review panel reviewing the child's death pursuant to section 210.192 unless the  
76 juvenile court on its own motion, or upon application by the juvenile officer, enters an order  
77 to seal the records of the victim child.

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 been adjudicated a**  
9 **delinquent by a juvenile court for committing an offense that would be considered a**  
10 **felony offense if committed by an adult.**



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

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

**571.077. 1. A person who is the parent or guardian of a child under eighteen  
2 years of age commits the offense of failure to supervise a child in possession of a firearm  
3 if:**

4           **(1) The child has been adjudicated a delinquent by a juvenile court;**

5           **(2) The person knowingly sells, leases, loans, gives away, or delivers a firearm to  
6 the child;**

7           **(3) The person knowingly fails to supervise the child in all uses of the firearm;  
8 and**

9           **(4) The child uses the firearm in the commission of a criminal offense or causes  
10 serious bodily injury or death as a result of his or her use of the firearm.**

11           **2. The offense of failure to supervise a child in possession of a firearm is a class A  
12 misdemeanor, except that if the child causes serious bodily injury or death as a result of  
13 his or her use of the firearm, it is a class D felony.**

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