

HOUSE BILL NO. 159

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPARKS.

0286H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 211.071 and 569.090, RSMo, and to enact in lieu thereof two new sections relating to tampering in the second degree, with penalty provisions.

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

Section A. Sections 211.071 and 569.090, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 211.071 and 569.090, to read as follows:

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

(1) Committed an offense [~~which~~] **that if committed by an adult** would be considered:

(a) First degree murder under section 565.020[~~5~~];

(b) Second degree murder under section 565.021[~~5~~];

(c) First degree assault under section 565.050[~~5~~];

(d) Forcible rape under section 566.030 as it existed prior to August 28, 2013[~~5~~];

(e) Rape in the first degree under section 566.030[~~5~~];

(f) Forcible sodomy under section 566.060 as it existed prior to August 28, 2013[~~5~~];

(g) Sodomy in the first degree under section 566.060[~~5~~];

(h) First degree robbery under section 569.020 as it existed prior to January 1, 2017[~~5~~];

[~~5~~];

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.

18 **(i) Tampering in the second degree under section 569.090 if the property involves**
19 **a motor vehicle and the child is in possession of a firearm during the commission of the**
20 **offense;**

21 **(j) Robbery in the first degree under section 570.023[;];**

22 **(k) Distribution of drugs under section 195.211 as it existed prior to January 1, 2017[;**
23 **or];**

24 **(l) The manufacturing of a controlled substance under section 579.055[;];**

25 **(m) A dangerous felony as defined in section 556.061[; any]; or**

26 **(n) A felony involving the use, assistance, or aid of a deadly weapon[; or has]; or**

27 **(2) Committed two or more prior unrelated offenses which would be felonies if**
28 **committed by an adult,**

29

30 the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the
31 child to a court of general jurisdiction for prosecution under the general law.

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

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

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

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

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

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

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

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

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

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

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

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

73 (7) The age of the child;

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

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

78 (10) Racial disparity in certification.

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

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

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

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

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

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

89 9. When a petition has been dismissed thereby permitting a child to be prosecuted
90 under the general law and the prosecution of the child results in a conviction, the jurisdiction

91 of the juvenile court over that child is forever terminated, except as provided in subsection 10
92 of this section, for an act that would be a violation of a state law or municipal ordinance.

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

98 11. If the court does not dismiss the petition to permit the child to be prosecuted under
99 the general law, it shall set a date for the hearing upon the petition as provided in section
100 211.171.

569.090. 1. A person commits the offense of tampering in the second degree if he or
2 she:

3 (1) Tampers with property of another for the purpose of causing substantial
4 inconvenience to that person or to another; or

5 (2) Unlawfully rides in or upon another's automobile, airplane, motorcycle, motorboat
6 or other motor-propelled vehicle; or

7 (3) Tampers or makes connection with property of a utility; or

8 (4) Tampers with, or causes to be tampered with, any meter or other property of an
9 electric, gas, steam or water utility, the effect of which tampering is either:

10 (a) To prevent the proper measuring of electric, gas, steam or water service; or

11 (b) To permit the diversion of any electric, gas, steam or water service.

12 2. In any prosecution under subdivision (4) of subsection 1, proof that a meter or any
13 other property of a utility has been tampered with, and the person or persons accused received
14 the use or direct benefit of the electric, gas, steam or water service, with one or more of the
15 effects described in subdivision (4) of subsection 1, shall be sufficient to support an inference
16 which the trial court may submit to the trier of fact, from which the trier of fact may conclude
17 that there has been a violation of such subdivision by the person or persons who use or
18 receive the direct benefit of the electric, gas, steam or water service.

19 3. Tampering in the second degree is a class A misdemeanor unless:

20 (1) Committed as a second or subsequent violation of subdivision (4) of subsection 1,
21 in which case it is a class E felony; ~~or~~

22 (2) The defendant has a prior conviction or has previously been found guilty pursuant
23 to paragraph (a) of subdivision (3) of subsection 5 of section 570.030, or subdivision (2) of
24 subsection 1 of this section, in which case it is a class D felony; or

25 **(3) The defendant is guilty under subdivision (1) of subsection 1 of this section,**
26 **the property under subdivision (1) of subsection 1 of this section involves a motor**
27 **vehicle, and the defendant is in possession of a firearm during the commission of the**

28 **offense, in which case it is a class E felony. A person subject to the penalties under this**
29 **subdivision shall not be granted parole or probation until he or she has served a**
30 **minimum of one year imprisonment. If the person is in violation of this subdivision and**
31 **is a juvenile, the court shall order a certification hearing under section 211.071.**

✓