

FIRST REGULAR SESSION

HOUSE BILL NO. 736

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLAN.

1817H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 211.073, 211.181, 219.021, 455.010, 455.035, and 455.513, RSMo, and to enact in lieu thereof six new sections relating to court proceedings involving juveniles.

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

Section A. Sections 211.073, 211.181, 219.021, 455.010, 455.035, and 455.513, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 211.073, 211.181, 219.021, 455.010, 455.035, and 455.513, to read as follows:

211.073. 1. [~~The court shall, in a case when~~] **If** the offender is under [~~eighteen~~] **nineteen** years of age and has been transferred to a court of general jurisdiction pursuant to section 211.071, and whose prosecution results in a conviction or a plea of guilty, **the court shall** consider dual jurisdiction of both the criminal and juvenile codes, as set forth in this section. The court is authorized to impose a juvenile disposition under this chapter and simultaneously impose an adult criminal sentence, the execution of which shall be suspended pursuant to the provisions of this section. Successful completion of the juvenile disposition ordered shall be a condition of the suspended adult criminal sentence. The court may order an offender into the custody of the division of youth services pursuant to this section:

(1) Upon agreement of the division of youth services; and

(2) If the division of youth services determines that there is space available in a facility designed to serve offenders sentenced under this section.

If the division of youth services agrees to accept a youth and the court does not impose a juvenile disposition, the court shall make findings on the record as to why the division of

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 youth services was not appropriate for the offender prior to imposing the adult criminal
17 sentence.

18 2. If there is probable cause to believe that the offender has violated a condition of the
19 suspended sentence or committed a new offense, the court shall conduct a hearing on the
20 violation charged, unless the offender waives such hearing. If the violation is established and
21 found the court may continue or revoke the juvenile disposition, impose the adult criminal
22 sentence, or enter such other order as it may see fit.

23 3. When an offender has received a suspended sentence pursuant to this section and
24 the division determines the child is beyond the scope of its treatment programs, the division
25 of youth services may petition the court for a transfer of custody of the offender. The court
26 shall hold a hearing and shall:

27 (1) Revoke the suspension and direct that the offender be taken into immediate
28 custody of the department of corrections; or

29 (2) Direct that the offender be placed on probation.

30 4. When an offender who has received a suspended sentence reaches the age of
31 ~~eighteen~~ **nineteen**, the court shall hold a hearing. The court shall:

32 (1) Revoke the suspension and direct that the offender be taken into immediate
33 custody of the department of corrections;

34 (2) Direct that the offender be placed on probation; or

35 (3) Direct that the offender remain in the custody of the division of youth services if
36 the division agrees to such placement.

37 5. The division of youth services shall petition the court for a hearing before it
38 releases an offender who comes within subsection 1 of this section at any time before the
39 offender reaches the age of twenty-one years. The court shall:

40 (1) Revoke the suspension and direct that the offender be taken into immediate
41 custody of the department of corrections; or

42 (2) Direct that the offender be placed on probation.

43 6. If the suspension of the adult criminal sentence is revoked, all time served by the
44 offender under the juvenile disposition shall be credited toward the adult criminal sentence
45 imposed.

211.181. 1. When a child is found by the court to come within the applicable
2 provisions of subdivision (1) of subsection 1 of section 211.031, the court shall so decree and
3 make a finding of fact upon which it exercises its jurisdiction over the child, and the court
4 may, by order duly entered, proceed as follows:

5 (1) Place the child under supervision in ~~his or her~~ **the child's** own home or in the
6 custody of a relative or other suitable person after the court or a public agency or institution
7 designated by the court conducts an investigation of the home, relative or person and finds

8 such home, relative or person to be suitable and upon such conditions as the court may
9 require;

10 (2) Commit the child to the custody of:

11 (a) A public agency or institution authorized by law to care for children or to place
12 them in family homes; except that, such child may not be committed to the department of
13 social services, division of youth services;

14 (b) Any other institution or agency which is authorized or licensed by law to care for
15 children or to place them in family homes;

16 (c) An association, school or institution willing to receive the child in another state if
17 the approval of the agency in that state which administers the laws relating to importation of
18 children into the state has been secured; or

19 (d) The juvenile officer;

20 (3) Place the child in a family home;

21 (4) Cause the child to be examined and treated by a physician, psychiatrist or
22 psychologist and when the health or condition of the child requires it, cause the child to be
23 placed in a public or private hospital, clinic or institution for treatment and care; except that,
24 nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric
25 treatment of a child whose parents or guardian in good faith are providing other remedial
26 treatment recognized or permitted under the laws of this state;

27 (5) ~~[The court may order,]~~ Pursuant to subsection 2 of section 211.081, **the court**
28 **may order** that the child receive the necessary services in the least restrictive appropriate
29 environment including home and community-based services, treatment and support, based on
30 a coordinated, individualized treatment plan. The individualized treatment plan shall be
31 approved by the court and developed by the applicable state agencies responsible for
32 providing or paying for any and all appropriate and necessary services, subject to
33 appropriation, and shall include which agencies are going to pay for and provide such
34 services. Such plan must be submitted to the court within thirty days and the child's family
35 shall actively participate in designing the service plan for the child;

36 (6) The department of social services, in conjunction with the department of mental
37 health, shall apply to the United States Department of Health and Human Services for such
38 federal waivers as required to provide services for such children, including the acquisition of
39 community-based services waivers.

40 2. When a child is found by the court to come within the provisions of subdivision (2)
41 of subsection 1 of section 211.031, the court shall so decree and upon making a finding of fact
42 upon which it exercises its jurisdiction over the child, the court may, by order duly entered,
43 proceed as follows:

44 (1) Place the child under supervision in ~~[his or her]~~ **the child's** own home or in
45 custody of a relative or other suitable person after the court or a public agency or institution
46 designated by the court conducts an investigation of the home, relative or person and finds
47 such home, relative or person to be suitable and upon such conditions as the court may
48 require;

49 (2) Commit the child to the custody of:

50 (a) A public agency or institution authorized by law to care for children or place them
51 in family homes; except that, a child may be committed to the department of social services,
52 division of youth services, only if ~~[he or she]~~ **the child** is presently under the court's
53 supervision after an adjudication under the provisions of subdivision (2) or (3) of subsection 1
54 of section 211.031;

55 (b) Any other institution or agency which is authorized or licensed by law to care for
56 children or to place them in family homes;

57 (c) An association, school or institution willing to receive it in another state if the
58 approval of the agency in that state which administers the laws relating to importation of
59 children into the state has been secured; or

60 (d) The juvenile officer;

61 (3) Place the child in a family home;

62 (4) Cause the child to be examined and treated by a physician, psychiatrist or
63 psychologist and when the health or condition of the child requires it, cause the child to be
64 placed in a public or private hospital, clinic or institution for treatment and care; except that,
65 nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric
66 treatment of a child whose parents or guardian in good faith are providing other remedial
67 treatment recognized or permitted under the laws of this state;

68 (5) Assess an amount of up to ten dollars to be paid by the child to the clerk of the
69 court.

70

71 Execution of any order entered by the court pursuant to this subsection, including a
72 commitment to any state agency, may be suspended and the child placed on probation subject
73 to such conditions as the court deems reasonable. After a hearing, probation may be revoked
74 and the suspended order executed.

75 3. When a child is found by the court to come within the provisions of subdivision (3)
76 of subsection 1 of section 211.031, the court shall so decree and make a finding of fact upon
77 which it exercises its jurisdiction over the child, and the court may, by order duly entered,
78 proceed as follows:

79 (1) Place the child under supervision in ~~[his or her]~~ **the child's** own home or in
80 custody of a relative or other suitable person after the court or a public agency or institution

81 designated by the court conducts an investigation of the home, relative or person and finds
82 such home, relative or person to be suitable and upon such conditions as the court may
83 require; provided that, no child who has been adjudicated a delinquent by a juvenile court for
84 committing or attempting to commit a sex-related offense which if committed by an adult
85 would be considered a felony offense pursuant to chapter 566, including but not limited to
86 rape, forcible sodomy, child molestation, and sexual abuse, and in which the victim was a
87 child, shall be placed in any residence within one thousand feet of the residence of the abused
88 child of that offense until the abused child reaches the age of eighteen, and provided further
89 that the provisions of this subdivision regarding placement within one thousand feet of the
90 abused child shall not apply when the abusing child and the abused child are siblings or
91 children living in the same home;

92 (2) Commit the child to the custody of:

93 (a) A public agency or institution authorized by law to care for children or to place
94 them in family homes;

95 (b) Any other institution or agency which is authorized or licensed by law to care for
96 children or to place them in family homes;

97 (c) An association, school or institution willing to receive it in another state if the
98 approval of the agency in that state which administers the laws relating to importation of
99 children into the state has been secured; or

100 (d) The juvenile officer;

101 (3) Beginning January 1, 1996, the court may make further directions as to placement
102 with the division of youth services concerning the child's length of stay. The length of stay
103 order may set forth a minimum review date;

104 (4) Place the child in a family home;

105 (5) Cause the child to be examined and treated by a physician, psychiatrist or
106 psychologist and when the health or condition of the child requires it, cause the child to be
107 placed in a public or private hospital, clinic or institution for treatment and care; except that,
108 nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric
109 treatment of a child whose parents or guardian in good faith are providing other remedial
110 treatment recognized or permitted under the laws of this state;

111 (6) Suspend or revoke a state or local license or authority of a child to operate a motor
112 vehicle;

113 (7) Order the child to make restitution or reparation for the damage or loss caused by
114 ~~his or her~~ **the child's** offense. In determining the amount or extent of the damage, the court
115 may order the juvenile officer to prepare a report and may receive other evidence necessary
116 for such determination. The child and ~~his or her~~ **the child's** attorney shall have access to
117 any reports which may be prepared, and shall have the right to present evidence at any

118 hearing held to ascertain the amount of damages. Any restitution or reparation ordered shall
119 be reasonable in view of the child's ability to make payment or to perform the reparation. The
120 court may require the clerk of the circuit court to act as receiving and disbursing agent for any
121 payment ordered;

122 (8) Order the child to a term of community service under the supervision of the court
123 or of an organization selected by the court. Every person, organization, and agency, and each
124 employee thereof, charged with the supervision of a child under this subdivision, or who
125 benefits from any services performed as a result of an order issued under this subdivision,
126 shall be immune from any suit by the child ordered to perform services under this
127 subdivision, or any person deriving a cause of action from such child, if such cause of action
128 arises from the supervision of the child's performance of services under this subdivision and if
129 such cause of action does not arise from an intentional tort. A child ordered to perform
130 services under this subdivision shall not be deemed an employee within the meaning of the
131 provisions of chapter 287, nor shall the services of such child be deemed employment within
132 the meaning of the provisions of chapter 288. Execution of any order entered by the court,
133 including a commitment to any state agency, may be suspended and the child placed on
134 probation subject to such conditions as the court deems reasonable. After a hearing,
135 probation may be revoked and the suspended order executed;

136 (9) When a child has been adjudicated to have violated a municipal ordinance or to
137 have committed an act that would be a misdemeanor if committed by an adult, assess an
138 amount of up to twenty-five dollars to be paid by the child to the clerk of the court; when a
139 child has been adjudicated to have committed an act that would be a felony if committed by
140 an adult, assess an amount of up to fifty dollars to be paid by the child to the clerk of the
141 court.

142 4. Beginning January 1, 1996, the court may set forth in the order of commitment the
143 minimum period during which the child shall remain in the custody of the division of youth
144 services. No court order shall require a child to remain in the custody of the division of youth
145 services for a period which exceeds the child's nineteenth ~~birth date~~ **birthday** except upon
146 petition filed by the division of youth services pursuant to subsection 1 of section 219.021. In
147 any order of commitment of a child to the custody of the division of youth services, the
148 division shall determine the appropriate program or placement pursuant to subsection 3 of
149 section 219.021. Beginning January 1, 1996, the department shall not discharge a child from
150 the custody of the division of youth services before the child completes the length of stay
151 determined by the court in the commitment order unless the committing court orders
152 otherwise. The director of the division of youth services may at any time petition the court
153 for a review of a child's length of stay commitment order, and the court may, upon a showing
154 of good cause, order the early discharge of the child from the custody of the division of youth

155 services. The division may discharge the child from the division of youth services without a
156 further court order after the child completes the length of stay determined by the court or may
157 retain the child for any period after the completion of the length of stay in accordance with the
158 law.

159 5. When an assessment has been imposed under the provisions of subsection 2 or 3 of
160 this section, the assessment shall be paid to the clerk of the court in the circuit where the
161 assessment is imposed by court order, to be deposited in a fund established for the sole
162 purpose of payment of judgments entered against children in accordance with section
163 211.185.

219.021. 1. Except as provided in subsections 2 and 3 of this section, any child may
2 be committed to the custody of the division when the juvenile court determines a suitable
3 community-based treatment service does not exist, or has proven ineffective; and when the
4 child is adjudicated pursuant to the provisions of subdivision (3) of subsection 1 of section
5 211.031 or when the child is adjudicated pursuant to subdivision (2) of subsection 1 of section
6 211.031 and is currently under court supervision for adjudication under subdivision (2) or (3)
7 of subsection 1 of section 211.031. The division shall not keep any youth beyond ~~[his~~
8 ~~eighteenth birth date]~~ **the youth's nineteenth birthday**, except upon petition and a showing
9 of just cause in which case the division may maintain custody until the youth's twenty-first
10 ~~[birth date]~~ **birthday**. Notwithstanding any other provision of law to the contrary, the
11 committing court shall review the treatment plan to be provided by the division. The division
12 shall notify the court of original jurisdiction from which the child was committed at least
13 three weeks prior to the child's release to aftercare supervision. The notification shall include
14 a summary of the treatment plan and progress of the child that has resulted in the planned
15 release. The court may formally object to the director of the division in writing, stating its
16 reasons in opposition to the release. The director shall review the court's objection in
17 consideration of its final approval for release. The court's written objection shall be made
18 within a one-week period after it receives notification of the division's planned release;
19 otherwise the division may assume court agreement with the release. The division director's
20 written response to the court shall occur within five working days of service of the court's
21 objection and preferably prior to the release of the child. The division shall not place a child
22 directly into a precare setting immediately upon commitment from the court until it advises
23 the court of such placement.

24 2. No child who has been diagnosed as having a mental disease or a communicable or
25 contagious disease shall be committed to the division; except the division may, by regulation,
26 when services for the proper care and treatment of persons having such diseases are available
27 at any of the facilities under its control, authorize the commitment of children having such
28 diseases to it for treatment in such institution. Notice of any such regulation shall be

29 promptly mailed to the judges and juvenile officers of all courts having jurisdiction of cases
30 involving children.

31 3. When a child has been committed to the division, the division shall forthwith
32 examine the individual and investigate all pertinent circumstances of his background for the
33 purpose of facilitating the placement and treatment of the child in the most appropriate
34 program or residential facility to assure the public safety and the rehabilitation of the child;
35 except that, no child committed under the provisions of subdivision (2) of subsection 1 of
36 section 211.031 may be placed in the residential facilities designated by the division as a
37 maximum security facility, unless the juvenile is subsequently adjudicated under subdivision
38 (3) of subsection 1 of section 211.031.

39 4. The division may transfer any child under its jurisdiction to any other institution
40 for children if, after careful study of the child's needs, it is the judgment of the division that
41 the transfer should be effected. If the division determines that the child requires treatment by
42 another state agency, it may transfer the physical custody of the child to that agency, and that
43 agency shall accept the child if the services are available by that agency.

44 5. The division shall make periodic reexaminations of all children committed to its
45 custody for the purpose of determining whether existing dispositions should be modified or
46 continued. Reexamination shall include a study of all current circumstances of such child's
47 personal and family situation and an evaluation of the progress made by such child since the
48 previous study. Reexamination shall be conducted as frequently as the division deems
49 necessary, but in any event, with respect to each such child, at intervals not to exceed six
50 months. Reports of the results of such examinations shall be sent to the child's committing
51 court and to his parents or guardian.

52 6. Failure of the division to examine a child committed to it or to reexamine him
53 within six months of a previous examination shall not of itself entitle the child to be
54 discharged from the custody of the division but shall entitle the child, his parent, guardian, or
55 agency to which the child may be placed by the division to petition for review as provided in
56 section 219.051.

57 7. The division is hereby authorized to establish, build, repair, maintain, and operate,
58 from funds appropriated or approved by the legislature for these purposes, facilities and
59 programs necessary to implement the provisions of this chapter. Such facilities or programs
60 may include, but not be limited to, the establishment and operation of training schools,
61 maximum security facilities, moderate care facilities, group homes, day treatment programs,
62 family foster homes, aftercare, counseling services, educational services, and such other
63 services as may be required to meet the needs of children committed to it. The division may
64 terminate any facility or program no longer needed to meet the needs of children.

65 8. The division may institute day release programs for children committed to it. The
66 division may arrange with local schools, public or private agencies, or persons approved by
67 the division for the release of children committed to the division on a daily basis to the
68 custody of such schools, agencies, or persons for participation in programs.

69 9. The division shall make all reasonable efforts to ensure that any outstanding
70 judgment entered in accordance with section 211.185 or any outstanding assessments ordered
71 in accordance with section 211.181 be paid while a child is in the care, custody or control of
72 the division.

455.010. As used in this chapter, unless the context clearly indicates otherwise, the
2 following terms shall mean:

3 (1) "Abuse", includes but is not limited to the occurrence of any of the following acts,
4 attempts or threats against a person who may be protected pursuant to this chapter, except
5 abuse shall not include abuse inflicted on a child by accidental means by an adult household
6 member or discipline of a child, including spanking, in a reasonable manner:

7 (a) "Abusing a pet", purposely or knowingly causing, attempting to cause, or
8 threatening to cause physical injury to a pet with the intent to control, punish, intimidate, or
9 distress the petitioner;

10 (b) "Assault", purposely or knowingly placing or attempting to place another in fear
11 of physical harm;

12 (c) "Battery", purposely or knowingly causing physical harm to another with or
13 without a deadly weapon;

14 (d) "Coercion", compelling another by force or threat of force to engage in conduct
15 from which the latter has a right to abstain or to abstain from conduct in which the person has
16 a right to engage;

17 (e) "Harassment", engaging in a purposeful or knowing course of conduct involving
18 more than one incident that alarms or causes distress to an adult or child and serves no
19 legitimate purpose. The course of conduct must be such as would cause a reasonable adult or
20 child to suffer substantial emotional distress and must actually cause substantial emotional
21 distress to the petitioner or child. Such conduct might include, but is not limited to:

22 a. Following another about in a public place or places;

23 b. Peering in the window or lingering outside the residence of another; but does not
24 include constitutionally protected activity;

25 (f) "Sexual assault", causing or attempting to cause another to engage involuntarily in
26 any sexual act by force, threat of force, duress, or without that person's consent;

27 (g) "Unlawful imprisonment", holding, confining, detaining or abducting another
28 person against that person's will;

29 (2) "Adult", any person [~~seventeen~~] **eighteen** years of age or older or otherwise
30 emancipated;

31 (3) "Child", any person under [~~seventeen~~] **eighteen** years of age unless otherwise
32 emancipated;

33 (4) "Court", the circuit or associate circuit judge or a family court commissioner;

34 (5) "Domestic violence", abuse or stalking committed by a family or household
35 member, as such terms are defined in this section;

36 (6) "Ex parte order of protection", an order of protection issued by the court before
37 the respondent has received notice of the petition or an opportunity to be heard on it;

38 (7) "Family" or "household member", spouses, former spouses, any person related by
39 blood or marriage, persons who are presently residing together or have resided together in the
40 past, any person who is or has been in a continuing social relationship of a romantic or
41 intimate nature with the victim, and anyone who has a child in common regardless of whether
42 they have been married or have resided together at any time;

43 (8) "Full order of protection", an order of protection issued after a hearing on the
44 record where the respondent has received notice of the proceedings and has had an
45 opportunity to be heard;

46 (9) "Order of protection", either an ex parte order of protection or a full order of
47 protection;

48 (10) "Pending", exists or for which a hearing date has been set;

49 (11) "Pet", a living creature maintained by a household member for companionship
50 and not for commercial purposes;

51 (12) "Petitioner", a family or household member who has been a victim of domestic
52 violence, or any person who has been the victim of stalking or sexual assault, or a person
53 filing on behalf of a child pursuant to section 455.503 who has filed a verified petition
54 pursuant to the provisions of section 455.020 or section 455.505;

55 (13) "Respondent", the family or household member alleged to have committed an act
56 of domestic violence, or person alleged to have committed an act of stalking or sexual assault,
57 against whom a verified petition has been filed or a person served on behalf of a child
58 pursuant to section 455.503;

59 (14) "Sexual assault", as defined under subdivision (1) of this section;

60 (15) "Stalking", is when any person purposely engages in an unwanted course of
61 conduct that causes alarm to another person, or a person who resides together in the same
62 household with the person seeking the order of protection when it is reasonable in that
63 person's situation to have been alarmed by the conduct. As used in this subdivision:

64 (a) "Alarm", to cause fear of danger of physical harm; and

65 (b) "Course of conduct", two or more acts that serve no legitimate purpose including,
66 but not limited to, acts in which the stalker directly, indirectly, or through a third party
67 follows, monitors, observes, surveils, threatens, or communicates to a person by any action,
68 method, or device.

455.035. 1. Upon the filing of a verified petition pursuant to sections 455.010 to
2 455.085 and for good cause shown in the petition, the court may immediately issue an ex
3 parte order of protection. An immediate and present danger of domestic violence to the
4 petitioner or the child on whose behalf the petition is filed shall constitute good cause for
5 purposes of this section. An ex parte order of protection entered by the court shall take effect
6 when entered and shall remain in effect until there is valid service of process and a hearing is
7 held on the motion. The court shall deny the ex parte order and dismiss the petition if the
8 petitioner is not authorized to seek relief pursuant to section 455.020.

9 2. Failure to serve an ex parte order of protection on the respondent shall not affect
10 the validity or enforceability of such order. If the respondent is less than ~~seventeen~~ **eighteen**
11 years of age, unless otherwise emancipated, service of process shall be made upon a custodial
12 parent or guardian of the respondent, or upon a guardian ad litem appointed by the court,
13 requiring that the person appear and bring the respondent before the court at the time and
14 place stated.

15 3. If an ex parte order is entered and the respondent is less than ~~seventeen~~ **eighteen**
16 years of age, the court shall transfer the case to juvenile court for a hearing on a full order of
17 protection. The court shall appoint a guardian ad litem for any such respondent not
18 represented by a parent or guardian.

455.513. 1. The court may immediately issue an ex parte order of protection upon the
2 filing of a verified petition under sections 455.500 to 455.538, for good cause shown in the
3 petition, and upon finding that:

4 (1) No prior order regarding custody involving the respondent and the child is
5 pending or has been made; or

6 (2) The respondent is less than ~~seventeen~~ **eighteen** years of age.
7

8 An immediate and present danger of domestic violence, including danger to the child's pet,
9 stalking, or sexual assault to a child shall constitute good cause for purposes of this section.
10 An ex parte order of protection entered by the court shall be in effect until the time of the
11 hearing. The court shall deny the ex parte order and dismiss the petition if the petitioner is not
12 authorized to seek relief pursuant to section 455.505.

13 2. Upon the entry of the ex parte order of protection, the court shall enter its order
14 appointing a guardian ad litem or court-appointed special advocate to represent the child
15 victim.

16 3. If the allegations in the petition would give rise to jurisdiction under section
17 211.031, the court may direct the children's division to conduct an investigation and to
18 provide appropriate services. The division shall submit a written investigative report to the
19 court and to the juvenile officer within thirty days of being ordered to do so. The report shall
20 be made available to the parties and the guardian ad litem or court-appointed special
21 advocate.

22 4. If the allegations in the petition would give rise to jurisdiction under section
23 211.031 because the respondent is less than [~~seventeen~~] **eighteen** years of age, the court may
24 issue an ex parte order and shall transfer the case to juvenile court for a hearing on a full order
25 of protection. Service of process shall be made pursuant to section 455.035.

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