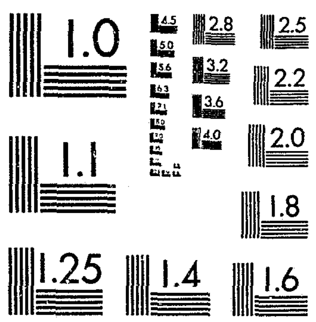

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CERTIFICATION

A REVIEW OF THE TRANSFER PROCESS TO THE ADULT CRIMINAL JUSTICE SYSTEM

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

July, 1982

CERTIFICATION
A REVIEW OF THE TRANSFER PROCESS TO THE ADULT CRIMINAL JUSTICE SYSTEM

Prepared by

Missouri Juvenile Justice Review Committee

July 1982

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Missouri Juvenile Justice Review Committee
P.O. Box 1332
Jefferson City, Missouri 65102

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

P. O. BOX 1332
JEFFERSON CITY, MISSOURI 65102
(314) 751-3265

Dear Reader:

As part of its review of the juvenile services system in the State, the Missouri Juvenile Justice Review Committee has prepared the following report on Certification. The Committee believes that this process warrants review and revision.

It is the hope of the Review Committee that you will find this report both informative and thought provoking. We intend to pursue the changes recommended in this report and welcome your support and participation in this endeavor.

Sincerely,

Robert L. Perry
Facilitator

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INTRODUCTION

The Missouri Juvenile Justice Review Committee (MJJRC) considers the act of entering an Order to Dismiss, thereby permitting a juvenile to be prosecuted under the general law, to be one of the more critical issues with which the juvenile court must be concerned. It clearly involves a fine balance between protecting the public safety and protecting the rights of juveniles, including the right to treatment in a system specifically designed to meet the needs of youthful offenders.

The Review Committee believes that Missouri should retain the option to transfer youths to the adult system just as forty-seven other states and the District of Columbia have done.[1] While the juvenile justice system can provide programs and services to the majority of youth which it serves, there are some who simply are not proper subjects to be dealt with by the system. Lack of amenability to treatment, lack of appropriate or adequate resources, criminally sophisticated behavior, and serious recidivism are all among the reasons why access to the adult system for certain youth is necessary and essential.

The entire process referenced above is labeled by a variety of terms in Missouri. The Supreme Court Rules (118.01-118.04) outline the procedures that culminate in a "Dismissal Hearing." Others in the state, including juvenile court personnel, juvenile court judges, other professionals, and the general community may refer to this hearing as one of "certification," "waiver" or "transfer." In any case, the process involves: the initial filing of a petition, including information regarding the facts that bring the juvenile within the jurisdiction of the court; a subsequent motion to dismiss the petition to allow prosecution of the juvenile under the general law; notice of the hearing; an investigation to aid the court in is determination; and a hearing to determine if the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. For the purposes of this paper, these terms will be used interchangeably when reference is made to this process.

Current certification processes are guided by state statute, Missouri Supreme Court Rules and precedents set by case law. The Review Committee would suggest that there are voids and areas of vagueness that need to be addressed, and an effort will be made to do so in this paper.

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[1]John L. Hutzler, "Waiver/Transfer/Certification of Juveniles to Criminal Court: 1980 Statutes Analysis," Pittsburgh, Pa.: National Center for Juvenile Justice, 1980 (corrected to reflect the 1981 revision in Vermont State Statute).

PART I: CURRENT STATUTE AND SUPREME COURT RULES

In the following sections of this paper, the Missouri Juvenile Justice Review Committee will outline its proposed revisions regarding the current certification process. However, in order to be able to adequately assess these proposals, the reader must first be aware of the current law and Supreme Court Rules that provide the authority and direction for this process.

SECTION 211.071 RSMo

Child prosecuted under general law, when.--In the discretion of the judge of the juvenile court, when any petition under this chapter alleges that a child of the age of fourteen years or older has committed an offense which would be a felony if committed by an adult, or that the child has violated a state or municipal traffic law or ordinance or that a minor between the ages of seventeen and twenty-one years over whom the juvenile court has jurisdiction has violated any state law or municipal ordinance, the petition may be dismissed and such child or minor may be prosecuted under the general law, whenever the judge after receiving the report of the investigation required by this chapter and hearing evidence finds that such child or minor is not a proper subject to be dealt with under the provisions of this chapter.

SUPREME COURT RULES

118.01 Order for Hearing

When the petition alleges:

(1) that a juvenile between the ages of fourteen and seventeen years has committed an act which would be a felony if committed by an adult or which constitutes a violation of a state or municipal traffic law or ordinance; or

(2) that a juvenile between the ages of seventeen and twenty-one years over whom the court has jurisdiction has violated any state law or municipal ordinance;

the court at any time prior to the commencement of a hearing on the allegations of the petition may upon its own motion or upon motion by the juvenile officer, the juvenile or the juvenile's custodian, order that a hearing be held for the purpose of determining, in the discretion of the court, whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. When the order for a hearing is made, the court shall set the date, time and place thereof.

118.02 Notice of Hearing

a. When a hearing is ordered under Rule 118.01, written notice thereof shall be given to the juvenile and his custodian in the same manner as provided for service of summons in Rule 115.01. Notice of the hearing may be waived by the custodian in accordance with Rule 115.06.

b. Notice shall be substantially in the form set forth in Rule 128.20. It shall contain a statement that the purpose of the hearing is to determine whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, and that if the court finds that the juvenile is not a proper subject, the petition will be dismissed to allow prosecution of the juvenile under the general law.

118.03 Investigation

a. When the court orders a hearing under Rule 118.01, the juvenile officer shall make an investigation to aid the court in determining whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code.

b. A written report of the investigation, including all social records, shall be made to the court, and, prior to the hearing, may be made available to the parties and shall be made available to counsel.

c. The court may order that a supplemental investigation be made by the juvenile officer and a written report thereof filed, and may continue or adjourn the hearing to afford opportunity to complete the supplemental investigation. Prior to the hearing the report of any supplemental investigation may be made available to the parties and shall be made available to counsel.

118.04 Dismissal Hearing

a. If after a hearing has been ordered under Rule 118.01 it shall appear to the court that the juvenile is not represented by counsel, counsel shall be appointed for the juvenile if required by Rule 116.01.

b. At the hearing the court shall receive evidence relating to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. The juvenile officer who prepared the report of investigation may be examined by counsel, and other witnesses may be examined and other evidence received.

c. In reaching its decision the court shall consider all evidence relevant to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code,

including but not limited to:

(1) whether the offense alleged involved viciousness, force or violence; and

(2) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the juvenile may be beyond rehabilitation under the Juvenile Code; and

(3) the record of the juvenile; and

(4) the programs and facilities available to the juvenile courts.

d. After the conclusion of the hearing if the court finds that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, it shall order the petition dismissed to permit the juvenile to be prosecuted under the general law, and shall include in its order the reasons for its decision. A copy of the petition and order of the dismissal shall be sent to the prosecuting attorney.

PART II: CURRENT PRACTICES IN MISSOURI

Within the context of current statutes and Supreme Court Rules addressed in the previous section, individual circuits have developed local policies and practices regarding the certification process. In March 1982, the MJJRC conducted a survey of the forty-four judicial circuits to gather information regarding this issue. The results of the questionnaire (Appendix) are summarized in this section.

During the calendar year 1981, thirty (30) circuits filed a total of 140 Motions to Dismiss so that a juvenile could be waived (transferred) to the adult system. Fourteen (14) circuits did not file any Motions to Dismiss. Of the 140 motions filed, 128 juveniles (91.4%) were actually waived to the adult system.

The age breakdown of the 128 juveniles certified is found in Table 1. It should be noted that the vast majority of those being certified dominated the two upper age brackets (86.7%). This could reflect a number of possibilities: a reluctance on the part of judges and juvenile court personnel to certify younger juveniles; a willingness to explore the more numerous resources for younger youth; and the possibility that younger children are not involved as frequently in "certifiable" offenses. The correlation between age and certification would be an interesting subject for further investigation. However, for the purposes of this paper, the statistics will simply be noted.

TABLE 1. Certifications by Age in Missouri, 1981

AGE	NO.	% OF ALL CERTIFIED
14	2	1.6
15	15	11.7
16	78	60.9
17 & over	33	25.8
TOTAL	128	100.0%

The questionnaire also requested a ranking by priority of the criteria considered by each of the circuits when making a determination regarding certification. Table 2 tabulates the responses provided by all of the circuits both in terms of total ranking and in terms of #1 "votes" only.

TABLE 2. Rankings of criteria by all of the circuits used when considering certification

CRITERIA	RANKING OF ALL CRITERIA BY ALL CIRCUITS	RANKING BY ALL CIRCUITS BASED ON #1 VOTE ONLY
AGE OF JUVENILE	2	2
AVAILABILITY OF RESOURCES	5	3
SERIOUSNESS OF OFFENSE	1	1
AMENABILITY TO TREATMENT	4	2
RECORD OF THE JUVENILE	3	3

In reviewing the responses to the question regarding the criteria, the Review Committee thought that it would be interesting to see whether the courts that certified youth in 1981 ranked the criteria any differently than those circuits not certifying youth during the same time period. Table 3 outlines the MJJRC's findings.

TABLE 3. A comparison of rankings of the criteria used when considering certification between those courts certifying youth in 1981 and those courts not certifying youth in 1981.

CRITERIA	RANKING OF ALL CRITERIA BY COURTS CERTIFYING	RANKING OF ALL CRITERIA BY COURTS NOT CERTIFYING
AGE OF JUVENILE	3	2
AVAILABILITY OF RESOURCES	5	5
SERIOUSNESS OF OFFENSE	1	1
AMENABILITY TO TREATMENT	4	4
RECORD OF THE JUVENILE	2	3

When the Committee inquired as to the nature of offenses for which juveniles were certified, the results noted in Table 4 were cited.

TABLE 4. Breakdown of Certifications in Missouri by Nature of Offense, 1981

NATURE OF OFFENSE FOR WHICH CERTIFIED	NO. OF CERTIFICATIONS IN MISSOURI	% OF ALL CERTIFICATIONS IN MISSOURI
HOMICIDE	9	7.0
MANSLAUGHTER	1	.8
CLASS A FELONY	61	47.6
OTHER FELONY (Non-Traffic)	55	43.0
TRAFFIC FELONY	1	.8
TRAFFIC, UNDER 16	1	.8
TOTALS	128	100.0%

While these figures indicate that a large portion (55.4%) of Missouri's certified youth were waived for Homicide, Manslaughter or Class A felonies, they do not reflect the fact that the majority of circuits in the state certify youth for less serious felony offenses. As noted in Table 5 (page 8), when one compares the types of offenses for which youth are certified in the three major metropolitan areas (St. Louis, St. Louis County, and Jackson County) with those for which youth are certified in other areas of the state, there is a significant difference, specifically in the categories of Class A felonies and other felonies, non-traffic.

The Review Committee believes that the data outlined above accurately reflects Missouri's current practices in the area of certification. Further, it is the intent of the Committee that this information serve as a basis for reflection as you review the options for changes and the recommendations made by the MJJRC.

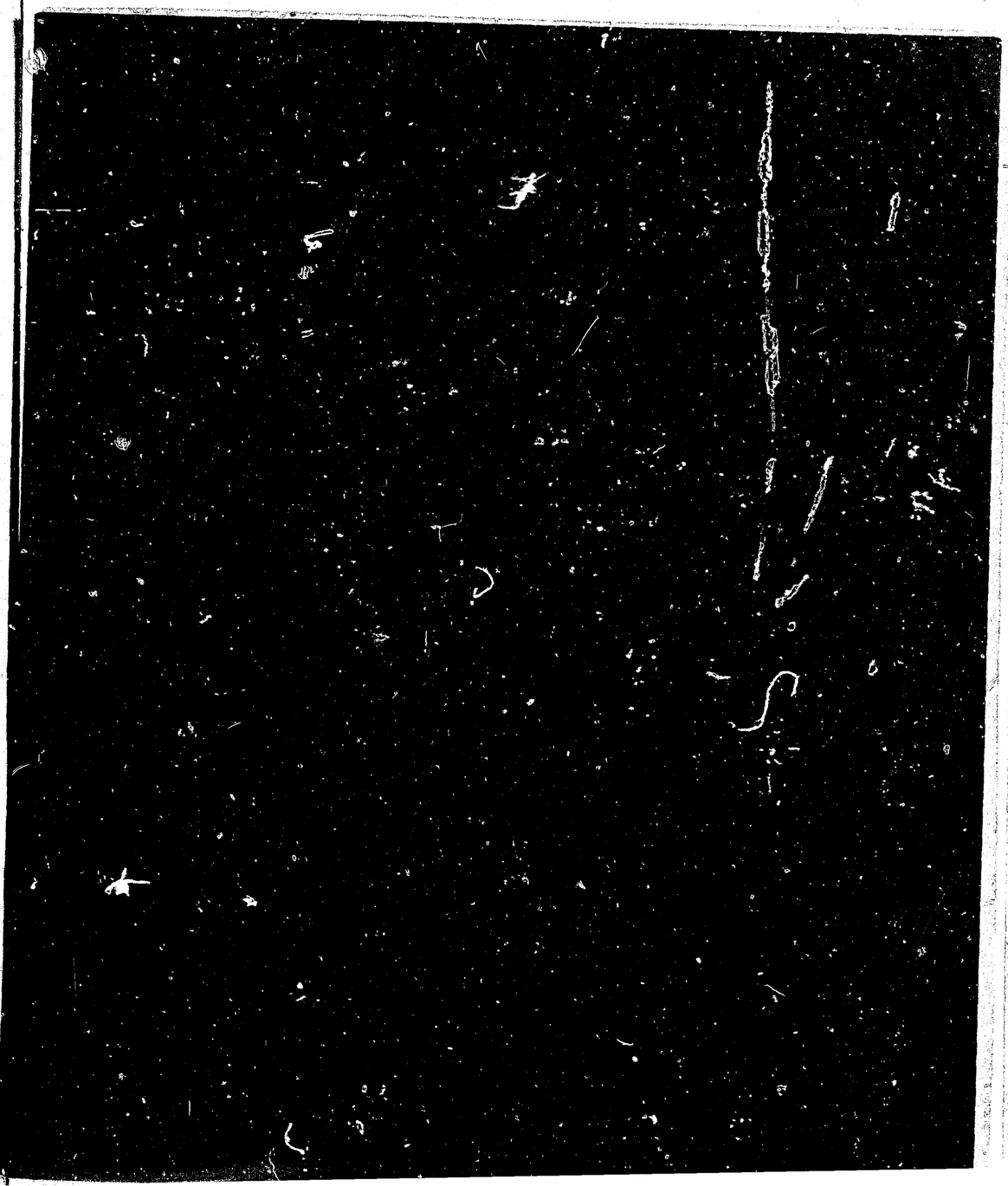

TABLE 5. Comparison of Major Metropolitan Areas (St. Louis, St. Louis County, Jackson County) with the Remainder of Missouri for Breakdown of Certifications by Nature of Offense, 1981.

NATURE OF OFFENSE FOR WHICH CERTIFIED	# IN MAJOR METRO AREAS	% OF MAJOR METRO CERTIFICATIONS	% OF STATEWIDE CERTIFICATIONS	# IN REMAINDER OF STATE	% OF REMAINDER OF STATE CERTIFICATIONS	% OF STATEWIDE CERTIFICATIONS
HOMICIDE	5	7.3	55.6	4	6.8	44.4
MANSLAUGHTER	0	-	-	1	1.7	100.0
CLASS A FELONY	47	68.1	77.0	14	23.7	23.0
OTHER FELONY (NON-TRAFFIC)	16	23.2	29.0	39	66.1	71.0
TRAFFIC FELONY	1	1.4	100.0	0	-	-
TRAFFIC UNDER 16	0	-	-	1	1.7	100.0
TOTALS	69	100.0%		59	100.0%	

PART III: OPTIONS FOR MISSOURI

The MJJRC has identified a number of problems and concerns regarding the issue of certification of juveniles to the adult system in Missouri. Options for resolving these would appear to fall into four positions: (i) maintain the status quo; i.e., make no recommendations for legislative, rule, and/or procedural change; (ii) transfer the jurisdiction of juveniles who have allegedly committed criminal offenses to the adult system; (iii) provide for automatic certification consideration for youth over a given age who have allegedly committed certain offenses; and (iv) make adjustments to the current system that maintain the philosophy of the Juvenile Code but more clearly define and delineate the process.

A. NO CHANGE. One option available to decision makers in Missouri is to make no change in the current statute, Supreme Court Rules, and/or administrative policies of the individual circuits that pertain to the issue of certification. In choosing this option, one would be agreeing that the status quo is acceptable and that the process that is currently in operation is adequate to meet the needs of the court, the youth involved, and the community at large.

The advantages of this option include: 1) no legislative change would have to take place; 2) local policies and practices would remain unchanged and the discretionary power of the court would remain intact; and 3) the varying needs of various communities could more readily be met by the court's ability to tailor its actions to those needs.

The primary disadvantages of this option would be: 1) it represents no change in a process with which many find fault, and 2) it allows for a wide disparity in practices throughout the State.

B. TRANSFER OF JURISDICTION. A second option available to decision makers would be to reassess the juvenile court's jurisdiction over criminal law violators and to revise definitions and statute sections where appropriate. This option could be accomplished by a variety of approaches and on a variety of levels as outlined by the following:

1. Lower Age Limit. The age for the juvenile court's jurisdiction over all criminal law violators could be lowered by statutory revision. This would make all such violators over a certain age directly subject to processing and prosecution in the adult system. Such an option would in effect mean that the court would deal with certain categories of youth (i.e., status offenders and abuse/neglect victims) until one age (i.e., seventeen) while dealing with law violators for a shorter period of time.

2. Age and Limited Offense Transfer. Another possible approach would be to revise the law to require that those youth over a given age (i.e., fourteen) who have committed certain offenses (i.e., Class A felonies and homicide) would be directly subject to adult processing

and prosecution.

3. Transfer of all Law Violators. A third possibility would be that charges regarding all criminal law violations, regardless of age, be processed through the adult system. The prosecutor in this system would review the case and make the decision as to which court (juvenile or adult) should exercise jurisdiction.

To support the total or partial transfer of cases to the adult system involving juvenile law violators, one would be taking a position that the basic philosophy of the Juvenile Code is outmoded, that the juvenile court is not the appropriate vehicle for dealing with these youth, and that the adult system could more effectively address the issue.

Regarding the possible approaches to this option, the Review Committee can find no advantage. Rather, it would suggest that this option would be destructive for the following reasons. First, it rejects the very premise of the Juvenile Code--specifically that it was designed to provide individualized treatment in a system that has the flexibility to meet varying needs. Second, while the juvenile court looks for the exception (i.e., the comparatively few who cannot be treated within this system), this approach would appear to assert that the differential treatment (between juveniles and adults) is increasingly "a thing of the past." In addition, while services and programs currently exist within the juvenile justice system that have demonstrated effective treatment of these youth, it is questionable that such resources exist within the adult system. Finally, the MJJRC would contend that there are factors other than the alleged offense that should be considered when making a determination regarding whether the person is beyond the rehabilitation of the juvenile justice system.

C. MANDATED CERTIFICATION CONSIDERATION. A third option would be to mandate that all juvenile courts in Missouri automatically schedule a dismissal hearing when a child over a given age has allegedly committed a certain type of offense. The court would still have its discretionary power to transfer the child to the adult system or to retain him/her in the juvenile system but it would have to consider the former as an alternative.

The Review Committee, while not recommending that this approach be adopted, certainly finds it more viable than the Transfer of Jurisdiction Option above. It clearly retains the discretion of the court, takes into consideration the totality of the circumstances surrounding the child's referral to the court, and clearly recognizes the possibility that the juvenile court may have appropriate resources for some serious law violators. The major problem with this option is that the court's time would be required in all such cases when, more often than not, the professional judgement of court personnel to make the initial determination to place the matter before the court is sufficient.

D. ADJUSTMENTS TO CURRENT PROCESS. The fourth option for decision makers would be to adjust the current system so that it more clearly defines and delineates certain aspects of the process while leaving the philosophy of the Juvenile Code intact.

The disadvantage of this approach would be that in some areas it would diminish the juvenile court's discretion. However, the advantages would include: 1) an increase in specificity of criteria and procedures thus providing a greater consistency in practice among the circuits, and 2) insurance that those youth who are indeed proper subjects for adult prosecution could be more readily transferred to the adult system.

PART IV: RECOMMENDATIONS FOR CHANGE

The Missouri Juvenile Justice Review Committee believes that there is a need for revision in the State's current certification process. As a result of its review of current statute, Supreme Court Rules, case law, litigation that has been initiated, statutes from other states and model codes, the MJJRC would endorse OPTION D. As outlined in Part III, this option involves maintaining the basic framework of the current process but, at the same time, tightening the criteria, the procedures, and the reins on certain segments of the population currently involved in the process. The Committee further believes that while Option D address various concerns raised by a number of individuals and groups, it retains the purpose and philosophy of the Juvenile Code.

In this section of the paper, the Review Committee will present its recommendations for change. It should be noted that the MJJRC's findings and suggested revisions are not always consistent with the results of the survey mentioned in Part II of the paper. However, the Committee would suggest that its comprehensive review of this issue and its findings will support the proposals as outlined.

A. AGE AND OFFENSE BASES FOR TRANSFER

RECOMMEND: Amend Section 211.071 RSMo as follows:

> *1. If a petition alleges that a child between the ages of fourteen and seventeen has committed an offense which would be considered a felony if committed by an adult, or that a child sixteen years of age has committed an offense that would be considered a felony or a misdemeanor, 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. The child may waive his right to counsel only with the approval of the court.*

Revise Supreme Court Rule 118.01(1) and (2) to read:

> *(1) that a juvenile between the ages of fourteen and seventeen years has committed an act which would be a felony if committed by an adult; or*
>
> *(2) that a juvenile sixteen years of age has committed an act that would be considered a misdemeanor.*

This recommendation accomplishes the following:

- provides that this section conform to the recent revision in Section 211.041 RSMo which, in effect, eliminates the current reference to those between

the ages of seventeen and twenty-one in the current Section 211.071 RSMo

- allows for the prosecution of sixteen year olds who are charged with misdemeanors
- provides that for traffic offenses committed by those between fourteen and seventeen years of age, only felonious charges may be considered for certification by the juvenile court (sixteen year olds charged with non-felonious violations are currently handled by the adult system)
- makes the language of the statute and the Supreme Court Rules more congruent with regard to the filing of the petition
- allows for the child to waive his/her right to counsel upon approval by the court consistent with the Supreme Court Rules (cross-reference between Rules 118.04 and 116.01)

COMMENT: This recommendation is, in fact, an effort to "clean up" the age reference as revised by the passage of HB 1171 et al. In addition, there are some obvious substantive differences, particularly with regard to the exclusion of the certification option for all underage drivers for non-felonious traffic charges and to the inclusion of sixteen year olds who are charged with misdemeanors for certification consideration.

In reference to the underage driver, the Review Committee would recommend that the juvenile court provide services to this offender in all cases involving non-felonious violations. This system can, in fact, provide more extensive treatment resources for a juvenile charged with this type of offense and its sanctions on future licensing can be severe. Fines imposed by the adult system (which in all probability would be paid by parents) might have minimal impact on a fourteen or fifteen year old. While the option should still exist to certify underage drivers for felonious offenses, it should be in the most rare of circumstances.

In its statewide survey, the MJJRC asked: "Would your court like having the option of certifying chronic 16 year old offenders who are currently charged with misdemeanors?" Forty-three circuits responded to the question indicating that twenty-six (26) favored such an option while seventeen (17) rejected same. The Review Committee believes that this option should be available to the courts. As always, they will have discretion in making this determination and the same criteria used in all such considerations will still hold true.

It may in some cases simply be a matter that "the offense alleged is part of a repetitive pattern of offenses which indicates that the juvenile may be beyond rehabilitation under the Juvenile Code" (Supreme Court Rule 118.01.c.(2)). Should the court be hampered in

its ability to transfer a sixteen year old with a history of twenty referrals (perhaps a combination of status, felony, and misdemeanor) to the adult system because the instant charge is of a misdemeanor nature? The Review Committee would contend that should the child meet enough of the criteria considered by the court to be diagnosed as "beyond rehabilitation" by this system, the court should have that prerogative.

B. AUTOMATIC TRANSFER FOR SEVENTEEN YEAR OLD YOUTH UNDER CONTINUING JURISDICTION

RECOMMEND: Amend Section 211.071 RSMo to include:

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

Revise Supreme Court Rule 118.01 by:

deleting 118.01(2)

COMMENT: The Review Committee proposed and finalized this recommendation prior to the time that HB 1643 was filed, eventually incorporated into HB 1171 et al., and ultimately passed by the General Assembly and signed by the Governor. This statutory revision impacts Section 211.041 RSMo (Continuing jurisdiction over child) and reads as follows:

> ...Every child over whose person the juvenile court retains jurisdiction shall be prosecuted under the general law for any violation of a state law or of a municipal ordinance which he commits after he becomes seventeen years of age. The juvenile court shall have no jurisdiction with respect to any such violation and, so long as it retains jurisdiction of the child, shall not exercise its jurisdiction in such a manner as to conflict with any other court's jurisdiction as to any such violation.

Pursuant to the adoption of the above revision, this particular MJJRC recommendation has, indeed, been addressed. The Review Committee would agree that this legislation obviously places limits and qualifiers on the court's continuing jurisdiction for those over the age of sixteen and should appropriately be cited in Section 211.041 RSMo. However, since it likewise addresses a new limitation on the previous practice necessitating the transfer process for seventeen year olds under the jurisdiction of the court, perhaps it should be set forth in Section 211.071 RSMo as well.

C. AGE MISREPRESENTATION

RECOMMEND: Amend Section 211.071 RSMo to include:

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

This recommendation accomplishes the following:

- provides that age misrepresentation shall not result in dismissal for insufficiency of evidence based on the premise of "the fruit of the poisonous tree"
- provides that knowing and willful age misrepresentation will serve as a waiver to due process rights and allows the juvenile court to proceed upon determination that the person is a juvenile
- allows the adult system to proceed with prosecution based upon all available evidence if the juvenile is ultimately transferred to the adult system

COMMENT: This proposal is made in response to State v. Wade, 531 S.W.2d (1976) which found that misrepresentation as to age is not sufficient "to remove the need for protection and special treatment foreseen and mandated by the General Assembly" (by the creation of the Juvenile Code). The Missouri Supreme Court reversed the conviction of one Dirk Allen Wade for first-degree murder and remanded the cause for a new trial. It found that the circuit court had been in reversible error for admitting a police officer's testimony concerning the total oral confession given by the sixteen (16) year-old defendant who had not been taken to juvenile authorities prior to interrogation, despite the fact that he had represented himself to the officers who arrested him in connection with a robbery to be seventeen (17).

The Review Committee would contend that, while law enforcement personnel and officers of any court should make a diligent effort to ascertain the age of anyone in custody, the willful deceit by a juvenile should not afford him/her the opportunity to hide behind the due process guarantees of the juvenile justice sytem and avoid prosecution, either as a juvenile or an adult as a result of his/her deceit.

D. NOTICE OF THE TRANSFER HEARING

RECOMMEND: Amend Section 211.071 RSMo to include:

4. Written notification of a transfer hearing shall

be given to the juvenile and his custodian in the same manner as provided in Section 211.101, 211.111 RSMo. Notice of the hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the hearing is to determine whether the child is a proper subject to be dealt with under the provisions of this chapter, and that if the court finds that the child is not a proper subject to be dealt with under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the child under the general law.

This recommendation accomplishes the following:

- clarifies that the procedure for notice of a transfer hearing is the same as that for any other hearing in the juvenile court
- makes the language of state statute congruent with that of the Supreme Court Rules

COMMENT: In fact, this recommendation does not change the current practices of the juvenile court. Rather, it serves as one element of the recommended expansion of the statute covering the certification process. While the Review Committee would agree that this is a procedural change as opposed to a substantive revision, it would suggest that state statute needs to be more specific regarding this process. This provision would provide a statutory basis for the existing Supreme Court Rule and would address the requirements as set forth in Kent v. The United States, 383 U.S. 541 at 562-563 (1966).

E. THE ROLE OF THE PROSECUTING ATTORNEY

RECOMMEND: Amend Section 211.071 RSMo to include:

5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section in order to determine the prosecutive merit of this offense. The prosecuting attorney shall not divulge any information regarding the child and the offense until the juvenile court has determined that the child is not a proper subject to be dealt with under the provisions of this chapter.

This recommendation accomplishes the following:

- authorizes the juvenile officer to consult with the prosecuting attorney before making a determination as to whether to proceed with certification

- provides a greater likelihood of prosecution following certification

- imposes confidentiality constraints upon the prosecuting attorney until such time as the child is certified

COMMENT: This provision grants statutory authority to a practice that is already in operation in many circuits. In response to a question posed in the Certification Practices Questionnaire, twenty-six circuits (59%) indicated that they always consult with the prosecuting attorney regarding the prosecutive merit of a case prior to deciding whether to file a Motion to Dismiss. Thirteen circuits (30%) indicated that they consult on as-needed or case-by-case bases and five circuits (11%) stated that they never consult with the prosecuting attorney.

There is some evidence as indicated by the introduction of SB 539 in the Second Session of the 81st General Assembly, that some groups or individuals believe that the prosecuting attorney should take a more active role--if not exclusive--in determining the court of jurisdiction for juveniles who have allegedly committed law violations. The Review Committee would contend that this would be a destructive step as already outlined in its response to Option B in Part III of this paper.

Acknowledging that on occasion there may be a conflict between the treatment and prosecutorial functions currently prescribed to the juvenile officer, the Review Committee would contend that he/she is the only person in a position within the existing structure of both the juvenile and adult justice systems to make the initial determination to place the matter before the court as to whether a juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. Only the juvenile officer is in a position to take into account the totality of the child's circumstances as outlined in Kent and to evaluate the resources available to treat the juvenile. The prosecutor, on the other hand, can only address the nature of and the circumstances surrounding the offense.

The above recommendation is proposed as a means of developing and authorizing communication and coordination between the two systems while retaining the purpose, philosophy and intrinsic nature of each.

F. CRITERIA FOR THE COURT'S CONSIDERATION

RECOMMEND: Amend Section 211.071 RSMo to include:

> 6. *A written report shall be prepared in accordance with this chapter developing fully all available information relevant to the criteria which shall be considered by the court in determining whether the child is a proper subject to be dealt with under the provisions of this chapter and whether there are reasonable prospects of rehabilitation within the*

> *juvenile justice system. These criteria shall include but not be limited to:*
>
> *(a) the seriousness of the offense alleged and whether the protection of the community requires certification;*
>
> *(b) whether the offense alleged involved viciousness, force and violence;*
>
> *(c) whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;*
>
> *(d) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the Juvenile Code;*
>
> *(e) the record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;*
>
> *(f) the sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;*
>
> *(g) the program and facilities available to the juvenile court in considering disposition; and*
>
> *(h) whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court.*

Revise Supreme Court Rule 118.04 as follows:

delete C. (1)-(4) and insert the above

This recommendation accomplishes the following:

- expands the criteria to be considered by the court when making a determination regarding certification in Rule and statute to include those cited in Kent v. United States

- eliminates the possibility that a decision to certify will be challenged on the basis of the Kent case

- provides that the same criteria shall be considered statewide when a determination is being made with regard to certification

COMMENT: Currently state statute establishes two elements that need to be present before certification to the adult system can be considered--age and nature of offense. The Supreme Court Rules, on the other hand, specify four criteria that shall be considered in such a situation. The Kent decision goes beyond Missouri's Rules and sets forth additional criteria that the court shall consider. The Review Committee would suggest that these should be incorporated into both statute and Rule primarily to insure uniform consideration of this matter in all circuits of the state.

It is important to note that the MJJRC supports the notion that these criteria shall be considered where applicable as opposed to met. It would appear that currently several circuits in the state feel that all four criteria outlined in the Rules need to be established before a determination to certify can be made. Other courts appear to interpret this Rule to mean that one or more of the criteria must be evidenced in order to transfer the juvenile to the adult system. The Review Committee would support the latter contention, believing that the court must retain its discretionary authority to make such a decision based upon the totality of the evidence.

The statewide survey conducted by the Review Committee does not support this recommendation. Thirty-eight (38) of the responding circuits felt that the criteria currently outlined in Supreme Court Rule 118.04 are sufficient. Only five (5) circuits felt that they are not specific enough, while one (1) circuit felt that they are too specific. The MJJRC, however, would suggest that all juveniles in Missouri subject to certification action should be assessed and considered based upon not only uniform, but specific criteria. An Order to Dismiss, which could thrust a juvenile into the adult justice system and conceivably start a chain of events that would follow him throughout his life, is one of the most crucial considerations made by the court. Thus, the court should make every effort to develop fully all evidence and information relating to the totality of the circumstances surrounding such a case. Based on the Review Committee's belief that there is a need for specificity as well as a need for statewide consistency, it would recommend the inclusion of the criteria outlined in Kent in both statute and Rule.

G. THE ORDER TO DISMISS

RECOMMEND: Amend Section 211.071 RSMo to include:

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

(a) findings showing that the court had jurisdiction of the cause and of the parties;

(b) findings showing that the child was represented by counsel or has waived counsel with the approval of the court;

(c) findings showing that the hearing was held in the presence of the child and his counsel unless counsel was waived; and

(d) findings showing the facts and reasons underlying the court's decision to transfer jurisdiction.

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

Revise Supreme Court Rule 118.04.d. as follows:

d. After the conclusion of the hearing if the court finds that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, it shall order the petition dismissed to permit the juvenile to be prosecuted under the general law and shall include in its order the following:

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

(2) findings showing that the child was represented by counsel or has waived counsel with the approval of the court;

(3) findings showing that the hearing was held in the presence of the child and his counsel unless counsel was waived; and

(4) findings showing the facts and reasons underlying the court's decision to transfer jurisdiction.

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

This recommendation accomplishes the following:

- ensures that the Supreme Court Rules and the Missouri Juvenile Code are consistent with Kent v. United States
- ensures consistency in the dismissal order in all circuits in the State of Missouri

COMMENT: Many circuits in the State of Missouri have altered their practice to ensure that the dismissal order is consistent with the ruling in the Kent case. With this change in both the Supreme Court Rules and in the statute, there will be clear-cut mandates requiring that the above recommendations be included in every dismissal order.

This order effectively produces consistency across the state and reduces the possibility of appeal of a certification on a technicality that has been established by case law.

H. ONCE CERTIFIED, FOREVER CERTIFIED

RECOMMEND: Amend Section 211.071 RSMo to include:

> 8. *When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, and the subject has been convicted in the court of general jurisdiction, the jurisdiction of the juvenile court over that child is forever terminated for an act that would be a violation of a state law or municipal ordinance.*

This recommendation accomplishes the following:

- provides that a juvenile who has been certified and subsequently convicted under the general law would forever be considered an adult for any additional law violations
- reduces the necessity for the juvenile court to reconsider the issue of certification on subsequent offenses, a practice that in many instances has been redundant
- eliminates the possibility of concurrent jurisdiction on the part of the juvenile court with that of the adult court for a law violator under the age of seventeen who has already been deemed an improper subject to be dealt with by the provisions of the Juvenile Code.

COMMENT: Under existing statute, a juvenile may be certified to the court of general jurisdiction pursuant to current rule and practice. A finding has been made that he/she is not a proper subject to be dealt with under the provisions of the Juvenile Code. Any subsequent violation of state law or municipal ordinance, while the subject is under the age of 17, would be referred again to the juvenile court for consideration and disposition. Assuming conviction in the general court of jurisdiction, the referral of any subsequent matter to the juvenile court creates the dilemma of concurrent jurisdiction. Further, once the juvenile court has determined that a child or minor is not a proper subject to be dealt with under the provisions of the Juvenile Code, it may be redundant to reconsider that issue on a subsequent violation.

Based upon the questionnaire administered statewide, 34 circuits responded favorably to this recommendation while 10 circuits indicated their lack of support.

I. JUVENILE COURT CASE RETENTION

RECOMMEND: Amend Section 211.071 RSMo to include:

> 9. *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 in accordance with Section 211.171 RSMo.*

This recommendation accomplishes the following:

- amends the statute to ensure consistency with current Supreme Court Rule
- completes the certification process in statutory form

COMMENT: While not a significant change in terms of content and/or practice, the above recommendation does ensure statutory consistency between the Juvenile Code and Missouri Supreme Court Rules.

SUMMARY

The Missouri Juvenile Justice Review Committee has closely examined the certification or transfer process that currently exists in the State by undertaking:

- a review of the current statute and Supreme Court Rules that apply to this process;
- a review of other states' statutes as well as model codes;
- a survey of Missouri's forty-four judicial circuits to determine their practices and opinions; and
- a review of case law decisions.

As a result of its study, the MJJRC approached the issue by:

- developing options that can be considered by those empowered to initiate both statutory and Rule revision with regard to this process and
- attaching specific recommendations to the Option chosen by the Committee as being the most practical and viable.

It is the Review Committee's opinion that there is a need for change with regard to the current certification process. Based on an analysis of the materials mentioned above, the overview presented in this paper as well as the recommendations are intended to provide the decision makers in Missouri with some insight into "why" and "how."

APPENDIX

QUESTIONNAIRE

CERTIFICATION PRACTICES

1. During 1981, how many times did your court file a Motion to Dismiss so that a juvenile could be waived to the adult system? (Check one of the below and indicate exact number if possible.)

a. 0 ____ c. 5-10 ____ e. 15-20 ____ g. 30-40 ____
b. 1-5 ____ d. 10-15 ____ f. 20-30 ____ h. over 40 ____

2. Of the number above, how many juveniles were, indeed, waived to the adult court? Please include in your count multiple certifications relating to the same juvenile. (Check one of the below and indicate exact number if possible.)

a. 0 ____ c. 5-10 ____ e. 15-20 ____ g. 30-40 ____
b. 1-5 ____ d. 10-15 ____ f. 20-30 ____ h. over 40 ____

3. Of the number of juveniles actually waived to the adult system, please provide a numerical breakdown according to age (please include in your count multiple certifications relating to the same juvenile).

	How many?		How many?
a. 14 yrs. of age	____	c. 16 yrs. of age	____
b. 15 yrs. of age	____	d. 17 yrs. of age & over	____

4. Of the number of juveniles actually waived to the adult system, please provide a numerical breakdown according to the nature of the offense (if more than one, the more serious) alleged.

	How many?		How many?
a. Homicide (murder)	____	c. Other felony (non-traffic)	____
b. Class A Felony	____	d. Felony, traffic	____

5. Do you consult with the prosecuting attorney regarding the prosecutive merit of the case prior to making a decision as to the filing of a motion?

Always ____ Never ____ As Needed ____

If you do, does his/her decision affect your decision as to whether you file a motion to dismiss? Yes ___ No ___

6. Do you know how many times prosecution has been initiated by the adult system regarding the cases certified by your court? Yes ___ No ___

If yes, approximately ____%

7. Would your court like having the option of certifying chronic 16 year old offenders who are currently charged with misdemeanors? Yes ___ No ___

8. Of the number of cases waived in 1981 by your court, how many times was the same juvenile certified more than one time? (Check one of the below and indicate exact number if possible.)

a. 0 ____ c. 3-5 ____ e. more than 10 ____
b. 1-3 ____ d. 5-10 ____

9. Please rank in order those criteria listed below that your court considers when making a determination regarding whether to certify. (Number 1 would indicate first priority.)

a. ___The age of the juvenile
b. ___The availability of resources
c. ___The seriousness of the offense
d. ___The juvenile's amenability to treatment
e. ___The record of the juvenile
f. ___Other, please list:
_____
_____
_____

Do you think that the criteria for certification consideration as outlined in Supreme Court Rule 118.04 are: (Check one)

a. Sufficient ___
b. Too specific ___
c. Not specific enough ___

If not specific enough, what additional criteria would you suggest?

_____
_____
_____
_____
_____
_____

10. Is certification of a 16 year old an automatic consideration in your court? Yes ___ No ___

Is certification of a 17 year old an automatic decision in your court? Yes ___ No ___

11. Would you endorse the following concept? When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, and the subject has been convicted in the adult court, the jurisdiction of the juvenile court for that child is forever terminated for an act that would be a violation of a state law or municipal ordinance. Yes ___ No ___

12. Do you have any additional comments, criticims or recommendations regarding the issue of certification?

_____

_____

_____

_____

_____

_____

Name of Person Completing Questionnaire _____ Circuit _____

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE MEMBERS

Mr. Wally Allstun
Juvenile Administrator
32nd Judicial Circuit
Cape Girardeau, MO

Ms. Bettylu Donaldson
Assistant Director of Juvenile Court Services
16th Judicial Circuit
Kansas City, MO

Mr. Jerry Doty
Juvenile Officer
10th Judicial Circuit
Hannibal, MO

Mr. Raymond Grush
Juvenile Officer
11th Judicial Circuit
St. Charles, MO

Mr. Ken Hensiek
Chief Juvenile Officer
21st Judicial Circuit
Clayton, MO

Mr. Robert L. Perry
Director of Juvenile Court Services
13th Judicial Circuit
Columbia, MO

Mr. Don Szwabo
Administrative Assistant
22nd Judicial Circuit
St. Louis, MO

Mr. Bill Hentz
Juvenile Officer
36th Judicial Circuit
Poplar Bluff, MO

Mr. John Love
Director of Court Services
31st Judicial Circuit
Springfield, MO

Ms. Barbara Buzard
Missouri Child Care Association
Jefferson City, MO

Dr. Turner Tyson
Supervisor, School Finance
Department of Elementary and Secondary Education
Jefferson City, MO

Mr. John Bonnot
Program Development Administrator
Division of Youth Services
Jefferson City, MO

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Director of Operations
Office of State Courts Administrator
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Jefferson City, MO

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Western Missouri Mental Health Center
Child Psychiatry
Kansas City, MO

Ms. Judy Shaw, Acting Supervisor
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Division of Family Services
Jefferson City, MO

Mr. Dwain Hovis
Special Assistant to the Director
Division of Family Services
Jefferson City, MO

Mr. Jim Hair, Director
Division of Youth Services
Jefferson City, MO

Continued

JUDICIAL REVIEW COMMITTEE

The Honorable Bruce Normile
Judge, Circuit Court
2nd Judicial Circuit
Edina, MO

The Honorable George Henry
Judge, Circuit Court
40th Judicial Circuit
Chillicothe, MO

The Honorable Ninian M. Edwards
Judge, Circuit Court
21st Judicial Circuit
Clayton, MO

The Honorable James Stubbs
Judge, Circuit Court
43rd Judicial Circuit
Chillicothe, MO

COMMITTEE STAFF

Ms. Edith Tate
Staff Director
Jefferson City, MO

Mr. Dennis R. Canote
Assistant Staff Director
Jefferson City, MO

Ms. Jane Smith
Staff Secretary
Jefferson City, MO

CERTIFICATION

A REVIEW OF THE TRANSFER PROCESS TO THE ADULT CRIMINAL JUSTICE SYSTEM

EXECUTIVE SUMMARY

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

July, 1982

CERTIFICATION
A REVIEW OF THE TRANSFER PROCESS TO THE ADULT CRIMINAL JUSTICE SYSTEM

EXECUTIVE SUMMARY

Prepared by

Missouri Juvenile Justice Review Committee

July 1982

This document was prepared by the Missouri Juvenile Justice Review Committee under grant number 81-JFC-30001 awarded by the State Advisory Group for Juvenile Justice and Delinquency Prevention through the Missouri Department of Public Safety from funds made available to Missouri by the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice. Points of view or opinions stated in this document are those of the Missouri Juvenile Justice Review Committee and do not necessarily represent those of the State Advisory Group for Juvenile Justice and Delinquency Prevention, the Department of Public Safety, or of the United States Department of Justice.

Missouri Juvenile Justice Review Committee
P.O. Box 1332
Jefferson City, Missouri 65102

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

P. O. BOX 1332
JEFFERSON CITY, MISSOURI 65102
(314) 751-3265

Dear Reader:

As part of its review of the juvenile services system in the State, the Missouri Juvenile Justice Review Committee has prepared the following Executive Summary of its report on Certification. The Committee believes that this process warrants review and revision.

It is the hope of the Review Committee that you will find this report both informative and thought provoking. We intend to pursue the changes recommended in this report and welcome your support and participation in this endeavor.

Sincerely,

Robert L. Perry
Facilitator

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INTRODUCTION

This Missouri Juvenile Justice Review Committee (MJJRC) considers the act of entering an Order to Dismiss, thereby permitting a juvenile to be prosecuted under the general law, to be one of the more critical issues with which the juvenile court must be concerned. It clearly involves a fine balance between protecting the public safety and protecting the rights of juveniles, including the right to treatment in a system specifically designed to meet the needs of youthful offenders.

The Review Committee believes that Missouri should retain the option to transfer youths to the adult system just as forty-seven other states and the District of Columbia have done.[1] While the juvenile justice system can provide programs and services to the majority of youth which it serves, there are some who simply are not proper subjects to be dealt with by the system. Lack of amenability to treatment, lack of appropriate or adequate resources, criminally sophisticated behavior, and serious recidivism are all among the reasons why access to the adult system for certain youth is necessary and essential.

The entire process referenced above is labeled by a variety of terms in Missouri. The Supreme Court Rules (118.01-118.04) outline the procedures that culminate in a "Dismissal Hearing." Others in the state, including juvenile court personnel, juvenile court judges, other professionals, and the general community may refer to this hearing as one of "certification," "waiver" or "transfer." In any case, the process involves: the initial filing of a petition, including information regarding the facts that bring the juvenile within the jurisdiction of the court; a subsequent motion to dismiss the petition to allow prosecution of the juvenile under the general law; notice of the hearing; an investigation to aid the court in its determination; and a hearing to determine if the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. For the purposes of this summary, these terms will be used interchangeably when reference is made to this process.

[1]John L. Hutzler, "Waiver/Transfer/Certification of Juveniles to Criminal Court: 1980 Statutes Analysis," Pittsburg, Pa.: National Center for Juvenile Justice, 1980 (corrected to reflect the 1981 revision in Vermont State Statute).

PROBLEM STATEMENT

Current certification processes in Missouri are guided by state statute, Supreme Court Rules, and precedents established by case law. In addition, the forty-four judicial circuits have developed local policies and practices regarding the transfer process. The Review Committee believes that these practices may vary significantly among the circuits depending upon a variety of variables, including statute and Rule interpretation; resources available for violent/serious and/or chronic offenders; community pressure; and the philosophy of the court itself.

REVIEW PROCESS

The Review Committee has closely examined the certification or transfer process that currently exists in the State by undertaking:

- a review of the current statute and Supreme Court Rules that apply to this process;
- a review of other states' statutes as well as model codes;
- a survey of Missouri's forty-four judicial circuits to determine their practices and opinions; and
- a review of case law decisions.

As a result of its study, the MJJRC approached the issue by:

- developing options that can be consideed by those empowered to initiate both statutory and Rule revision with regard to this process and
- attaching specific recommendations to the option chosen by the Committee as being the most practical and viable.

RECOMMENDATIONS

The Committee believes that the following recommendations will provide a more consistent, uniform approach to the certification process throughout Missouri. Further, while there are several significant substantive changes, the MJJRC would suggest that they do not alter the basic intent or philosophy of the Juvenile Code. Rather, they address practical concerns and considerations that have arisen both within and outside of the juvenile justice field as the concept of juvenile delinquency has evolved.

As noted below, the Review Committee would recommend that legislative revision be undertaken with regard to these proposals. In several instances, however, the changes would, in all probability, necessitate Supreme Court Rule revision as well. Such recommendations will be designated by an asterisk (*) for this summary.

Amend Section 211.071 RSMo to read as follows:

*1. If a petition alleges that a child between the ages of fourteen and seventeen has committed an offense which would be considered a felony if committed by an adult or that a child sixteen years of age has committed an offense that would be considered a felony or a misdemeanor, 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 petiton and such child may be transferred to the court of general jurisdiction and prosecuted under the general law. The child may waive his right to counsel only with the approval of the court.

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

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

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

5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section in order to determine the prosecutive merit of this offense. The prosecuting attorney shall not divulge any information regarding the child and the offense until the juvenile court at a judicial hearing has determined that the child is not a proper subject to be dealt with under the provisions of this chapter,

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

(a) the seriousness of the offense alleged and whether the protection of the community requires certification;
(b) whether the offense alleged involved viciousness, force and violence;
(c) whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;
(d) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitiation under the Juvenile Code;
(e) the record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;
(f) the sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;
(g) the program and facilities available to the juvenile court in considering disposition; and
(h) whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court.

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

(a) findings showing that the court had jurisdiction of the cause and of the parties;
(b) findings showing that the child was represented by counsel or has waived counsel with the approval of the court;
(c) findings showing that the hearing was held in the presence of the child and his counsel unless counsel was waived; and
(d) findings showing the facts and reasons underlying the court's decisions to transfer jurisdiction.

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

8. When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, and the subject has been convicted in the court of general jurisdiction, the jurisdiction of the juvenile court over that child is forever terminated for an act that would be a violation of a state law or municipal ordinance.

9. 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 in accordance with Section 211.171 RSMo.

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE MEMBERS

Mr. Wally Allstun
President, Missouri Juvenile Justice Association
Cape Girardeau, MO

Ms. Bettylu Donaldson
Assistant Director of Juvenile Court Services
16th Judicial Circuit
Kansas City, MO

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Division of Youth Services
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END