

# Juvenile Justice and Procedures Part 2

## Role of Law Enforcement

### APPREHENSION, RIGHTS, PROCESSING AND CUSTODY

## Objectives

At the end of this portion of instruction the trainee will be able to:

12. Know what the statutes indicate regarding law enforcement officers assisting and cooperating with juvenile officers
13. Identify the two types of judicial custody
14. Identify the circumstances and situations when a juvenile may be taken into judicial custody, if it is this an arrest, and when does the jurisdiction of the court attaches.
15. Identify the process for the execution of a capias as used in judicial custody situations
16. Identify who will be notified when a juvenile is taken into judicial custody

POST Objectives

### Objectives

17. Identify the procedure for notification to the Juvenile Officer when the juvenile is or is not released
18. Know what conditions must exist for a juvenile to be released from custody
19. Know if a juvenile can be detained in a jail or other adult detention facility
20. Know the procedure when a juvenile is presented to the juvenile officer or detention facility
21. Know at what point an arrested child is to be taken before the juvenile court
22. Know if juvenile can be fingerprinted and/or photographed

### Objectives

23. Know what rights a child is to be given after being taken into custody and prior to questioning
24. Know who is to give the child his/her rights
25. Know who may interview or interrogate a juvenile
26. Know what procedure to follow to conduct a physical line-up, polygraph test or breathalyzer test
27. Know what happens if a juvenile misrepresents his age to law enforcement officials
28. Know how juvenile records must to be kept by law enforcement officials

POST Objectives

### Objectives

- 29. Know what discrepancies currently exist in Missouri law regarding traffic violations
- 30. Know what is the law regarding detention of youth for traffic ordinances
- 31. Know what is in the statutes about jurisdiction over a youth possessing or using a tobacco product
- 32. Know what happens if a child is still under the jurisdiction of the family/juvenile court but is older than 17 and commits a new law violation, and where he/she goes to court

POST Objectives

### The Role of Law Enforcement

Law enforcement officers are required by law to assist and cooperate with juvenile officers.

#### Key Points:

Section 211.411, RSMo,

1. It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices.
2. It is the duty of police officers, sheriffs and other authorized persons taking a child into custody to give information of that fact immediately to the juvenile court or to the juvenile officer or one of his deputies and to furnish the juvenile court or the juvenile officer all the facts in their possession pertaining to the child, its parents, guardian or other persons interested in the child, together with the reasons for taking the child into custody.
3. It is the duty of all other public officials and departments to render all assistance and cooperation within their jurisdictional power which may further the objects of this chapter.

The court is authorized to seek the cooperation of all societies and organizations having for their object the protection or aid of children and of any person or organization interested in the welfare of children.

### Judicial Custody

“Judicial custody” means taking or retention of custody of the person of a juvenile in either protective custody or detention.

#### Key Points:

“Judicial custody” means taking or retention of custody of the person of a juvenile in either protective custody or detention.

- (Source: 110.05 (10) Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

“Protective custody” means taking or retention of custody of the person of a juvenile to protect the juvenile from imminent danger or serious physical harm or threat to life.

- (Source: Sections 210.125 and 211.031.1(1) RSMo.)

### Judicial Custody

A juvenile may be taken into judicial custody:

- Pursuant to an order of the court; or
- Pursuant to the laws of arrest applicable to adults if being taken into detention

#### Key Points:

When any child:

- found violating any law or ordinance, OR
- whose behavior, environment or associations are injurious to his welfare or to the welfare of others, OR
- who is without proper care, custody or support

is taken into custody, the taking into custody is not considered an arrest.

- (Source: Section 211.131.1 RSMo.)

The jurisdiction of the court attaches from the time the child is taken into custody.

- (Source: Section 211.131.3 RSMo.)

Section 211.101.3, RSMo, authorizes the court, after a petition has been filed, to order that the juvenile be taken into custody at once (see rule 128.01 for a recommended court order to take a juvenile into judicial custody).

Section 211.121 provides that the court may issue a capias if the juvenile fails to appear in response to a summons.

### Judicial Custody

Any person taking a juvenile into judicial custody shall notify the juvenile officer and shall make reasonable efforts to notify the juvenile's custodian.

#### Key Points:

- (Source: 111.02a Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

When a child is taken into custody, the parent, legal custodian or guardian of the child shall be notified as soon as possible.

- (Source: Section 211.131.2 RSMo.)

A written report shall be made to the juvenile officer stating why the juvenile was taken into judicial custody and, if the juvenile is not released, why the juvenile was not released.

- (Source: 111.02b Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

The person to whom a juvenile is released may be required to sign a written promise to produce the juvenile when ordered by the court.

- (Source: 111.02e Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

If the juvenile is not released and detention is ordered or authorized, the juvenile shall immediately be taken to the juvenile officer or a person acting for the juvenile officer or to a detention facility designated by court order pursuant to Rule 111.03.

- (Source: 111.02f Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

### Judicial Custody

Specific conditions must exist for a juvenile to be released from custody.

#### Key Points:

When a juvenile is taken into judicial custody, the juvenile shall not remain in custody but shall be released at once to the juvenile's custodian or some other suitable person, unless:

- The court has ordered the juvenile to be in detention; OR
- Temporary detention has been authorized pursuant to Rule 111.06
- (Source: 111.02c(1)(2) Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

When a child is taken into custody as provided in section 211.131, the person taking the child into custody shall, unless it has been otherwise ordered by the court, return the child to his parent, guardian or legal custodian on the promise of such person to bring the child to court, if necessary, at a stated time or at such times as the court may direct.

- The court may also impose other conditions relating to activities of the child.
- If these additional conditions are not met, the court may order the child detained as provided in section 211.151.
- If additional conditions are imposed, the child shall be notified that failure to adhere to the conditions may result in the court imposing more restrictive conditions or ordering the detention of the child.

If the person taking the child into custody believes it desirable, he may request the parent, guardian or legal custodian to sign a written promise to bring the child into court and acknowledging any additional conditions imposed on the child.

- (Source: Section 211.141.1 RSMo.)



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If the child is not released as provided in subsection 1 of this section, he may be conditionally released or detained in any place of detention specified in section 211.151 but only on order of the court specifying the reason for the conditional release or the detention.

- The parent, guardian or legal custodian of the child shall be notified of the terms of the conditional release or the place of detention as soon as possible.
- (Source: Section 211.141.2 RSMo.)

As used in this section, the term “juvenile detention facility” means a place, institution, building or part thereof, set of buildings or area, whether or not enclosing a building or set of buildings, which has been designated by the juvenile court as a place of detention for juveniles and which is operated, administered and staffed separately and independently of a jail or other detention facility for adults and used exclusively for the lawful custody and treatment of juveniles.

- The facility may be owned or operated by public or private agencies.

A juvenile detention facility may be located in the same building or grounds as a jail or other adult detention facility, if:

- There is spatial separation between the facilities which prevents haphazard or accidental contact between juvenile and adult detainees;
- There is separation between juvenile and adult program activities; and
- There are separate juvenile and adult staffs other than specialized support staff that have infrequent contact with detainees.
- (Source: Section 211.151.4(2) RSMo.)

### Judicial Custody

A child shall not be detained in a jail or other adult detention facility pending disposition of a case.

#### Key Points:

- (Source: Section 211.151.2 RSMo.)

As used in this section the term “jail or other adult detention facility” means any locked facility administered by state, county or local law enforcement and correctional agencies, a primary purpose of which is to detain adults charged with violating a criminal law pending trial, including facilities of temporary nature which do not hold persons after they have been formally charged, or to confine adults convicted of an offense.

- The term “jail or other adult detention facility” does not include a juvenile detention facility.
- (Source: Section 211.151.4(1) RSMo.)

### Judicial Custody

When a juvenile in detention is presented to the juvenile officer, the juvenile officer may release the juvenile or may take the juvenile to a detention facility and there authorize the juvenile's detention.

#### Key Points:

When a juvenile in detention is presented to the juvenile officer, the juvenile officer may, unless the court has ordered detention of the juvenile, release the juvenile pursuant to Rule 111.02 or may take the juvenile to a detention facility and there authorize the juvenile's detention in accordance with Rule 111.06.

When a person other than the juvenile officer presents a juvenile in detention to a detention facility operated exclusively for the detention of juveniles, the person in charge of the detention facility may release the juvenile pursuant to Rule 111.02, unless the court or the juvenile officer has ordered or shall order that the juvenile be in detention.

When a juvenile is presented to a detention facility, the person in charge of the detention facility shall promptly inform the juvenile officer of the county in which the facility is located and the county requesting or authorizing detention that the juvenile has been received by the facility and why the juvenile was taken into judicial custody.

If the person in charge of the detention facility is unable to locate a juvenile officer entitled to be informed within a reasonable time, such person shall inform the juvenile officer's judge that the juvenile has been presented to the facility and why the juvenile was taken into judicial custody.

Upon being informed that a juvenile is in detention, the juvenile officer or judge shall consider the circumstances and shall thereupon either direct the juvenile to

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be released or authorize the juvenile to be held in the detention facility or some other appropriate facility in accordance with Rules 111.06 and 111.07.(Source: 111.04 Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Court.)

### Rights

A child taken into custody, with or without a warrant, for an offense shall be taken immediately and directly before the juvenile court or delivered to the juvenile officer or person acting for him.

#### Key Points:

When a child is taken into custody with or without a warrant for an offense, the child, together with any information concerning him and the personal property found in his possession, shall be taken immediately and directly before the juvenile court or delivered to the juvenile officer or person acting for him.

- (Source: Section 211.061 RSMo.)

### Rights

Any child taken into custody for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court must be advised of his/her rights prior to questioning.

#### Key Points:

When a child is taken into custody by a juvenile officer or law enforcement official, with or without a warrant for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 or section 211.031, the child shall be advised prior to questioning:

- That he has the right to remain silent; and
- That any statement he/she does make to anyone can be and may be used against him; and
- That he has a right to have a parent, guardian or custodian present during questioning; and
- That he/she has a right to consult with an attorney and that one will be appointed and paid for them if they cannot afford one.

If the child indicates in any manner and at any stage of questioning pursuant to this section that he/she does not wish to be questioned further, the officer shall cease questioning.

Note that section 211.059.1(3) of this statute requires a warning more complete than the Miranda decision itself requires under the Fifth Amendment in arrests and prosecutions of adults.

Also further note that the juvenile shall be advised of those rights, as well as the fact that whatever the juvenile says to the police or persons other than the juvenile officer or court personnel may be used against the juvenile if the juvenile

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is prosecuted as an adult, by the juvenile officer or by a designee trained by the juvenile officer.

- (Source: 122.05 Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Courts.)

### Processing

Law enforcement officers shall take fingerprints and photographs of a child taken into custody for offenses that would be considered felonies if committed by adults, without the approval of the juvenile judge.

#### Key Points:

A child taken into custody as a victim of abuse or neglect or as a status offender pursuant to subdivisions (1) or (2) of subsection 1 of section 211.031 or for an offense that would be considered a misdemeanor if committed by an adult may be fingerprinted or photographed with the consent of the juvenile judge.

Records of a child who has been fingerprinted and photographed after being taken into custody shall be closed records as provided under section 610.100, RSMo, if a petition has not been filed within thirty days of the date that the child was taken into custody.

If a petition for the child has not been filed within one year of the date the child was taken into custody, any records relating to the child concerning the alleged offense may be expunged under the procedures in section 610.122 to 610.126, RSMo. (Source: Section 211.151.3 RSMo.)

All law enforcement departments should have available "Juvenile Fingerprint Cards," which can be obtained by contacting:

Missouri State Highway Patrol  
Criminal Records and Identification Division  
P.O. Box 568  
Jefferson City, MO 65102



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The juvenile's fingerprints and photographs should be forwarded to the Juvenile Officer, who will send the fingerprints to the Highway Patrol and maintain custody of the photograph.

### Processing

Except for the juvenile's custodian, the juvenile's counsel, the juvenile officer, and other authorized personnel of the court, no person shall interview or interrogate a juvenile held in a detention facility unless approval therefore has first been obtained from the court or the juvenile officer.

#### Key Points:

- (Source: 111.10d Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Courts.)

When a juvenile in custody is represented by counsel, no person may interview or interrogate the juvenile concerning the violation of a state law or municipal ordinance by the juvenile unless in the presence of counsel or with the consent of counsel.

- (Source: 111.10e Supreme Court of Missouri Rules of Practice and Procedures in Juvenile Courts.)

### Processing

Local rules of your juvenile/family court should be followed for physical line-ups, polygraph tests or breathalyzer tests.

#### Key Points:

It is believed that juvenile/family courts require a court order for these procedures.

### Processing

Knowing and willful misrepresentation of age by a juvenile subject shall not affect any action or proceeding which occurs based upon the juvenile's misrepresentation.

#### Key Points:

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.
- (Source: Section 211.071.3 RSMo)

If any person is taken before a circuit or associate circuit judge not assigned to juvenile court or a municipal judge, and it is then, or at any time thereafter, ascertained that he was under the age of seventeen years at the time he is alleged to have committed the offense, or that he is subject to the jurisdiction of the juvenile court as provided by this chapter, it is the duty of the judge forthwith to transfer the case or refer the matter to the juvenile court, and direct the delivery of such person, together with information concerning him and the personal property found in his possession, to the juvenile officer or person acting as such.

- (Source: Section 211.061.2 RSMo.)

### Processing

Peace officers' records, if any are kept, of children shall be kept separate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court.

#### Key Points:

This subsection does not apply to children who are transferred to courts of general jurisdiction as provided by section 211.071 or to juveniles convicted under the provisions of sections 578.421 to 578.437, RSMo.

This subsection does not apply to the inspection or disclosure of the contents of the records of peace officers for the contents of the records of peace officers for the purpose of pursuing a civil forfeiture action pursuant to the provisions of section 195.140, RSMo.

- (Source: Section 211.321.3 RSMo.)

### Processing

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.

#### Key Points:

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.

- (Source: Section 211.041 RSMo.)

EXAMPLE: If a 17-year-old (for example) is still under Juvenile/Family Court jurisdiction but is alleged to have committed a Burglary he/she should be handled as any other adult would be handled.

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 as provided in section 211.041.

- (Source: Section 211.071.2 RSMo.)

### Special Exceptions

The juvenile court does not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a municipal traffic ordinance or regulation, the violation of which does not constitute a felony.

#### Key Points:

- (Source: Section 211.031 RSMo.)

Later laws regulating when juveniles could obtain a temporary instruction permit changed to age fifteen.

- (Source: Section 302.130.1 RSMo)

However, the age in the juvenile portion of the statutes remains at fifteen and one-half years of age, not fifteen.

- At this time, if a juvenile aged fifteen to fifteen and one-half years commits a traffic violation, it appears that they should be under juvenile court jurisdiction.
- If the juvenile is fifteen and one-half years or older and they commit a traffic offense (unless it is a felony), they should be under adult jurisdiction.

What this means is that traffic offenses committed between ages 15 ½ to 17 do remain on your record and can accumulate points which continues into the persons adult years (after their 17th birthday.)

- Any traffic offense prior to 15 ½ goes to juvenile/family court.

Any felony traffic offense (example, DWI third) goes to juvenile court until the person is 17, at which time all offenses (including all traffic cases) go to the Court of General Jurisdiction (adult court.)

No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071, shall be

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detained in a jail or other adult detention facility as that term is defined in section 211.151.

- A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility. (Source: Section 211.033 RSMo.)



### Special Exceptions

The juvenile/family court shall not have jurisdiction over a child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of a tobacco product.

#### Key Points:

- (Source: Section 211.031 RSMo.)

Section 407.933 RSMo states:

- (1) No person less than eighteen years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products unless such person is an employee of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the course of employment, or an employee of the division of liquor control for enforcement purposes pursuant to subsection 5 of section 407.934.
- (2) Any person less than eighteen years of age shall not misrepresent his or her age to purchase cigarettes or tobacco products.
- (3) Any person who violates the provisions of this section shall be penalized as follows:
  - (a) For the first violation, the person is guilty of an infraction and shall have any cigarettes or tobacco products confiscated;
  - (b) For a second violation and any subsequent violations, the person is guilty of an infraction and shall have any cigarettes or tobacco products confiscated and shall complete a tobacco education or smoking cessation program, if available.

So, if a 14-year-old is in possession of a carton of cigarettes, where does (s)/he go to Court? Most juvenile/family courts say not there, but, some municipal/associate circuit court judges also believe the child should not go to court there.

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NOTE: For several years legislation has been introduced to make the Missouri statutes regarding age consistent in the statutes for traffic and tobacco offenses. As of this writing that legislation has not been made into law.

It is best in a situation regarding purchasing, possession etc. or use of a tobacco product, for the law enforcement officer to find out how this is handled in his or her area. Many law enforcement officials and juvenile court officials have discussed how to handle this in their circuit.