

SENATE BILL NO. 302

BY SENATOR MORRELL AND REPRESENTATIVES BAGNERIS AND MARCELLE

1 AN ACT

2 To amend and reenact Children's Code Articles 412(C), 905, and 906, and R.S. 15:905(B),  
3 and to enact Children's Code Articles 412(D)(12) and 898(D) and (E), and Part III  
4 of Code Title XIV of Chapter 1 of Title 15 of the Louisiana Revised Statutes of  
5 1950, to be comprised of R.S. 15:186.1 through 186.6, relative to juvenile justice;  
6 to provide for the release of records; to provide for costs; to provide for  
7 presumptions of indigence; to provide for hearings; to provide for legal  
8 representation of certain juveniles; to create the Safe Return Program; to provide for  
9 data collection and reporting; to provide for standards of representation; to create the  
10 Safe Return Representation Program fund; to provide for access to counsel; to  
11 provide relative to the duration of a disposition based on a felony-grade adjudication;  
12 and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Children's Code Articles 412(C), 905, and 906 are hereby amended and  
15 reenacted and Children's Code Articles 412(D)(12) and 898(D) and (E) are hereby enacted  
16 to read as follows:

17 Art. 412. Confidentiality of records; disclosure exceptions; sanctions

18 \* \* \*

19 C. Records and reports in individual cases may be released to parties, their  
20 counsel or other legal representatives, and court-appointed special advocates  
21 (CASAs) in accordance with discovery and disclosure provisions of this Code.

22 **Notwithstanding any other provision of law to the contrary, access to review all**

1 records and reports concerning a child in the custody of the office of juvenile  
 2 justice, including but not limited to records relating to condition, housing,  
 3 supervision, treatment, rehabilitation program, education, health, discipline,  
 4 transition planning, risk assessments, and status reports shall be promptly  
 5 provided to counsel enrolled for the child or engaged by the child, or to the  
 6 child's legal guardian, upon written request to the office of juvenile justice. If  
 7 the child is indigent, copies of all records and reports relevant to post-  
 8 dispositional defense and reentry advocacy shall be furnished at no cost to the  
 9 child, the child's family, legal guardian, or counsel. Representation by a public  
 10 defender shall create an irrebuttable presumption of indigence for the purposes  
 11 of this Paragraph.

12 D. When such information is relevant and necessary to the performance of  
 13 their respective duties and enhances services to the child or his family, the court may  
 14 authorize the release of records, reports, or certain information contained therein to  
 15 appropriate individuals representing:

16 \* \* \*

17 (12) A district public defender or the district public defender's  
 18 representative, or the representative of a public defender program established  
 19 pursuant to the Louisiana Public Defender Act of 2007.

20 \* \* \*

21 Art. 898. Duration of a disposition based on a felony-grade adjudication

22 \* \* \*

23 D. When modification and parole is not prohibited by Article 897.1, if an  
 24 order of commitment to custody of the Department of Public Safety and  
 25 Corrections is subsequently modified and the child is placed on parole, the  
 26 maximum term of parole shall be the remainder of the sentence originally  
 27 imposed.

28 E. These maximums do not apply if:

29 (1) The child was under thirteen at the time of a commitment to custody  
 30 of the Department of Public Safety and Corrections, in which case the judgment

1 shall terminate upon the child's reaching age eighteen.

2 (2) A portion of an order of commitment was suspended, when permitted  
3 by law, in which case the term of parole shall end when the time period so  
4 suspended has elapsed.

5 (3) The child is tried as an adult and is convicted of, or pleads guilty to  
6 a felony after having been committed to the Department of Public Safety and  
7 Corrections. In this instance, after sentencing, the department shall have the  
8 authority to keep the offender in custody according to terms of the juvenile  
9 disposition, or to transfer him to serve his adult sentence. The department shall  
10 retain such authority until the expiration of the juvenile commitment when, if  
11 not effected earlier, the individual will be transferred to begin serving the adult  
12 sentence.

13 (4) The judgment expires by its own terms, is modified when permitted  
14 by law, or is vacated.

15 (5)The child reaches age twenty-one.

16 (6) The child is ordered to participate in a juvenile drug court program  
17 operated by a court of this state, as a condition of probation, so long as the child  
18 is a full-time participant in such juvenile drug court program.

19 \* \* \*

20 Art. 905. Progress reports to court

21 A. Any institution or agency to which a child is assigned, upon request, shall  
22 provide the court any information concerning the condition, supervision, treatment,  
23 or rehabilitation program of the child. When such information is provided to the  
24 court, it shall also be provided to the state and to counsel for the child at the  
25 same time it is provided to the court.

26 B. Any institution, agency, or person to which a child is assigned shall, not  
27 less than once every six months, report in writing the whereabouts and condition of  
28 the child to the judge who rendered the judgment of disposition and to counsel for  
29 the child. Such reports shall be provided to the court and counsel for the child  
30 not less than seventy-two hours before any in-court review hearing.

1                    C. If the child is indigent, the information and reports contemplated by  
 2                    this Article shall be furnished at no cost to the child, the child's family, or to  
 3                    counsel. Representation by a public defender shall create an irrebuttable  
 4                    presumption of indigence for the purposes of this Article.

5                    D. Information and reports required by this Article may be submitted  
 6                    electronically to the extent practicable.

7                    \*           \*           \*

8                    Art. 906. Required review hearings; ~~commitment to mental institution~~

9                    A. Commitment to mental institution.

10                   (1) The medical staff of a mental institution to which a child is committed or  
 11                   placed by the Department of Health and Hospitals after the child has been found not  
 12                   guilty by reason of insanity or after a court determines that the child lacks mental  
 13                   capacity to proceed shall review the child's record after the first sixty days, again  
 14                   after one hundred twenty days of commitment, and every one hundred eighty days  
 15                   thereafter.

16                   ~~B.~~(2) The purpose of these reviews is to determine the child's present mental  
 17                   condition and whether he is presently capable of being discharged, conditionally or  
 18                   unconditionally, or being placed on probation, without being a danger to others or  
 19                   himself, or is presently capable of proceeding.

20                   ~~C.~~(3) The department or the superintendent of the private institution shall  
 21                   make such recommendations to the court as provided in Article 835 or 838.

22                   B. Children in the custody of the office of juvenile justice.

23                   (1) Any child committed by a court to the custody of the office of juvenile  
 24                   justice must be physically transported to the committing court for an in-person  
 25                   review hearing not more than six months after the child's commitment, and at  
 26                   least every six months thereafter, unless such an in-person hearing is waived by  
 27                   counsel for the child and by the committing court.

28                   (2) The purpose of the hearing shall be to ensure the child is receiving  
 29                   necessary treatment and services and all terms and conditions of his disposition  
 30                   are followed. The court may also consider any motions for modification of

1 disposition pursuant to Article 909 et seq. at the hearings.

2 (3) For the purposes of this Paragraph, a child is deemed "committed by  
 3 a court to the custody of the office of juvenile justice" if he is judicially  
 4 committed to the legal custody of the office of juvenile justice, regardless of  
 5 where the child is physically held, including but not limited to state-run secure  
 6 facilities, state-run non-secure facilities, private facilities with which the office  
 7 of juvenile justice contracts, and detention centers.

8 \* \* \*

9 Section 2. R. S. 15:905(B) is hereby amended and reenacted and Part III of Code  
 10 Title XIV of Chapter 1 of Title 15 of the Louisiana Revised Statutes of 1950, comprised of  
 11 R.S. 15:186.1 through 186.6, is hereby enacted to read as follows:

12 PART III. REPRESENTATION OF CHILDREN IN CUSTODY

13 §186.1. Purpose

14 The purpose of this Part is to provide for an effective and efficient  
 15 system of providing qualified legal representation for indigent children  
 16 committed to the custody of the office of juvenile justice pursuant to Title VII  
 17 and Title VIII of the Louisiana Children's Code and to promote safe return and  
 18 reentry for youth in custody.

19 §186.2. Definitions

20 For the purposes of this Part, the following words shall have the  
 21 following meanings:

22 (1) "Board" means the Louisiana Public Defender Board, or any  
 23 successor to that board, which is authorized to regulate the providing of legal  
 24 services to indigent persons in criminal proceedings in which the right to  
 25 counsel attaches under the United States and Louisiana Constitutions. The  
 26 board is also authorized to regulate the providing of representation to indigent  
 27 parents as authorized by this Part.

28 (2) "Custody" means the legal custody of the office of juvenile justice,  
 29 which follows on commitment by a Louisiana court exercising juvenile  
 30 jurisdiction to the office of juvenile justice as provided in Titles VII and VIII of

1 the Louisiana Children's Code.

2 (3) "District office" means the office of a district public defender.

3 (4) "District public defender", "chief indigent defender", or "chief  
4 public defender" means an attorney employed by or under contract with the  
5 board to supervise service providers and enforce standards and guidelines  
6 within a judicial district or multiple judicial districts.

7 (5) "Indigent child representation" means the providing of legal services  
8 to indigent children committed to the custody of the office of juvenile justice  
9 pursuant to Title VII and Title VIII of the Louisiana Children's Code.

10 (6) "Office of juvenile justice" and "the office" means the Department  
11 of Public Safety and Corrections, youth services, office of juvenile justice.

12 (7) "Public defender" or "indigent defender" means an attorney  
13 employed by or under contract with the board, the district public defender, or  
14 a nonprofit organization contracting with the board or the district public  
15 defender to provide representation as required by the provisions of the  
16 Louisiana Children's Code.

17 (8) "Safe Return Program" or "the program" means the Safe Return  
18 Representation Program administered pursuant to the Part.

19 §186.3. Safe Return Representation Program; duties of the board; subject to  
20 appropriations

21 A.(1) Subject to appropriation and the availability of other monies to the  
22 program, the board shall administer a program to provide qualified legal  
23 representation to indigent children committed to the custody of the office of  
24 juvenile justice pursuant to Title VII and Title VIII of the Louisiana Children's  
25 Code and promote safe return and reentry for youth in custody.

26 (2) Except for the regulatory authority of the Louisiana Supreme Court  
27 provided for in Article V, Section 5, of the Louisiana Constitution, the Louisiana  
28 Public Defender Board or any successor to that board, shall have all regulatory  
29 authority, control, supervision, and jurisdiction, including auditing and  
30 enforcement, and all power necessary to administer the program throughout the

1 state.

2 **B. In the administration of the Safe Return Program, the board shall:**

3 **(1) Regularly collect detailed data from judicial districts, where**  
4 **applicable, of workload, resources, employees, and expenditures relating to**  
5 **representation of children in the custody of the office of juvenile justice.**

6 **(2) Review and evaluate the operations of the program and emphasize**  
7 **special training for counsel representing children in the custody of the office of**  
8 **juvenile justice.**

9 **(3) Review and approve an annual budget for the program.**

10 **(4) Review and approve an annual report on the operation of the**  
11 **program and submit such report to the legislature, the governor, and the chief**  
12 **justice of the Louisiana Supreme Court.**

13 **(5) Submit an annual report to the legislature regarding the state of the**  
14 **program. Such report shall include:**

15 **(a) Recommendations for changes in the law regarding the board or any**  
16 **regulated activity.**

17 **(b) A detailed explanation of all revenues and expenditures.**

18 **(c) Comprehensive workload data regarding the program.**

19 **(6) Ensure all policies, procedures, and public pronouncements of the**  
20 **board recognize the role of attorneys in safeguarding fundamental rights and**  
21 **promoting the safety, reintegration, and well-being of children in the custody**  
22 **of the office of juvenile justice.**

23 **(7) Promote accessible family preservation, medical resources,**  
24 **educational resources, substance abuse treatment, vocational training, and**  
25 **mental health resources for children in the custody of the office of juvenile**  
26 **justice.**

27 **(8) Take such actions as necessary and appropriate to secure private and**  
28 **state, federal, or other public funds to help support the program.**

29 **(9) Institute or cause to be instituted legal proceedings as necessary to**  
30 **enforce any of the duties or powers of the program.**

1           (10) Employ and train attorneys and other staff as may be necessary to  
2           carry out the functions of the program. All attorneys representing indigent  
3           children through this program shall be licensed to practice law in Louisiana and  
4           qualified in accordance with the standards and guidelines adopted by rule of the  
5           board.

6           (11) Contract with organizations or individuals for the legal services for  
7           indigent children in the custody of the office of juvenile justice.

8           (12) Administer an efficient and effective statewide program for the  
9           representation of indigent children which safeguards their rights and facilitates  
10          timely and fair decision-making concerning safety, reentry, reintegration, and  
11          well-being.

12          (13) Establish and modify a plan of organization to conduct the business  
13          of regulating and controlling the delivery of program services. The plan of  
14          organization shall provide for:

15               (a) The granting of contracts.

16               (b) The review of investigative and audit reports and findings.

17               (c) The enforcement of board rules.

18          (14) Develop and disseminate standards, procedures, and policies to  
19          ensure that quality representation of indigent children in the custody of the  
20          office of juvenile justice is provided consistently throughout the state.

21          (15) Prepare and submit to the Joint Legislative Committee on the  
22          Budget not later than March first of each year an annual financial report which  
23          outlines the expenditures of all program funds, including local, state, and  
24          federal funds, for the previous calendar year.

25          (16) Prepare and submit to the governor, legislative auditor, and  
26          legislative fiscal officer, not later than June first of each year an estimate of  
27          unexpended balances in every account in the custody of the board.

28          (17) Develop and maintain a comprehensive information system on the  
29          revenues received by the board and any district from local, state, and federal  
30          sources, as well as the expenditure of any revenue, and submit a summary of the



1 information annually to the legislature.

2 (18) Assign appropriate staff to:

3 (a) Coordinate training and performance evaluation for attorneys  
4 representing indigent children pursuant to this Section.

5 (b) Apply for and assist in the disbursement of federal funds or other  
6 grant money to aid the statewide program, provided that such gifts, grants, and  
7 donations are not otherwise prohibited by law or rule.

8 (c) Assist district public defenders in maintaining compliance with  
9 standards and guidelines adopted by the board pursuant to this Section. The  
10 board staff shall assist the district public defenders with implementation of  
11 standards, guidelines, supervision, policy, and procedures to maintain  
12 compliance.

13 (19) Work with public and private representatives, including but not  
14 limited to judges, social service personnel, district attorneys, and service  
15 providers to promote sound juvenile justice policy and practice.

16 C. The powers and duties of the board provided for by this Section shall  
17 be in addition to the powers and duties provided for in R.S. 15:147.

18 §186.4. Standards and guidelines for representation of indigent children in  
19 custody; rulemaking

20 A. The board shall adopt all rules necessary to implement the provisions  
21 of this Part.

22 B. The rules shall include mandatory statewide standards and guidelines  
23 for the representation of indigent children in the custody of the office of juvenile  
24 justice to be provided in a uniform manner and consistent throughout the state.

25 C. All rules and regulations shall be promulgated in accordance with the  
26 Administrative Procedure Act and subject to legislative oversight by the House  
27 Committee on Health and Welfare and the Senate Committee on Health and  
28 Welfare.

29 §186.5. Safe Return Representation Program Fund

30 A. "The Louisiana Safe Return Representation Program Fund",

1 hereafter referred to as "the fund", is hereby created within the state treasury.  
2 Interest earned on the investment of monies in the fund shall be deposited into  
3 the fund. Unexpended and unencumbered monies in the fund at the close of  
4 each fiscal year shall remain in the fund. Monies in the fund shall be  
5 appropriated, administered, and used solely as provided in this Section.

6 B. The fund shall be comprised of all monies appropriated by the  
7 legislature specifically for the program or other monies made available to the  
8 program. All monies required to be deposited in the state treasury in  
9 accordance with Article VII, Section 9(A), of the Louisiana Constitution shall  
10 be deposited in the fund after first meeting the requirements of Article VII,  
11 Section 9(B), of the Louisiana Constitution.

12 C. The fund shall be segregated from all other funds and shall be used  
13 solely to provide for the implementation and operation of the Safe Return  
14 Representation Program. Monies appropriated to the fund shall also be used to  
15 supplement the judicial district indigent defender funds as provided in R.S.  
16 15:168 and shall not be used to displace, replace, or supplant monies available  
17 for this program or the purpose of providing legal representation to children in  
18 the custody of the office of juvenile justice.

19 D. Monies in the fund which have been appropriated to the Louisiana  
20 Public Defender Board shall be administered by the Louisiana Public Defender  
21 Board, or any successor to that board.

22 E. The board shall not commingle the monies appropriated from the  
23 fund with any other monies of the board.

#### 24 §186.6. Implementation of Safe Return Representation Fund

25 A. Subject to appropriation, or the availability of other monies to the  
26 program, the board shall develop a program to establish a flexible delivery  
27 system that is responsive to jurisdictional variances and local community needs.  
28 The board may implement the program incrementally, but full statewide  
29 implementation shall be completed not later than July 1, 2017.

30 B. The board shall choose a method of implementation of the Safe

1 Return Representation Program that is efficient, feasible, practicable, and  
 2 appropriate to provide the best delivery of indigent parent representation.

3 \* \* \*

4 §905. Rules and regulations; education; training and discipline, work opportunities,  
 5 vocational training, contracts and agreements

6 \* \* \*

7 B. The Notwithstanding any other provision of law to the contrary, the  
 8 deputy secretary for youth services shall establish all rules and regulations for the  
 9 placement, care, and treatment of a juvenile in the custody of the office of juvenile  
 10 justice. Such rules and regulations shall include:

11 (1) Provisions for reasonable access to each child in the custody of the  
 12 office of juvenile justice for defense counsel and for adequate and confidential  
 13 meeting space in each juvenile facility for defense counsel and children they  
 14 represent.

15 (2) Provisions for direct, confidential, and readily accessible telephone  
 16 or audio-visual connections between each child in the custody of the office of  
 17 juvenile justice and their defense counsel. Telephones and audio or visual  
 18 connections to counsel shall be available, by reasonable request on a daily basis,  
 19 to each child in the custody of the office of juvenile justice at no cost to the child  
 20 or their family.

21 (3) For the purposes of this Subsection:

22 (a) A child is deemed "in the custody of the office of juvenile justice" if  
 23 he is judicially committed to the Department of Public Safety and Corrections,  
 24 youth services, office of juvenile justice, regardless of where the child is  
 25 physically held, including but not limited to state-run secure facilities, state-run  
 26 non-secure facilities, contracted facilities, and detention centers.

27 (b) A "juvenile facility" is any facility in which a child judicially  
 28 committed to the office of juvenile justice is placed, whether the facility is run  
 29 directly by the state or contracted by any agency of the state.

30 \* \* \*

1           Section 3. This Act shall be known and may be referred to as the "Safe and Fair  
2   Return Act of 2016".

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_