

RÉSUMÉ DIGEST

ACT 617 (SB 302)

2016 Regular Session

Morrell

New law enacts the Safe and Fair Return Act of 2016.

Prior law provided that records and reports regarding juvenile court matters, except traffic violations, are confidential and shall not be disclosed except records in individual cases which may be released to parties, their counsel, or other representatives when the court finds such information is relevant and necessary to the performance of duties and enhances services to the child.

New law retains prior law and provides that access to review the records of a child in the custody of the office of juvenile justice must be provided to the child's counsel or legal guardian upon the request of the office of juvenile justice. New law further provides that representation by a public defender shall create an assumption of indigence and copies of the records and reports relevant to post-dispositional defense and reentry advocacy are to be furnished at no cost to the child, the child's family, legal guardian, or counsel.

Prior law provided a list of parties that the court may authorize the release of records and reports on a child when it is relevant and necessary to the performance of duties or enhances services to a child or his family. New law retains these provisions and adds the district public defender, district public defender's representative, or the representative of a public defender program to the list of individuals to be authorized to receive records and reports in individual cases.

New law requires that if an order of commitment to the custody of the Department of Public Safety and Corrections (DPSC) is subsequently modified and the child is placed on parole, then the maximum term of this parole is the remainder of the sentence originally imposed.

Provides that this maximum term does not apply in the following instances:

- (1) If the child is under age 13 at the time of commitment to custody but in this case the judgment terminates upon the child reaching the age of 18.
- (2) If a portion of the order of commitment was suspended, then the term of parole ends when the suspended time period has elapsed.
- (3) If the child is tried as an adult, is convicted or pleads guilty to a felony, then DPSC, after a hearing, may keep the offender in custody according to the terms of the juvenile disposition or transfer him to serve his adult sentence. DPSC retains this authority until expiration of the juvenile commitment when the individual is transferred to begin serving the adult sentence.
- (4) The judgment expires by its own terms, is modified or vacated.
- (5) The child reaches age 21.
- (6) The child is ordered to participate in a juvenile drug court program as a condition of probation, so long as the child is a full-time participant in the program.

Prior law allowed an institution or agency to request from the court any information on a child to which it is assigned if the information is concerning the condition, supervision, treatment, or rehabilitation program of the child.

New law retains prior law and provides that if an institution or agency receives any information regarding a child to which it is assigned, the state and counsel for the child shall also receive the information.

Prior law required an agency or person to which a child is assigned to report to the judge not less than once every six months on the whereabouts and condition of the child.

New law retains prior law and requires an agency or institution to which a child is assigned to also send its report on the whereabouts and condition of the child to the child's counsel. Further requires an institution, agency, or person to which a child is assigned to send a report in writing regarding the whereabouts and condition of the child to the court and child's

counsel not less than 72 hours before any in-court hearing. Provides that if a child is indigent, all information and reports regarding the child's whereabouts and condition shall be furnished at no cost to the child, his family, or counsel. New law further creates an irrebuttable presumption of indigence if the child is represented by a public defender.

Prior law required review of a child's record after the first 60 days, after 120 days, and every 180 days after the child's commitment to a mental institution for being found not guilty by reason of insanity or after a court determines that the child lacks mental capacity to proceed to determine if the child is able to be discharged, placed on probation, or capable of proceeding.

New law retains prior law and requires an in-person review hearing to occur not more than six months after commitment for a child committed to the custody of the office of juvenile justice, unless waived by counsel.

New law provides that the in-person hearings shall be to ensure the child is receiving necessary treatment and services and consider any motions for modification. Further requires the child be physically transported to the committing court for the review hearing.

New law provides a child is deemed "committed by a court to the custody of the office of juvenile justice" if he is judicially committed to the legal custody of the office of juvenile justice, regardless of where the child is physically held.

New law provides definitions of "board", "custody", "district office", "district public defender", "chief indigent defender", and "chief public defender", "indigent child representation", "office of juvenile justice", "public defender" or "indigent defender", and "safe return program".

New law creates the Safe Return Representation Program to provide qualified legal representation to indigent children committed to the custody of the office of juvenile justice and promote safe return and reentry for youth in custody. Grants the Louisiana Public Defender Board the power to administer the program and all regulatory authority, control, supervision, and power necessary to administer the program.

New law establishes requirements for the board in the administration of the Safe Return Program. New law requires the board to:

- (1) Regularly collect detailed data from judicial districts, where applicable, of workload, resources, employees, and expenditures relating to representation of children in the custody of the office of juvenile justice (OJJ).
- (2) Review and evaluate the operations of the program and emphasize special training for counsel representing children in the custody of the office of juvenile justice.
- (3) Review and approve an annual budget for the program.
- (4) Review and approve an annual report on the operation of the program and submit such report to the legislature, the governor, and the chief justice of the Louisiana Supreme Court.
- (5) Submit an annual report to the legislature regarding the state of the program.
- (6) Ensure all policies, procedures, and public pronouncements of the board recognize the role of attorneys in safeguarding fundamental rights and promoting the safety, reintegration, and well-being of children in the custody of the office of juvenile justice.
- (7) Promote accessible family preservation, medical resources, educational resources, substance abuse treatment, vocational training, and mental health resources for children in the custody of the office of juvenile justice.
- (8) Take such actions as necessary and appropriate to secure private and state, federal, or other public funds to help support the program.
- (9) Institute or cause to be instituted legal proceedings as necessary to enforce any of the duties or powers of the program.

- (10) Provide for the employing or contracting with and training of attorneys and other professional and nonprofessional staff that may be necessary to carry out the functions of the program. Require all attorneys representing indigent children through this program shall be licensed to practice law in Louisiana and qualified in accordance with the standards and guidelines adopted by rule of the board.
- (11) Have the ability to contract with organizations or individuals for the legal services for indigent children in the custody of the office of juvenile justice.
- (12) Administer an efficient and effective statewide program for the representation of indigent children which safeguards their rights and facilitates timely and fair decision-making concerning safety, reentry, reintegration, and well-being.
- (13) Establish and modify, a plan of organization to conduct the business of regulating and controlling the delivery of program services.
- (14) Develop and disseminate standards, procedures, and policies that will ensure that quality representation of indigent children in the custody of the office of juvenile justice is provided consistently throughout the state.
- (15) Prepare and submit to the Joint Legislative Committee on the Budget on or before March first of each year an annual financial report which outlines the expenditures of all program funds, including local, state, and federal funds, for the previous calendar year.
- (16) Prepare as of June first of each year, an estimate of unexpended balances in every account in the custody of the board and submit a copy to the governor, the legislative auditor, and the legislative fiscal officer.
- (17) Develop and maintain a comprehensive information system on the revenues received by the board and any district from local, state, and federal sources, as well as the expenditure of any revenue, and submit a summary of the information annually to the legislature.
- (18) Assign appropriate staff to coordinate attorneys and aid in compliance.
- (19) Work with public and private representatives, including but not limited to, judges, social service personnel, district attorneys, and service providers to promote sound juvenile justice policy and practice.

New law grants the board authority to adopt rules necessary to implement the program and requires the rules to include mandatory statewide standards and guidelines for the program and adopted pursuant to the Administrative Procedure Act with legislative oversight.

New law creates the Louisiana Safe Return Representation Program Fund within the state treasury to administer the Safe Return Representation Program to be funded by appropriations from the legislature or any other source. Requires the fund to be segregated from all other funds and allows monies in the fund to supplement the judicial district indigent defender funds. Provides that monies in the fund which have been appropriated to the La. Public Defender Board shall be administered by the board and requires the board to develop a program to consider establishing a flexible delivery system that is responsive to the jurisdictional variances and local community needs. The board can implement the program incrementally with a full implementation goal of July 1, 2017.

Prior law gave the OJJ full control of all juvenile institutions and allowing the deputy secretary to establish rules and treatment plans for juveniles in the care of his department.

New law retains prior law and further requires the deputy secretary's rules and regulations to include provisions providing for:

- (1) Reasonable access to each child by defense counsel, and for adequate and confidential meeting space in each juvenile facility for defense counsel and children they represent.
- (2) Direct, confidential, and readily accessible telephone or audio-visual connections, to be provided at no cost to children in custody or to their families, between children

and defense counsel designated by the Public Defender Board. Telephones or audio or visual connections to counsel must be available, by reasonable oral request on a daily basis to all children.

New law establishes definitions of:

- (1) A child is deemed "in the custody of the office of juvenile justice" if he is judicially committed to the OJJ, regardless of where the child is physically held, including but not limited to state-run secure facilities, state-run non-secure facilities, contracted facilities, and detention centers.
- (2) A "juvenile facility" is any facility in which a child judicially committed to the office of juvenile justice is placed, whether the facility is run directly by the state or contracted with by any agency or agencies of the state.

New law allows electronic submission of certain reports whenever practicable.

Effective August 1, 2016.

(Amends Ch.C. Arts. 412(C), 905, 906, and R.S. 15:905(B); adds Ch.C. Arts. 412(D)(12), 898(D) and (E) and R.S. 15:186.1 - 186.6)