

2019 Regular Session

HOUSE BILL NO. 158

BY REPRESENTATIVES WHITE, ABRAMSON, ADAMS, BILLIOT, DAVIS,
DUPLESSIS, DWIGHT, HORTON, JEFFERSON, MAGEE, MARCELLE,
MARINO, AND PIERRE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUVENILE PROCEDURE: Provides relative to the detention or release of juveniles

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AN ACT

To amend and reenact R.S. 15:1110(B), (C), (E), and (F) and Children's Code Articles 814(A) and (B)(2), 815, and 817(A) and to enact R.S. 15:609(A)(3) and 1110(D), (G), and (H) and Children's Code Articles 815.1 and 826(E), relative to juveniles; to provide relative to juvenile detention; to provide relative to the purposes of juvenile detention; to provide for the development and implementation of detention screening instruments; to provide for the responsibilities of juvenile detention facilities relative to detention screening instruments; to provide relative to the authority of law enforcement when a child has committed a delinquent act; to require the use of a detention screening instrument relative to a child taken into custody for the commission of a delinquent act; to require certain information relative to a detention screening instrument be recorded; to provide relative to the aggregation and dissemination of such information; to provide relative to the appropriate facility to which a child may be transferred when taken into custody for commission of a delinquent act; to authorize a child to participate in an alternative to a detention program in lieu of transfer to a juvenile detention facility; to provide relative to the authority to release a child after being taken into custody for commission of a delinquent act; to authorize the establishment of alternative to detention programs; to provide relative to the operation and funding of such programs; to provide relative

1 to the taking of DNA samples of a child who is released in lieu of being taken into
2 custody; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. Children's Code Articles 814(A), (B)(2), and (C), 815, and 817(A) are
5 hereby amended and reenacted and Children's Code Articles 815.1 and 826(E) are hereby
6 enacted to read as follows:

7 Art. 814. Taking child into custody without a court order; duties of the officer;
8 duties of the court

9 A. A child may be taken into custody without a court order or warrant by a
10 peace officer or probation officer if the officer has probable cause to believe that the
11 child has committed a delinquent act. When the officer has probable cause to believe
12 that the child has committed a delinquent act, the officer, in lieu of taking the child
13 into custody, may issue a verbal warning to the child.

14 B. If a child is taken into custody without a court order or warrant, the officer
15 shall have the responsibility to either:

16 * * *

17 (2) ~~Promptly escort the child to~~ Follow the appropriate facility in accordance
18 with procedures set forth in Article 815.

19 * * *

20 Art. 815. Child taken into custody; place of detention

21 A.(1) The peace officer or an appropriate representative of the arresting
22 agency shall have the authority and responsibility to transport the child to the
23 appropriate place of detention as specified in Paragraphs B and C of this Article,
24 unless the child has been released to the care of his parents pursuant to Article
25 814(B)(1). Beginning July 1, 2020, a detention screening instrument shall be
26 administered to the child prior to transportation of the child to the appropriate place
27 of detention or upon the child's arrival at the appropriate place of detention, unless
28 it cannot be completed at that time. If the detention screening instrument cannot be
29 completed prior to the child's transportation to the appropriate place of detention or

1 upon the child's arrival at the appropriate place of detention, the detention screening
2 instrument shall be completed as soon as possible after the child has been admitted
3 into the detention center. Reasonable efforts shall be made to administer the
4 instrument at the earliest possible time.

5 (2) The detention screening instrument shall include, but need not be limited
6 to, consideration of the following factors:

7 (a) The current offense for which the child was taken into custody.

8 (b) The child's history of prior delinquent acts.

9 (c) The child's history of failure to appear.

10 (d) The child's history of being a runaway.

11 (e) Any mitigating and aggravating circumstances.

12 (3) When the child is detained prior to the completion of the detention
13 screening instrument, the results of the detention screening instrument shall be
14 communicated to the court promptly upon its completion.

15 B.(1) Except as provided in Paragraph F E of this Article, if the child has
16 been taken into custody for the commission of a felony-grade delinquent act or of a
17 misdemeanor-grade delinquent act based upon an offense against the person of
18 another, the child ~~shall~~ may be taken to a juvenile detention center: and the
19 procedures regarding the administration of the detention screening instrument set
20 forth in Paragraph A of this Article shall apply.

21 C. Except as provided in Paragraph F E of this Article, for the commission
22 of any other misdemeanor-grade delinquent act, the child ~~shall be taken to either a~~
23 ~~shelter care facility or a juvenile detention center~~ may be taken to a juvenile
24 detention center or shelter care facility or released to a parent or guardian upon the
25 written promise of the parent or guardian to bring the child to court pursuant to
26 Children's Code Article 814. If the child is not released to a parent or guardian, the
27 officer shall follow the procedures set forth in Paragraph A of this Article.

28 D. ~~Notwithstanding any other provision of this Code or other provision of~~
29 ~~law to the contrary, no judge shall order that a youth who is thirteen years of age or~~

1 ~~older and who is taken into custody for a felony-grade delinquent act or for a~~
2 ~~misdemeanor-grade delinquent act based upon an offense against the person of~~
3 ~~another be placed in a shelter care facility.~~

4 E.D. The governing authority of the parish or municipality requesting
5 placement of a juvenile in either a regional detention center or a shelter care facility
6 shall be responsible to the regional detention center or shelter care facility for the
7 cost of confinement in accordance with a schedule which may be adopted by the
8 regional detention center or shelter care facility.

9 F.E. No child under the age of thirteen shall be detained in a juvenile
10 detention center after being taken into custody for the alleged commission of a
11 misdemeanor-grade delinquent act.

12 Art. 815.1. Alternative to detention programs

13 A. Each judicial district or parish may develop a program or programs to
14 serve as alternatives to secure detention of a child. Such program shall be used only
15 for a child taken into custody for the commission of a delinquent act who is not
16 released pursuant to Article 814.

17 B. An alternative to detention program may be operated either by a nonprofit
18 or government entity.

19 C. There shall be no fees associated with participation in an alternative to
20 detention program. Funding may be provided by any source, including through a
21 contract with the office of juvenile justice. Any program funded by the office of
22 juvenile justice shall comply with any requirements established by the office of
23 juvenile justice for the purpose of receiving and retaining such funding.

24 D. An alternative to detention program shall be considered a form of
25 detention and the time periods set forth in Children's Code Articles 854 and 877 shall
26 apply unless waived by the child. No child shall remain enrolled in an alternative to
27 detention program following a disposition hearing, except as an alternative to
28 placement in detention or other out-of-home placement.

1 instruments and the training process and requirements for those persons who will
2 utilize the instruments.

3 (b) The detention screening instruments shall assess the child only to
4 determine the child's risk to public safety while a current arrest is pending and the
5 risk of failure to appear in court for the pending case.

6 (c) Except as authorized in Subparagraph (d) of this Paragraph, the detention
7 screening instrument shall be selected from the tools that are being utilized as of
8 January 1, 2019, by local jurisdictions in the state, which shall be provided by the
9 JDAI Collaborative. A detention screening instrument that is being utilized by a
10 jurisdiction as of January 1, 2019, is sufficient to satisfy the requirements of this
11 Subparagraph.

12 (d) Any jurisdiction that chooses to use a detention screening instrument
13 other than an instrument provided by the JDAI Collaborative, shall submit the
14 instrument to the JDAI Collaborative for its approval no later than April 1, 2020,
15 pursuant to a submission process set forth by the JDAI Collaborative.

16 (3) A copy of the completed detention screening instrument shall be
17 provided to the juvenile detention facility for any child who is admitted into its
18 custody. The juvenile detention facility shall keep a record of the results of the
19 detention screening instrument and the recommendation made based upon the
20 instrument to either detain the child, release the child with conditions, or release the
21 child without conditions. This record shall include the parish in which the child was
22 taken into custody, the most serious charge for which the child was taken into
23 custody, and demographic information about the child including but not limited to
24 race, ethnicity, gender, and age. This information shall be aggregated and submitted
25 quarterly to the Louisiana Commission on Law Enforcement and Administration of
26 Criminal Justice which shall annually provide such information to the JDAI
27 Collaborative.

28 ~~B.E.~~ On or before July 1, 2011, the Louisiana Juvenile Detention Association
29 shall develop and recommend uniform standards for local juvenile detention

1 facilities that comport with nationally recognized and accepted best practice
2 standards for juvenile detention facilities.

3 ~~E.F.~~ On or before January 1, 2012, the Department of Children and Family
4 Services shall develop and promulgate, in accordance with the provisions of the
5 Administrative Procedure Act, rules governing the licensing of juvenile detention
6 facilities consistent with the standards recommended by the Louisiana Juvenile
7 Detention Association.

8 ~~E.G.~~ On or before July 1, 2013, all juvenile detention facilities, including
9 facilities owned or operated by any governmental, profit, nonprofit, private, or public
10 agency, shall be licensed in accordance with rules promulgated pursuant to the
11 provisions of Subsection ~~E~~ F of this Section.

12 ~~F.H.~~ There shall be an annual license fee for any license issued to a detention
13 facility as follows:

14 (1) For a detention facility authorized to care for six or fewer juveniles, the
15 license fee shall be four hundred dollars.

16 (2) For a detention facility authorized to care for at least seven but not more
17 than fifteen juveniles, the license fee shall be five hundred dollars.

18 (3) For a detention facility authorized to care for sixteen or more juveniles,
19 the license fee shall be six hundred dollars.

20 Section 3. This Act shall be cited and referred to as "Solan's Law".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 158 Reengrossed

2019 Regular Session

White

Abstract: Provides relative to the detention or release of a child taken into custody for the commission of a delinquent act, provides for the implementation of a juvenile detention screening instrument, and provides relative to the taking of DNA samples of a child who is released in lieu of being taken into custody.

Present law requires all juvenile detention facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or public agency, to be licensed by the Dept. of Children and Family Services in accordance with rules promulgated by the department.

Proposed law retains present law and does all of the following:

- (1) Prohibits any juvenile detention facility from detaining a child who is alleged to have committed a delinquent act for any of the following purposes or reasons, except when the child is charged with the commission of a serious offense or has a history of adjudications based on prior serious offenses:
 - (a) To punish, treat, or rehabilitate the child.
 - (b) To allow the child's parent, guardian, or legal custodian to avoid the parent's, guardian's, or legal custodian's legal responsibilities relative to the child.
 - (c) Solely to satisfy a demand made by a victim, law enforcement, or the community that a child be detained.
 - (d) To facilitate further interrogation or investigation.
 - (e) To facilitate further assessment or evaluation.
 - (f) The unavailability of a more appropriate facility.
- (2) Provides that on and after July 1, 2020, a detention screening instrument shall be administered for any child placed in secure detention when taken into custody without a court order for alleged commission of a delinquent act.

With regard to the detention screening instrument, proposed law does all of the following:

- (a) Requires the La. Juvenile Detention Alternatives Initiative Statewide Leadership Collaborative (the JDAI Collaborative) to support the statewide implementation of detention screening instruments and the training process and requirements for those persons who will utilize the instruments.
- (b) Requires detention screening instruments to assess the child only to determine the child's risk to public safety while a current arrest is pending and the risk of failure to appear in court for the pending case.
- (c) Requires the detention screening instrument to be selected from tools that are being utilized as of Jan. 1, 2019, by local jurisdictions in the state. Further provides that a detention screening instrument being utilized by a jurisdiction as of Jan. 1, 2019, is sufficient to satisfy requirements of proposed law.
- (d) Requires a copy of the completed detention screening instrument to be provided to the juvenile detention facility for any child who is admitted to its custody and requires the facility to keep a record of the results of the instrument and other specified information.

Present law (Ch.C. Art. 814) provides that a child may be taken into custody without a court order or warrant by a peace officer or probation officer if the officer has probable cause to believe that the child has committed a delinquent act.

Proposed law retains present law and adds that the officer, in lieu of taking the child into custody, may issue a verbal warning to the child.

Present law (Ch.C. Art. 815) provides that if the child is taken into custody without a court order or warrant, the officer shall have the responsibility to either:

- (1) Counsel and release the child to the care of his parents upon their written promise to bring the child to court at such time as may be fixed by the court.
- (2) Promptly escort the child to the appropriate facility in accordance with present law. In this regard, present law provides that the peace officer or an appropriate representative of the arresting agency shall have the authority and responsibility to transport the child to the appropriate place of detention.

With regard to the determination of the appropriate facility for the child, present law does all of the following:

- (1) If the child has been taken into custody for the commission of a felony-grade delinquent act or of a misdemeanor-grade delinquent act based upon an offense against the person of another, requires the child to be taken to a juvenile detention center. For the commission of any other misdemeanor-grade delinquent act, present law requires the child to be taken to either a shelter care facility or a juvenile detention center.
- (2) Provides that no judge shall order that a youth who is 13 years of age or older and who is taken into custody for a felony-grade delinquent act or for a misdemeanor-grade delinquent act based upon an offense against the person of another be placed in a shelter care facility.
- (3) Provides that no child under the age of 13 shall be detained in a juvenile detention center after being taken into custody for the alleged commission of a misdemeanor-grade delinquent act.

Proposed law amends present law as follows:

- (1) Beginning July 1, 2020, requires the proposed law detention screening instrument to be administered to the child prior to transportation of the child to the appropriate place of detention or upon the child's arrival at the appropriate place of detention. If it cannot be completed at that time, proposed law provides that the instrument shall be completed as soon as possible after the child has been admitted into the detention center.
- (2) Requires the detention screening instrument to include consideration of certain factors including the child's current offense, history of prior delinquent acts, history of failure to appear, and history of being a runaway and any mitigating and aggravating circumstances.
- (3) If a child is detained after being taken into custody, requires the results of the detention screening instrument to be communicated to the court promptly upon its completion.
- (3) Authorizes, instead of requires, the child to be taken to a juvenile detention center for the commission of a felony-grade delinquent act or of a misdemeanor-grade delinquent act based upon an offense against the person of another.
- (4) Provides that for the commission of any other misdemeanor-grade delinquent act, the child may be taken to a juvenile detention center or shelter care facility or released to a parent or guardian upon the written promise of the parent or guardian to bring the child to court. If the child is not released to a parent or guardian, proposed law provides that a detention screening instrument shall be administered to the child.
- (5) Repeals the present law provision which provides that no judge shall order that a youth who is 13 years of age or older and who is taken into custody for a felony-grade delinquent act or for a misdemeanor-grade delinquent act based upon an offense against the person of another be placed in a shelter care facility.

Present law (Ch.C. Art. 817) provides that as soon as practicable after a child is received by a juvenile detention center or shelter care facility, the court or a probation officer employed and authorized by the court, upon determining it to be appropriate, shall release the child to the care of his parents or other relatives upon their written promise to bring him to court at such times as may be fixed by the court.

Proposed law amends present law to allow the court to authorize an individual or entity, who is not a probation officer, to make this determination.

Proposed law authorizes each judicial district or parish to develop a program or programs, operated by a nonprofit or government entity, to serve as alternatives to secure detention of a child which shall be used only for a child taken into custody for the commission of a delinquent act who is not released pursuant to present law or proposed law. In this regard, proposed law does all of the following:

- (1) Provides that funding may be provided by any source, including through a contract with the office of juvenile justice. Any program funded by the office of juvenile justice shall comply with any requirements established by the office of juvenile justice for the purpose of receiving and retaining such funding.
- (2) Provides that an alternative to detention program shall be considered a form of detention and the time for persons set forth in present law regarding the answering of a delinquency petition and for conducting an adjudication hearing shall apply unless waived by the child.
- (3) An authorized individual acting in good faith shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of a child's release to an alternative to detention program.

Present law (R.S. 15:609) provides that any person who is arrested for a felony or certain other specified offenses, including an attempt, conspiracy, criminal solicitation, or accessory after the fact of such offenses, shall have a DNA sample drawn or taken at the same time he is fingerprinted pursuant to the booking procedure. In this regard, present law further provides that this requirement shall also apply to a juvenile who is arrested for a specified offense or adjudicated delinquent for the commission of a felony-grade delinquent act, including an attempt, conspiracy, criminal solicitation, or accessory after the fact of a felony-grade delinquent act.

Proposed law retains present law but adds that when a peace officer elects to issue a written summons to a person in lieu of arrest pursuant to present law (C.Cr.P. Art. 211) or to counsel and release a child pursuant to present law (Ch.C. Art. 814), the peace officer is not required to draw or take a DNA sample from the person or child.

Proposed law shall be cited and referred to as "Solan's Law".

(Amends R.S. 15:1110(B), (C), (E), and (F) and Ch.C. Arts. 814(A) and (B)(2), 815, and 817(A); Adds R.S. 15:609(A)(3) and 1110(D), (G), and (H) and Ch.C. Arts. 815.1 and 826(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Restore present law to require prompt, instead of immediate, notification to the child's parents that the child has been taken into custody.
2. Delete the requirement that the administration of the detention screening instrument take place immediately upon the child's arrival at the appropriate place of detention.
3. If a child is detained after being taken into custody, require the results of the detention screening instrument to be communicated to the court within 48 hours.

4. Remove proposed law provisions that authorize the release of the child by law enforcement directly to an authorized entity, authorize a detaining authority to release a child regardless of a detention screening instrument's indication that detention is appropriate, and provide immunity from liability for authorized entities acting in good faith.
5. Specify that conditions of release are to be ordered by the court.
6. Remove the proposed law prohibition on detention of a child without authorization based upon the results of a detention screening instrument, and instead require the detention screening instrument to be administered and factored into the determination of whether secure detention is appropriate.
7. Add that, for offenses other than crimes of violence or those involving a handgun, there shall be a presumption against detaining the child.
8. Require each juvenile facility to use a detention screening instrument that is provided by the JDAI Collaborative and selected from tools that are utilized as of Jan. 1, 2019, by local jurisdictions in the state.
9. Provide that a detention screening instrument being utilized by a jurisdiction as of Jan. 1, 2019, is sufficient to satisfy requirements of proposed law.
10. Add that the Act shall be cited and referred to as "Solan's Law".

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Remove the requirement that the detention screening instrument be administered to the child either by phone prior to transportation of the child to the appropriate place of detention or in person upon the child's arrival at the place of detention.
3. Remove the requirement that the detention screening instrument be administered before secure care is considered and factored into the determination of whether secure detention is appropriate.
4. Remove presumption against detaining a child for any offense other than a crime of violence.
5. Provide that the detention screening instrument shall be administered prior to the child's transportation to the appropriate detention facility or upon the child's arrival at the appropriate detention facility, if possible. Otherwise, require the detention screening instrument to be completed as soon as possible after the child has been admitted into the detention center.
6. Require the results of the detention screening instrument to be communicated to the court "promptly" instead of within 48 hours.
7. Specify certain factors to be considered in the detention screening instrument.
8. Restore present law to provide that for misdemeanor-grade delinquent acts, the child may be taken to a juvenile detention center or shelter care facility.
9. Restore present law relative to conditions of release that may be ordered by the court upon release of the child.

10. Require the JDAI Collaborative to support, instead of oversee and develop, the statewide implementation of the detention screening instruments and the training process and requirements for those persons who will utilize the instruments.
11. Require the detention screening instrument to assess the child only to determine the child's risk to public safety, instead of the child's risk of re-arrest, while a current arrest is pending and the risk of failure to appear in court for the pending case.
12. Remove provisions which require DCFS to revise licensing standards for juvenile detention facilities to require use of an approved detention screening instrument and provisions which require all licensed juvenile facilities to comply with standards or risk revocation or suspension of the facility's license.
13. Remove the requirement that intake staff be designated at each facility for the purpose of administering the detention screening instrument.
14. Remove the requirement that the detention screening instrument information required to be collected by the facility be submitted quarterly to the JDAI coordinator.