

2016 Regular Session

SENATE BILL NO. 302

BY SENATOR MORRELL

CRIMINAL PROCEDURE. Creates the Safe and Fair Return Act of 2016. (8/1/16)

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AN ACT

To amend and reenact Children's Code Arts. 412(C), 905, 906(A) and (B), and 908(A) and (C)(2), and R.S. 15:905(A) and (B), and to enact Children's Code Arts. 412(D)(12) and 908(C)(5) and (6), and Part III of Code Title XIV of Chapter 1 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:186.1 through 186.6; to provide relative to juvenile justice; to provide for the release of records; to provide for costs; to provide for presumptions of indigence; to provide for hearings; to provide for legal representation of certain juveniles; to create the Safe Return Program; to provide for data collection and reporting; to provide for standards of representation; to create the Safe Return Representation Program fund; to provide for access to counsel; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Arts. 412(C), 905, 906(A) and (B), and 908(A) and (C)(2) are hereby amended and reenacted and Children's Code Arts. 412(D)(12), and 908(C)(5) and (6) are hereby enacted to read as follows:

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

\* \* \*

1 C. Records and reports in individual cases may be released to parties, their  
 2 counsel or other legal representatives, and court-appointed special advocates  
 3 (CASAs) in accordance with discovery and disclosure provisions of this Code.  
 4 **Notwithstanding any other provision of law to the contrary, all records and**  
 5 **reports concerning a child in the custody of the office of juvenile justice,**  
 6 **including but not limited to records relating to condition, housing, supervision,**  
 7 **treatment, rehabilitation program, education, health, discipline, transition**  
 8 **planning, risk assessments, and status reports shall be promptly provided to**  
 9 **counsel enrolled for the child or engaged by the child, or to the child's legal**  
 10 **guardian, upon written request to the office of juvenile justice. If the child is**  
 11 **indigent, the records and reports shall be furnished at no cost to the child, the**  
 12 **child's family, legal guardian, or counsel. Representation by a public defender**  
 13 **shall create an irrebuttable presumption of indigence for the purposes of this**  
 14 **Paragraph.**

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

19 \* \* \*

20 **(12) A district public defender or the district public defender's**  
 21 **representative, or the representative of a public defender program established**  
 22 **pursuant to the Louisiana Public Defender Act of 2007.**

23 \* \* \*

24 Art. 905. Progress reports to court

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



1 review hearing not more than six months after the child's commitment, and at  
2 least every six months thereafter, unless such an in-person hearing is waived by  
3 counsel for the child and by the committing court.

4 (2) The purpose of the hearing shall be to ensure the child is receiving  
5 necessary treatment and services and all terms and conditions of his disposition  
6 are followed. The court may also consider any motions for modification of  
7 disposition pursuant to Article 909 et seq. at the hearings.

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

14 \* \* \*

15 Art. 908. Care and treatment by department

16 A. Notwithstanding any provision of law to the contrary, and except  
17 ~~Except~~ as provided in Article 906, ~~the~~ Department of Public Safety and Corrections,  
18 youth services, office of juvenile justice shall have sole authority over the  
19 placement, care, treatment, or any other considerations deemed necessary from the  
20 resources that are available for children judicially committed to the department.

21 \* \* \*

22 C. At least six months prior to the release of the child, the department shall  
23 prepare a written, individualized, and thorough transitional plan developed in  
24 collaboration with the child and any agency or department assuming his custody,  
25 care, or responsibility.

26 \* \* \*

27 (2) A copy of the transitional plan shall be provided to the court, counsel for  
28 the child, the child's legal guardian, and the district attorney.

29 \* \* \*



1 parents as authorized by this Part.

2 (2) "Custody" means the legal custody of the office of juvenile justice,  
3 which follows on commitment by a Louisiana court exercising juvenile  
4 jurisdiction to the office of juvenile justice as provided in Titles VII and VIII of  
5 the Louisiana Children's Code.

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

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

11 (5) "Safe Return Program" or "the program" means the Safe Return  
12 Representation Program administered pursuant to the Part.

13 (6) "Indigent child representation" means the providing of legal services  
14 to indigent children committed to the custody of the office of juvenile justice  
15 pursuant to Title VII and Title VIII of the Louisiana Children's Code.

16 (7) "Office of juvenile justice" and "the office" means the Department  
17 of Public Safety and Corrections, youth services, office of juvenile justice.

18 (8) "Public defender" or "indigent defender" means an attorney  
19 employed by or under contract with the board, the district public defender, or  
20 a nonprofit organization contracting with the board or the district public  
21 defender to provide representation as required by the provisions of the  
22 Louisiana Children's Code.

23 §186.3 Safe Return Representation Program; duties of the board; subject to  
24 appropriations

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

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

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

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

11                  (2) Review and evaluate the operations of the program and emphasize  
12                  special training for counsel representing children in the custody of the office of  
13                  juvenile justice.

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

15                  (4) Review and approve an annual report on the operation of the  
16                  program and submit such report to the legislature, the governor, and the chief  
17                  justice of the Louisiana Supreme Court.

18                  (5) Submit an annual report to the legislature regarding the state of the  
19                  program. Such report shall include:

20                  (a) Recommendations for changes in the law regarding the board or any  
21                  regulated activity.

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

23                  (c) Comprehensive workload data regarding the program.

24                  (6) Ensure all policies, procedures, and public pronouncements of the  
25                  board recognize the role of attorneys in safeguarding fundamental rights and  
26                  promoting the safety, reintegration, and well-being of children in the custody  
27                  of the office of juvenile justice.

28                  (7) Promote accessible family preservation, medical resources,  
29                  educational resources, substance abuse treatment, vocational training, and

1 mental health resources for children in the custody of the office of juvenile  
2 justice.

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

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

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

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

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

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

21 (a) The granting of contracts.

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

23 (c) The enforcement of board rules.

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

27 (15) Prepare and submit to the Joint Legislative Committee on the  
28 Budget not later than March first of each year an annual financial report which  
29 outlines the expenditures of all program funds, including local, state, and

1 federal funds, for the previous calendar year.

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

5 (17) Develop and maintain a comprehensive information system on the  
6 revenues received by the board and any district from local, state, and federal  
7 sources, as well as the expenditure of any revenue, and submit a summary of the  
8 information annually to the legislature.

9 (18) Assign appropriate staff to:

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

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

15 (c) Assist district public defenders in maintaining compliance with  
16 standards and guidelines adopted by the board pursuant to this Section. The  
17 board staff shall assist the district public defenders with implementation of  
18 standards, guidelines, supervision, policy, and procedures to maintain  
19 compliance.

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

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

25 §186.4. Standards and guidelines for representation of indigent children in  
26 custody; rulemaking

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

29 B. The rules shall include mandatory statewide standards and guidelines

1 for the representation of indigent children in the custody of the office of  
2 juvenile justice to be provided in a uniform manner and consistent throughout  
3 the state.

4 C. All rules and regulations shall be promulgated in accordance with the  
5 Administrative Procedure Act and subject to legislative oversight by the House  
6 Committee on Health and Welfare and the Senate Committee on Health and  
7 Welfare.

8 **§186.5. Safe Return Representation Program Fund**

9 A. "The Louisiana Safe Return Representation Program Fund",  
10 hereafter referred to as "the fund", is hereby created within the state treasury.  
11 Interest earned on the investment of monies in the fund shall be deposited into  
12 the fund. Unexpended and unencumbered monies in the fund at the close of  
13 each fiscal year shall remain in the fund. Monies in the fund shall be  
14 appropriated, administered, and used solely as provided in this Section.

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

21 C. The fund shall be segregated from all other funds and shall be used  
22 solely to provide for the implementation and operation of the Safe Return  
23 Representation Program. Monies appropriated to the fund shall also be used to  
24 supplement the judicial district indigent defender funds as provided in R.S.  
25 15:168 and shall not be used to displace, replace, or supplant monies available  
26 for this program or the purpose of providing legal representation to children in  
27 the custody of the office of juvenile justice.

28 D. The fund shall be administered by the Louisiana Public Defender  
29 Board, or any successor to that board.

1                    **E. The board shall not commingle the monies in the fund with any other**  
2                    **monies of the board.**

3                    **§186.6 Implementation of Safe Return Representation Fund**

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

9                    **B. The board shall choose a method of implementation of the Safe**  
10                    **Return Representation Program that is efficient, feasible, practicable, and**  
11                    **appropriate to provide the best delivery of indigent parent representation.**

12                    \*           \*           \*

13                    §905 Rules and regulations; education; training and discipline, work opportunities,  
14                    vocational training, contracts and agreements

15                    A. ~~The~~ **Notwithstanding any other provision of law to the contrary, the**  
16                    Department of Public Safety and Corrections, office of juvenile justice, shall have  
17                    full control of all juvenile institutions, facilities, and programs under its  
18                    administration and the affairs of such institutions, facilities, and programs and shall  
19                    adopt all rules and regulations which it deems essential to the proper conduct of these  
20                    institutions, facilities, and programs. All children in these juvenile institutions,  
21                    facilities, and programs shall receive appropriate treatment, training, and education  
22                    commensurate with their needs and abilities. The department may enter into  
23                    contracts or cooperative agreements to fulfill its obligations to accomplish its goals  
24                    in the most efficient manner possible.

25                    B. ~~The~~ **Notwithstanding any other provision of law to the contrary, the**  
26                    deputy secretary for youth services shall establish all rules and regulations for the  
27                    placement, care, and treatment of a juvenile in the custody of the office of juvenile  
28                    justice. **Such rules and regulations shall include:**

29                    **(1) Provisions for daily access to each child in the custody of the office of**



Proposed law provides 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.

Proposed law retains present law and adds the district public defender, district public defender's representative, or the representative of a public defender program to the list of individuals be authorized to receive records and reports in individual cases.

Present law allows 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.

Proposed law retains present 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.

Present law requires 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.

Proposed law retains present 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.

Proposed law 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.

Proposed law 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. Proposed law further creates an irrebuttable presumption of indigence if the child is represented by a public defender.

Present law requires 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.

Proposed law retains present 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.

Proposed 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.

Proposed law further requires the child be physically transported to the committing court for the review hearing.

Proposed 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.

Present law provides that except when a child has been found not guilty by reason of insanity or lacking mental capacity to proceed, DPSC shall have sole authority over the placement, care, treatment, or any other consideration deemed necessary from the resources available for children judicially committed to the department.

Proposed law retains present law and clarifies that the Department of Public Safety and

Corrections, youth services, office of juvenile justice has sole authority over the placement, care, and treatment for children judicially committed to the department.

Present law requires a written, individualized transitional plan be developed with a child and any agency assuming his custody at least six month prior to the child's release and sent to the court, child's counsel, and the district attorney.

Proposed law retains present law and requires that a copy of the transitional plan be sent to the child's legal guardian.

Proposed law requires the department provide to each child and his counsel a complete copy of all records regarding the child's condition, supervision, treatment, rehabilitation program, education, health, discipline, and transition planning before or at the time of the child's release.

Proposed law further provides that all records shall be furnished at no cost to the child if the child, child's family, legal guardian, or counsel is deemed indigent and representation by a public defender creates an irrebuttable presumption of indigence.

Proposed law provides the following definitions:

- (1) "Board" means the Louisiana Public Defender Board, or any successor to that board, which is authorized to regulate the providing of legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana Constitutions.
- (2) "Custody" means the legal custody of the office of juvenile justice, which follows on commitment by a Louisiana court exercising juvenile jurisdiction to the office of juvenile justice as provided in present law.
- (3) "District office" means the office of a district public defender.
- (4) "District public defender", "chief indigent defender", or "chief public defender" means an attorney employed by or under contract with the board to supervise service providers and enforce standards and guidelines within a judicial district or multiple judicial districts.
- (5) "Safe Return Program" or "the program" means the Safe Return Representation Program administered pursuant to proposed law.
- (6) "Indigent child representation" means the providing of legal services to indigent children committed to the custody of the office of juvenile justice pursuant to present law.
- (7) "Office of juvenile justice" and "the office" means the Department of Public Safety and Corrections, youth services, office of juvenile justice.
- (8) "Public defender" or "indigent defender" means an attorney employed by or under contract with the board, the district public defender, or a nonprofit organization contracting with the board or the district public defender to provide representation as required by the provisions of the Louisiana Children's Code.

Proposed 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.

Proposed law 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.

Proposed law establishes requirements for the board in the administration of the Safe Return Program. Proposed 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.
- (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 aide 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.

Proposed 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.

Proposed 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.

Proposed law requires the fund to be segregated from all other funds and allows monies in the fund to supplement the judicial district indigent defender funds.

Proposed law provides the fund shall be administered by the Public Defender Board and the board shall 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.

Present law gives the Department of Public Safety and Corrections, office of juvenile justice 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.

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

- (1) Daily 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-visual connections to counsel must be available, by reasonable oral request on a daily basis to all children.

Proposed 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 Department of Public Safety and Corrections, youth services, office of juvenile justice, 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.

Proposed law allows electronic submission of certain reports whenever practicable.

Effective August 1, 2016.

(Amends Ch.C. Arts. 412(C), 905, 906(A) and (B), and 908(A) and (C)(2), and R.S. 15:905(A) and (B); adds Ch.C. Arts. 412(D)(12), and 908(C)(5) and (6), and R.S. 15:186.1 - 186.6)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Technical amendments.
2. Deletes requirement that progress reports provided to counsel for a child be made in the same manner as made to the court.
3. Allows for electronic submission of progress reports to courts whenever practicable.
4. Deletes requirement that telephone or audio-visual connections to a child's counsel be made available on an hourly basis.