

1 commission of a delinquent act; to authorize the establishment of alternative to
2 detention programs; to provide relative to the operation and funding of such
3 programs; to provide relative to conditions that may be imposed when a child is
4 released from detention; to provide relative to the taking of DNA samples of a child
5 who is released in lieu of being taken into custody; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

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

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

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

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

19 * * *

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

22 C. If the officer does not release the child to the care of his parents, the
23 officer shall ~~promptly~~ immediately notify the child's parents that he has been taken
24 into custody.

25 * * *

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

27 A. The peace officer or an appropriate representative of the arresting agency
28 shall have the authority and responsibility to transport the child to the appropriate
29 place of detention as specified in ~~Paragraphs B and C~~ of this Article, unless the child

1 has been released to the care of his parents pursuant to Article 814(B)(1). Beginning
2 July 1, 2020, a detention screening instrument shall be administered to the child
3 either by phone prior to transportation of the child to the appropriate place of
4 detention or in person immediately upon the child's arrival at the appropriate place
5 of detention.

6 B. Except as provided in Paragraph F of this Article, if the child has been
7 taken into custody for the commission of a felony-grade delinquent act or of a
8 misdemeanor-grade delinquent act based upon an offense against the person of
9 another, the child ~~shall~~ may be taken to a juvenile detention center. Beginning July
10 1, 2020, for any child taken to a juvenile detention center pursuant to the provisions
11 of this Subsection, a detention screening instrument shall be administered to the
12 child, if not previously administered by phone prior to the child being transported to
13 the facility.

14 C.(1) Except as otherwise ordered by the court, if a detention screening
15 instrument indicates that release of the child is appropriate, the law enforcement
16 officer may release the child to a parent or guardian without conditions. If the
17 detention screening instrument indicates that release with conditions is appropriate,
18 the law enforcement officer may release the child with conditions pursuant to Article
19 826, or with a written promise to participate in an alternative to detention program
20 pursuant to Article 815.1. The officer may also release the child directly to an
21 authorized entity, including a juvenile assessment center or an alternative to
22 detention program, which shall be responsible for contacting the child's parent or
23 guardian.

24 (2) If the child meets the criteria for detention based on a detention screening
25 instrument, the detaining authority has the discretion to release the child if other less
26 restrictive measures would be adequate.

27 (3) An authorized individual acting in good faith pursuant to this Article
28 shall have immunity from any liability, civil or criminal, which might otherwise be

1 incurred or imposed as a result of a child's release to an alternative to detention
2 program.

3 ~~C.D.~~ Except as provided in Paragraph F of this Article, for the commission
4 of any other misdemeanor-grade delinquent act, the child shall be taken to either a
5 shelter care facility or a juvenile detention center may be released to a parent or
6 guardian upon the written promise of the parent or guardian to bring the child to
7 court. If the child is not released to a parent or guardian, the officer shall follow the
8 procedures set forth in Paragraphs B and C of this Article.

9 ~~D.~~ Notwithstanding any other provision of this Code or other provision of
10 law to the contrary, no judge shall order that a youth who is thirteen years of age or
11 older and who is taken into custody for a felony-grade delinquent act or for a
12 misdemeanor-grade delinquent act based upon an offense against the person of
13 another be placed in a shelter care facility.

14 * * *

15 Art. 815.1. Alternative to detention programs

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

20 B. An alternative to detention program may be operated either by a non-
21 profit or government entity.

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

27 D. An alternative to detention program shall be considered a form of
28 detention and the time periods set forth in Children's Code Articles 854 and 877 shall
29 apply unless waived by the child. No child shall remain enrolled in an alternative to

1 detention program following a disposition hearing, except as an alternative to
2 placement in detention or other out-of-home placement.

3 E. An alternative to detention program is intended to serve the same limited
4 purpose as secure detention as set forth in R.S. 15:1110. The child's participation in
5 an alternative to detention program shall not be considered an adjudication nor shall
6 it suspend delinquency proceedings. An alternative to detention program may
7 include rehabilitative components, but continued participation in the program shall
8 not be required post-adjudication, except as an alternative to detention of the child
9 or other out-of-home placement. Placement of a child in an alternative to detention
10 program does not preclude the child from being referred to treatment programs that
11 are not required as a condition of the child's release from detention.

12 * * *

13 Art. 817. Release from custody

14 A. As soon as practicable after a child is received by a juvenile detention
15 center or shelter care facility, the court or ~~a probation officer employed and an~~
16 individual or entity authorized by the court to make the determination, upon
17 ~~determining it to be appropriate~~, shall, upon determining it to be appropriate, release
18 the child to the care of his parents or other relatives upon their written promise to
19 bring him to court at such times as may be fixed by the court. The court may also
20 impose reasonable restrictions upon the child's travel, place of abode, association
21 with other people, or employment during the period of this release.

22 * * *

23 Art. 826. Conditions of release

24 * * *

25 C. ~~The~~ When deciding whether to release the child from detention, the court
26 ~~may also impose as a condition of release~~ do any of the following:

- 27 (1) Release the child to the child's parent or guardian without conditions.

1 B. Secure detention shall be used only when it is determined to be necessary
2 based on the child's assessed risk to public safety or to secure the appearance of the
3 child in court.

4 C.(1) All juvenile detention facilities, including facilities owned or operated
5 by any governmental, profit, nonprofit, private, or public agency, shall not be used
6 to detain a child who is alleged to have committed a delinquent act for any of the
7 following purposes:

8 (a) To punish, treat, or rehabilitate the child.

9 (b) To allow the child's parent, guardian, or legal custodian to avoid the
10 parent's, guardian's, or legal custodian's legal responsibilities relative to the child.

11 (c) Solely to satisfy a demand made by a victim, law enforcement, or the
12 community that a child be detained.

13 (d) To facilitate further interrogation or investigation.

14 (e) To facilitate further assessment or evaluation.

15 (f) The unavailability of a more appropriate facility.

16 (2) Nothing in this Subsection shall prohibit the detention of a child who is
17 charged with the commission of a serious offense or with a history of prior
18 adjudications for the commission of delinquent acts based upon serious offenses.

19 D.(1) Unless otherwise ordered by the court pursuant to Children's Code
20 Article 813 or 817, any child taken into custody on or after July 1, 2020, for an
21 alleged status offense or delinquent act shall not be placed in detention without
22 authorization based upon the completion of a detention screening instrument which
23 indicates that detention is appropriate. For purposes of this Subsection, "status
24 offense" means conduct that would not be criminal if committed by an adult.

25 (2)(a) The Louisiana Juvenile Detention Alternatives Initiative Statewide
26 Leadership Collaborative, created by House Concurrent Resolution No. 102 of the
27 2016 Regular Session of the Legislature, hereinafter referred to as "the JDAI
28 Collaborative" shall develop and oversee the statewide implementation of detention

1 screening instruments, and shall develop and oversee the training process and
2 requirements for those persons who will utilize the instruments.

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

6 (c) Each juvenile detention facility shall be required to use a detention
7 screening instrument provided by the JDAI Collaborative or an alternative detention
8 screening instrument approved by the JDAI Collaborative prior to its use at the
9 facility.

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

15 (e) On or before July 1, 2020, the Department of Children and Family
16 Services shall revise the licensing standards for juvenile detention facilities, and
17 adopt rules in accordance with the Administrative Procedure Act, to require the use
18 of an approved detention screen instrument in accordance with the provisions of this
19 Subsection.

20 (f) All licensed juvenile detention facilities shall be required to comply with
21 the provisions of this Section and any rules adopted by the Department of Children
22 and Family Services pursuant to this Paragraph by July 1, 2020.

23 (g) On and after July 1, 2020, failure of a juvenile detention facility to
24 comply with the provisions of this Section and any rules adopted by the Department
25 of Children and Family Services may result in revocation or suspension of the
26 facility's license.

27 (3) Intake staff shall be designated and located at each juvenile detention
28 facility for the purpose of administering the detention screening instrument. Such
29 intake staff shall be trained on proper administration of the instrument. The

1 detention screening instrument may be administered by the intake staff either by
2 phone or in person.

3 (4) The juvenile detention facility shall keep a record of the results of the
4 detention screening instrument and the determination made based upon the
5 instrument to either detain the child, release the child with conditions, or release the
6 child without conditions. This record shall include the parish in which the child was
7 taken into custody, the most serious charge for which the child was taken into
8 custody, and demographic information about the child including but not limited to
9 race, ethnicity, gender, and age. This information shall be aggregated and submitted
10 quarterly to the state Juvenile Detention Alternatives Initiative coordinator at the
11 Louisiana Commission on Law Enforcement and Administration of Criminal Justice.
12 The state Juvenile Detention Alternatives Initiative coordinator shall annually
13 provide such information to the JDAI Collaborative.

14 ~~B.E.~~ On or before July 1, 2011, the Louisiana Juvenile Detention Association
15 shall develop and recommend uniform standards for local juvenile detention
16 facilities that comport with nationally recognized and accepted best practice
17 standards for juvenile detention facilities.

18 ~~C.F.~~ On or before January 1, 2012, the Department of Children and Family
19 Services shall develop and promulgate, in accordance with the provisions of the
20 Administrative Procedure Act, rules governing the licensing of juvenile detention
21 facilities consistent with the standards recommended by the Louisiana Juvenile
22 Detention Association.

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

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

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

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

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

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 Original

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 creation and implementation of a juvenile detention screening, 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, 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, any child taken into custody for an alleged status offense or delinquent act shall not be placed in detention without authorization based upon the completion of a detention screening instrument which indicates that detention is appropriate.

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 develop and oversee the statewide implementation of detention screening instruments, which may be administered in person or over the phone, and to develop and oversee 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 of re-arrest while a current arrest is pending and the risk of failure to appear in court for the pending case.
- (c) Requires each juvenile detention facility to use a detention screening instrument provided or approved by the JDAI Collaborative.
- (d) Requires the Dept. of Children and Family Services, on or before July 1, 2020, to revise the licensing standards for juvenile detention facilities, and adopt rules in accordance with the Administrative Procedure Act, to require the use of an approved detention screen instrument in accordance with the provisions of proposed law.
- (e) Provides that failure of a juvenile detention facility to comply with proposed law and any rules adopted by the Dept. of Children and Family Services pursuant to proposed law may result in revocation or suspension of the facility's license.
- (f) Provides that intake staff shall be designated and located at each juvenile detention facility for the purpose of administering detention screening instruments. In this regard, proposed law requires the juvenile detention facility to keep a record of the results of the detention screening instrument, provides for the specific information to be recorded, and requires the information to be aggregated and submitted quarterly to the state Juvenile Detention Alternatives Initiative coordinator at the La. Commission on Law Enforcement and Administration of Criminal Justice who shall annually provide such information to the JDAI Collaborative.

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 either by phone prior to the child's transportation to the appropriate place of detention or in person immediately upon the child's arrival at the appropriate place of detention.
- (2) 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.
- (3) Provides that for the commission of any other misdemeanor-grade delinquent act, the child may be 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.
- (4) 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.
- (5) Provides that if the child meets the criteria for detention based on a detention screening instrument, the detaining authority has the discretion to release the child if other less restrictive measures would be adequate.
- (6) Provides the following additional options for a child taken into custody by a law enforcement officer as indicated by the detention screening instrument:
- (a) Release the child to a parent or guardian without conditions.
 - (b) If the detention screening instrument indicates that release with conditions is appropriate, the child may be released with conditions pursuant to proposed law (Ch.C. Art. 826), or with a written promise to participate in an alternative to detention program pursuant to proposed law (Ch.C. Art. 815.1).
 - (c) Release the child directly to an authorized entity, including a juvenile assessment center or an alternative to detention program, which shall be responsible for contacting the child's parent or guardian.

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 non-profit 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 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 persons set forth in present law regarding the answering 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 (Ch.C. Art. 819) provides that if a child is not released to the care of his parents, a hearing shall be held by the court within three days after the child's entry into the juvenile detention center or shelter care facility. Following the hearing, present law authorizes the court to order a child to be continued in custody in a licensed facility for juveniles.

Present law (Ch.C. Arts. 823 and 826) further provides that a child shall have a right to bail for release from custody prior to adjudication by the deposit of a bond or other security and upon agreeing to other conditions found necessary to ensure the appearance of the child for adjudication including that the child regularly attend school, that the child voluntarily participate in a pretrial drug testing program, and any other condition of release that is reasonably related to assuring the child's appearance before the court.

Proposed law amends present law to provide that when deciding whether to release the child from detention, the court may do any of the following:

- (1) Release the child to the child's parent or guardian without conditions.
- (2) Release the child to the child's parent, guardian, or custodian upon the parent's, guardian's, or custodian's written assurance to secure the child's presence at the next court hearing.
- (3) Release the child with any of the following conditions:
 - (a) That the child participate in an alternative to detention program pursuant to proposed law.
 - (b) That the child regularly attend school.
 - (c) Any other condition of release that is reasonably related to assuring the child's appearance before the court.

Proposed law further provides that conditions of release may be ordered at any time in lieu of detention of the child, including at the point of first contact with law enforcement prior to initial court appearance.

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.

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