
DIGEST

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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))