
DIGEST

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HB 158 Engrossed

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, a detention screening instrument shall be administered before secure detention is considered for any child taken into custody for alleged commission of a delinquent act, and the detention screening instrument shall be factored into the determination of whether secure detention is appropriate. Further provides, that for offenses other than a crime of violence and those involving a handgun, there shall be a presumption against detaining the child.

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 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. 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 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 screening 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 upon the child's arrival at the appropriate place of detention.
- (2) If a child is detained after being taken into custody, requires the results of the detention screening instrument to be communicated to the court within 48 hours.
- (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 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 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 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 (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 by the court 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.

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), (B)(2), and (C), 815, 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))

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".