

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, and 817(A), and
8 826(C) and (D) are hereby amended and reenacted and Children's Code Articles 815.1 and
9 826(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 notify the child's parents that he has been taken into custody.

24 * * *

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

26 A.(1) The peace officer or an appropriate representative of the arresting
27 agency shall have the authority and responsibility to transport the child to the
28 appropriate place of detention as specified in ~~Paragraphs B and C~~ of this Article,
29 unless the child has been released to the care of his parents pursuant to Article

1 814(B)(1). Beginning July 1, 2020, a detention screening instrument shall be
2 administered to the child either by phone prior to transportation of the child to the
3 appropriate place of detention or in person upon the child's arrival at the appropriate
4 place of detention.

5 (2) If the child is detained after being taken into custody without a court
6 order pursuant to Children's Code Article 814, the results of the detention screening
7 instrument shall be communicated to the court within forty-eight hours.

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

16 (2) If the child is detained after being taken into custody without a court
17 order pursuant to Children's Code Article 814, the results of the detention screening
18 instrument shall be communicated to the court within forty-eight hours.

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

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

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

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

9 Art. 815.1. Alternative to detention programs

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

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

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

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

26 E. An alternative to detention program is intended to serve the same limited
27 purpose as secure detention as set forth in R.S. 15:1110. The child's participation in
28 an alternative to detention program shall not be considered an adjudication nor shall
29 it suspend delinquency proceedings. An alternative to detention program may

1 include rehabilitative components, but continued participation in the program shall
2 not be required post-adjudication, except as an alternative to detention of the child
3 or other out-of-home placement. Placement of a child in an alternative to detention
4 program does not preclude the child from being referred to treatment programs that
5 are not required as a condition of the child's release from detention.

6 * * *

7 Art. 817. Release from custody

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

16 * * *

17 Art. 826. Conditions of release

18 * * *

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

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

22 (2) Release the child to the child's parent, guardian, or custodian upon the
23 parent's, guardian's, or custodian's written assurance to secure the child's presence
24 at the next court hearing.

25 (3) Release the child with any of the following conditions:

26 (a) That the child participate in an alternative to detention program pursuant
27 to Children's Code Article 815.1.

28 ~~(1)~~(b) That the child regularly attend school.

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

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

5 (d) To facilitate further interrogation or investigation.

6 (e) To facilitate further assessment or evaluation.

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

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

11 D.(1) On or after July 1, 2020, a detention screening instrument shall be
12 administered before secure detention is considered for any child taken into custody
13 for alleged commission of a delinquent act, and the detention screening instrument
14 shall be factored into the determination of whether secure detention is appropriate.
15 For offenses other than those enumerated in R.S. 14:2 and those involving a
16 handgun, there shall be a presumption against detaining the child.

17 (2)(a) The Louisiana Juvenile Detention Alternatives Initiative Statewide
18 Leadership Collaborative, created by House Concurrent Resolution No. 102 of the
19 2016 Regular Session of the Legislature, hereinafter referred to as "the JDAI
20 Collaborative" shall develop and oversee the statewide implementation of detention
21 screening instruments, and shall develop and oversee the training process and
22 requirements for those persons who will utilize the instruments.

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

26 (c) Except as authorized in Subparagraph (d) of this Paragraph, each juvenile
27 detention facility shall use a detention screening instrument that is selected from the
28 tools that are being utilized as of January 1, 2019, by local jurisdictions in the state,
29 which shall be provided by the JDAI Collaborative. A detention screening

1 instrument that is being utilized by a jurisdiction as of January 1, 2019, is sufficient
2 to satisfy the requirements of this Subparagraph.

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

8 (e) On or before July 1, 2020, the Department of Children and Family
9 Services shall revise the licensing standards for juvenile detention facilities, and
10 adopt rules in accordance with the Administrative Procedure Act, to require the use
11 of an approved detention screening instrument in accordance with the provisions of
12 this Subsection.

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

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

20 (3) Intake staff shall be designated and located at each juvenile detention
21 facility for the purpose of administering the detention screening instrument. Such
22 intake staff shall be trained on proper administration of the instrument. The
23 detention screening instrument may be administered by the intake staff either by
24 phone or in person.

25 (4) The juvenile detention facility shall keep a record of the results of the
26 detention screening instrument and the determination made based upon the
27 instrument to either detain the child, release the child with conditions, or release the
28 child without conditions. This record shall include the parish in which the child was
29 taken into custody, the most serious charge for which the child was taken into

1 custody, and demographic information about the child including but not limited to
2 race, ethnicity, gender, and age. This information shall be aggregated and submitted
3 quarterly to the state Juvenile Detention Alternatives Initiative coordinator at the
4 Louisiana Commission on Law Enforcement and Administration of Criminal Justice.
5 The state Juvenile Detention Alternatives Initiative coordinator shall annually
6 provide such information to the JDAI Collaborative.

7 B.E. On or before July 1, 2011, the Louisiana Juvenile Detention Association
8 shall develop and recommend uniform standards for local juvenile detention
9 facilities that comport with nationally recognized and accepted best practice
10 standards for juvenile detention facilities.

11 C.F. On or before January 1, 2012, the Department of Children and Family
12 Services shall develop and promulgate, in accordance with the provisions of the
13 Administrative Procedure Act, rules governing the licensing of juvenile detention
14 facilities consistent with the standards recommended by the Louisiana Juvenile
15 Detention Association.

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

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

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

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

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

28 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 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".