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January 31, 2017

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: ACT 501 OF 2016

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to raising the age for juvenile offenders in the criminal justice system.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Jean-Paul J. Morrell
Representative John Bagneris
Representative Joseph Bouie, Jr.
Representative Gary M. Carter, Jr.
Representative Patrick Connick
Representative Kenny Cox
Representative Cedric B. Glover

Representative Jimmy Harris
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Representative Helena Moreno
Representative Barbara Norton
Representative Patricia Smith

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**LOUISIANA STATE LAW INSTITUTE
CHILDREN'S CODE COMMITTEE AND
CODE OF CRIMINAL PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO ACT 501 OF THE 2016 REGULAR SESSION**

Relative to raising the age for juvenile offenders in the criminal justice system

Prepared for the
Louisiana Legislature on
January 31, 2017

Baton Rouge, Louisiana

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SENATE BILL NO. 324

BY SENATOR MORRELL AND REPRESENTATIVES BAGNERIS, BOUIE, GARY CARTER, CONNICK, COX, GLOVER, JIMMY HARRIS, HILFERTY, HUNTER, JACKSON, JAMES, TERRY LANDRY, LEGER, LYONS, MAGEE, MARCELLE, DUSTIN MILLER, MORENO, NORTON AND SMITH

AN ACT

To amend and reenact Children's Code Arts. 305(A)(2), 306(D), and 804(1) and to enact Chapter 13-B of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:1441 and 1442, and Children's Code Art. 306(G), relative to juvenile jurisdiction; to provide for a child who commits a delinquent act before a certain age; to provide for transfer of juveniles to adult detention centers pending trial; to create the Juvenile Jurisdiction Planning and Implementation Committee; to provide for membership, authority, duties, and responsibilities; to provide for directives to the Louisiana State Law Institute, Louisiana Judicial Council, and Department of Children and Family Services; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 13-B of Title 15 of the Louisiana Revised Statutes of 1950, comprised of R.S. 15:1441 and 1442, is hereby enacted to read as follows:

CHAPTER 13-B. JUVENILE JURISDICTION

PLANNING AND IMPLEMENTATION ACT

§1441. Short title

This Chapter shall be known and may be cited as the "Juvenile Jurisdiction Planning and Implementation Act".

§1442. Louisiana Juvenile Jurisdiction Planning Implementation Committee;

1 composition; authority; responsibilities

2 A. The Louisiana Juvenile Jurisdiction Planning and Implementation
3 Committee, hereafter referred to as the "committee", is hereby created as a
4 committee of the Juvenile Justice Reform Act Implementation Commission
5 established pursuant to R.S. 46:2751 et seq.

6 B. The committee shall have the following authority, duties, and
7 responsibilities:

8 (1) Not later than January 1, 2017, the committee shall develop and
9 submit to the commissioner of administration, the president of the Senate, and
10 the speaker of the House of Representatives a plan for full implementation of
11 the provisions of this Chapter. The plan shall include recommendations for
12 changes required in the juvenile justice system to expand jurisdiction to include
13 persons seventeen years of age. These recommendations may include the
14 following items:

15 (a) The development of programs and policies that can safely reduce the
16 number of youth in the juvenile justice system, including expanded use of
17 diversion where appropriate; development and use of civil citation programs;
18 use of evidence-based and promising services wherever possible; and
19 reinvestment programs targeting the expanded use of community-based
20 alternatives to secure, nonsecure, and pre-disposition custody.

21 (b) The development of comprehensive projections to determine the
22 long-term distribution of placement capacity for youth in the juvenile justice
23 system.

24 (c) An analysis of the impact of the expansion of juvenile jurisdiction to
25 persons seventeen years of age on state agencies and a determination of which
26 state agencies shall be responsible for providing relevant services to juveniles,
27 including but not limited to mental health and substance abuse services,
28 housing, education, and employment.

29 (2) Not later than April 1, 2017, and quarterly thereafter, the committee
30 shall submit a written status report to the commissioner of administration, the

1 president of the Senate, and the speaker of the House of Representatives on
2 implementation of the plan as provided in this Subsection.

3 (3) The committee shall have such powers, authority, and prerogatives
4 as provided for the Juvenile Justice Reform Act Implementation Commission
5 pursuant to R.S. 46:2754 et seq.

6 C. The committee shall be composed of the following members:

7 (1) Each member of the Juvenile Justice Reform Act Implementation
8 Commission shall be an ex officio member.

9 (2) Two sitting Louisiana judges: one appointed by the president of the
10 Louisiana District Judges Association and one appointed by the president of the
11 Louisiana Council of Juvenile and Family Court Judges.

12 (3) The deputy secretary of the office of juvenile justice, or his designee.

13 (4) The superintendent of the state Department of Education, or his
14 designee.

15 (5) The executive director of the Louisiana Sheriffs' Association, or his
16 designee.

17 (6) The president of the Louisiana Juvenile Detention Association, or his
18 designee.

19 (7) An attorney appointed by the Louisiana Public Defender Board that
20 is an expert in juvenile defense.

21 (8) The executive director of the Children's Cabinet.

22 (9) The director of the Institute for Public Health and Justice, or his
23 designee.

24 (10) Two child or youth advocates, one appointed by the president pro
25 tempore of the Senate and one appointed by the speaker pro tempore of the
26 House of Representatives.

27 (11) Two parents of children who have been involved in the juvenile
28 justice system, one appointed by the executive director of the Cecil J. Picard
29 Center for Child Development and Lifelong Learning and one appointed by the
30 executive director of the Children's Coalition for Northeast Louisiana.

1 (12) An expert in juvenile justice, appointed by the chair of the
2 Children's Code Committee of the Louisiana State Law Institute.

3 (13) Two youth representatives who have been prosecuted in criminal
4 court at the age of seventeen, one appointed by the executive director of
5 LouisianaChildren.org and one appointed by the executive director of the
6 Family and Youth Counseling Agency of Lake Charles, Louisiana.

7 (14) A representative of the Police Jury Association of Louisiana.

8 (15) An attorney appointed by the Louisiana District Attorneys
9 Association that is an expert in juvenile prosecution.

10 D.(1) All appointments to the committee shall be made not later than
11 September 1, 2016. Any vacancy on the committee shall be filled by the
12 respective appointing authority.

13 (2) The executive director of the Children's Cabinet shall serve as chair
14 of the committee and shall convene the committee no later than October 1, 2016.

15 (3) The members of the committee shall serve without compensation,
16 except the compensation to which they may be individually entitled to as a
17 member or employee of their respective organization or agency.

18 (4) A majority of the total committee membership shall constitute a
19 quorum and any official action by the committee shall require an affirmative
20 vote of a majority of the quorum present and voting.

21 (5) The committee shall conduct meetings as it deems necessary to fully
22 and effectively perform its duties and accomplish the objectives and purposes
23 of this Chapter and may receive testimony and information relative to any of
24 the subjects enumerated in this Chapter.

25 (6) The committee shall terminate on December 31, 2020.

26 Section 2. Children's Code Art. 305(A)(2), 306(D), and 804(1) are hereby amended
27 and reenacted and Children's Code Art. 306(G) is hereby enacted to read as follows:

28 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
29 jurisdiction over children; when acquired

30 A.(1) * * *

1 (2) Thereafter, the child is subject to the exclusive jurisdiction of the
 2 appropriate court exercising criminal jurisdiction for all subsequent procedures,
 3 including the review of bail applications, and the ~~child shall be transferred forthwith~~
 4 ~~to the appropriate adult facility for detention prior to his trial as an adult~~ **court**
 5 **exercising criminal jurisdiction may order that the child be transferred to the**
 6 **appropriate adult facility for detention prior to his trial as an adult.**

7 * * *

8 Art. 306. Places of detention; juveniles subject to criminal court jurisdiction

9 * * *

10 D. If at the conclusion of the continued custody hearing, the court determines
 11 that the child meets the age requirements and that there is probable cause that the
 12 child has committed one of the offenses enumerated in Article 305, the court shall
 13 order him held for trial as an adult for the appropriate court of criminal jurisdiction.
 14 ~~The child shall~~ **appropriate court of criminal jurisdiction may thereafter order**
 15 **that the child** be held in any facility used for the pretrial detention of accused adults
 16 and **the child** shall apply to the appropriate court of criminal jurisdiction for a
 17 preliminary hearing, bail, and for any other rights to which he may be entitled under
 18 the Code of Criminal Procedure.

19 * * *

20 **G. Notwithstanding any provision of law to the contrary, a child who is**
 21 **subject to criminal jurisdiction pursuant to Article 305 shall not be detained**
 22 **prior to trial in a juvenile detention facility after reaching the age of eighteen**
 23 **if the governing authority with funding responsibility for the juvenile detention**
 24 **facility objects to such detention.**

25 * * *

26 Art. 804. Definitions

27 As used in this Title:

28 (1)(a) "Child" means any person under the age of twenty-one, including an
 29 emancipated minor, who commits a delinquent act before attaining seventeen years
 30 of age.

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

3 Section 5. This Act shall be known as the "Raise the Age Louisiana Act of 2016".

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

January 31, 2017

To: Representative Taylor F. Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO ACT 501 OF THE 2016 REGULAR SESSION**

Section 3(A) of Act 501 of the 2016 Regular Session, the Raise the Age Louisiana Act of 2016, directs the Law Institute to study and recommend amendments and additions to the Children's Code, Code of Criminal Procedure, and Revised Statutes as may be appropriate to effectuate the purpose of the Act, which is to include seventeen-year-olds in the juvenile justice system. In fulfillment of this request, the Law Institute assigned the project to its Children's Code and Code of Criminal Procedure Committees.

The Children's Code and Code of Criminal Procedure Committees each conducted background research to determine which provisions of these Codes and the Revised Statutes may need to be amended to effectuate the purpose of Acts 2016, No. 501, the raising of the juvenile offender age from seventeen to eighteen. The Committees met separately to discuss these provisions and to determine which amendments and additions should be recommended to the legislature. Each Committee recommended various amendments to the provisions of their respective Codes as well as the Revised Statutes, and their suggested revisions are reproduced below. The Law Institute recognizes that, pursuant to Acts 2016, No. 501, the raising of the juvenile offender age from seventeen to eighteen will be a two-step process, with nonviolent crimes effective June 30, 2018 and violent crimes effective June 30, 2020. As a result, the legislature may have to make a policy determination as to when the following suggested revisions should be incorporated into the Children's Code, Code of Criminal Procedure, and Revised Statutes.

Further, in making its determinations, the Code of Criminal Procedure Committee hesitated to recommend amendments that would change the definitions of substantive crimes and their penalties to those having been committed by eighteen-year-olds rather than seventeen-year-olds. The Committee expressed concern that without further review of the underlying policy considerations by the legislature, recommending such amendments would have the unintended consequence of decriminalizing these offenses entirely for seventeen-year-old offenders. As a result, rather than recommending amendments to these provisions, the Committee concluded that the following list of substantive crimes should be submitted to the legislature for its consideration of whether, in accordance with the purpose of Acts 2016, No. 501, these crimes and their penalties should be redefined to apply only to eighteen-year-old perpetrators: R.S.

14:28(C), 43.1, 43.2(C), 43.3, 73.8(D), 80(A)(1), 80.1(A), 81(H)(2), 81.1(E)(5), 81.2(A), 81.3(A), 82.1(A)(1), 86(A), 89.1(C)(2), 91.13(A), 92(A), 92.3(A), 93(A), 93.2.3(A)(1), and 95.8; and R.S. 15:562.3(A) and 1403.1(B)(2). In conjunction with this determination, the legislature may also wish to consider the meaning of the terms “juvenile” and “minor” as used throughout these provisions.

Additionally, both the Children’s Code and Code of Criminal Procedure Committees concluded that in addition to provisions concerning the age of juvenile offenders, the legislature may also wish to amend provisions relating to the age of juvenile victims for purposes of consistency. As a result, the Committees also compiled the following list of provisions pertaining to seventeen-year-old victims: Children’s Code Articles 116(9.1), 323(2)(a), 324(B), 610(F), 728(4), 811.1(G), 811.3(3), and 884.1; Code of Criminal Procedure Articles 571.1, 573(4), and 893(E)(1)(b); and R.S. 14:28(C), 67.16(C), 80(A)(1), 80.1(A), 81(A), 81.1, 81.1.1, 81.2, 81.3, 81.4, 89.1(A)(1)(f), 91.13(A), 92(A), 93(A), 93.2.3(A)(1), 106, 283(B)(4), 283.2(A)(1), 403.7(B)(3), and 403.8(B)(3); R.S. 15:283(E)(1), 440.2(C)(1), 539.2(A), 541(24)(a), 542(F)(4), and 1403.1(B)(2); and R.S. 40:1023.1.

Suggested Revisions

Children’s Code Articles

Article 804. Definitions

As used in this Title:

(1)(a) "Child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act before attaining seventeen years of age.

(b) After June 30, 2018, "child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act on or after July 1, 2018, when the act is not a crime of violence as defined in R.S. 14:2, and occurs before the person attains eighteen years of age.

(c)(i) After June 30, 2020, "child" means any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act on or after July 1, 2020, and before the person attains eighteen years of age.

(ii) Notwithstanding Item (i) of this Subparagraph, a child who has attained the age of seventeen shall be subject to criminal jurisdiction pursuant to Article 305 or 857.

(2) "Child care institution" means a nonprofit, licensed private or public institution which accommodates no more than twenty-five children and which is not a detention facility, a forestry camp, a training school, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(3) "Delinquent act" means an act committed by a child of ten years of age or older which

1 if committed by an adult is designated an offense under the statutes or ordinances of this state, or
2 of another state if the offense occurred there, or under federal law, except traffic violations. It
3 includes an act constituting an offense under R.S. 14:95.8, an act constituting an offense under
4 R.S. 14:81.1.1(A)(2), and a direct contempt of court committed by a child. "Delinquent act"
5 shall not include a violation of R.S. 14:82, 83.3, 83.4, 89, or 89.2 for a child who, during the time
6 of the alleged commission of the offense, was a victim of trafficking of children for sexual
7 purposes pursuant to R.S. 14:46.3(E).

8
9 (4) "Delinquent child" means a child who has committed a delinquent act.

10
11 (5) "Felony-grade delinquent act" means an offense that if committed by an adult, may be
12 punished by death or by imprisonment at hard labor. "Felony-grade delinquent act" shall not
13 include a violation of R.S. 14:82, 83.3, 83.4, 89, or 89.2 for a child who, during the time of the
14 alleged commission of the offense, was a victim of trafficking of children for sexual purposes
15 pursuant to R.S. 14:46.3(E).

16
17 (6) "Insanity" means a mental disease or mental illness which renders the child incapable
18 of distinguishing between right and wrong with reference to the conduct in question, as a result
19 of which the child is exempt from criminal responsibility.

20
21 (7) "Juvenile" means a child under eighteen years of age who has been accused of
22 committing a delinquent act.

23
24 (~~7~~ 8) "Mental incapacity to proceed" means that, as a result of mental illness or
25 developmental disability, a child presently lacks the capacity to understand the nature of the
26 proceedings against him or to assist in his defense.

27
28 (~~8~~ 9) "Misdemeanor-grade delinquent act" means any offense which if committed by an
29 adult is other than a felony and includes the violation of an ordinance providing a penal sanction.

30
31 (~~9~~ 10) "Sexually exploited child" means any person under the age of eighteen who has
32 been subject to sexual exploitation because the person:

33
34 (a) Is a victim of trafficking of children for sexual purposes under R.S. 14:46.3.

35
36 (b) Is a victim of child sex trafficking under 18 U.S.C. 1591.

37
38 * * *

39
40 **Article 837. Procedure after determination of mental capacity**

41
42 * * *

43
44 H. An out-of-home placement or commitment shall be in a separate unit and program
45 from an adult forensic program unless the child is ~~seventeen~~ eighteen years of age or older and
46 the court finds, after a contradictory hearing, that the child can be appropriately treated in an

1 adult forensic program.

2
3 * * *

4
5 **Revised Statutes**

6
7 **R.S. 13:1621. Juvenile court for the parish of East Baton Rouge; establishment;**
8 **jurisdiction**

9
10 A. There shall be a separate juvenile court for the parish of East Baton Rouge which
11 shall be a court of record and shall be known as the "Juvenile Court for the Parish of East Baton
12 Rouge". There shall be two judges of the juvenile court, who shall preside over that court. The
13 court shall have exclusive jurisdiction in the following proceedings:

14
15 (1) All proceedings in the interest of children under ~~seventeen~~ eighteen years of age
16 alleged to be delinquent, except as provided in R.S. 13:1570 and 1571.1 through 1571.4 and
17 Code of Juvenile Procedure Article 106; and all proceedings in the interest of children under
18 eighteen years of age alleged to be in need of supervision or in need of care.

19
20 * * *

21
22 **R.S. 14:40.7. Cyberbullying**

23 * * *

24
25 (D)(2) When the offender is under the age of ~~seventeen~~ eighteen, the disposition of the
26 matter shall be governed exclusively by the provisions of Title VII of the Children's Code.

27
28 * * *

29
30 **R.S. 14:73.10. Online impersonation**

31
32 * * *

33
34 (C)(2) When the offender is under the age of ~~seventeen~~ eighteen years, the disposition of
35 the matter shall be governed exclusively by the provisions of Title VII of the Children's Code.

36
37 * * *

38
39 **R.S. 14:81.1.1. "Sexting"; prohibited acts; penalties**

40
41 A.(1) No person under the age of ~~seventeen~~ eighteen years shall knowingly and
42 voluntarily use a computer or telecommunication device to transmit an indecent visual depiction
43 of himself to another person.

1 (2) No person under the age of ~~seventeen~~ eighteen years shall knowingly possess or
2 transmit an indecent visual depiction that was transmitted by another under the age of seventeen
3 years in violation of the provisions of Paragraph (1) of this Subsection.

4 * * *

5
6 **R.S. 14:92.1. Encouraging or contributing to child delinquency, dependency, or neglect;
7 penalty; suspension of sentence; definitions**

8
9 * * *

10
11 B. By the term "delinquency", as used in this section, is meant any act which tends to
12 debase or injure the morals, health or welfare of a child; drinking beverages of low alcoholic
13 content or beverages of high alcoholic content; the use of narcotics, going into or remaining in
14 any bawdy house, assignation house, disorderly house or road house, hotel, public dance hall, or
15 other gathering place where prostitutes, gamblers or thieves are permitted to enter and ply their
16 trade; or associating with thieves and immoral persons, or enticing a minor to leave home or to
17 leave the custody of its parents, guardians or persons standing in lieu thereof, without first
18 receiving the consent of the parent, guardian, or other person; or begging, singing, selling any
19 article; or playing any musical instrument in any public place for the purpose of receiving alms;
20 or habitually trespassing where it is recognized he has no right to be; or using any vile, obscene,
21 or indecent language; or performing any sexually immoral act; or violating any law of the state
22 ordinance of any village, town, city, or parish of the state.

23
24 The term "juvenile", as used in this section, refers to any child under the age of ~~seventeen~~
25 eighteen. Lack of knowledge of the juvenile's age shall not be a defense.

26
27 * * *

28
29 **R.S. 15:902.1. Transfer of adjudicated juvenile delinquents**

30
31 Notwithstanding Title VIII of the Louisiana Children's Code or any other provision of
32 law, the secretary of the department may promulgate rules and regulations to authorize the
33 transfer of adjudicated juvenile delinquents to adult correctional facilities when the delinquents
34 have attained the age of ~~seventeen~~ eighteen years, the age of full criminal responsibility.

35
36 * * *

37
38 **R.S. 15:1031. Establishment of parish schools for youths authorized**

39
40 The governing authorities of the parishes may establish, within their parishes, an
41 industrial school for male youths ~~of~~ under the age ~~seventeen~~ of eighteen years, ~~and under,~~
42 convicted in the juvenile court of the parish for offenses within the jurisdiction of the juvenile
43 court. Where any school has been so established, it shall be employed only for the delinquent
44 juveniles convicted within the parish, and shall be known as the "Parish Industrial School for
45 Youths."

1 * * *

2
3 **R.S. 15:1096.2. Purpose**
4

5 A. The purpose of the commission shall be to assist and afford opportunities to
6 preadjudicatory and postadjudicatory children who enter the juvenile justice system, or who are
7 children in need of care or supervision, to become productive, law-abiding citizens of the
8 community, parish, and state by the establishment of rehabilitative programs within a structured
9 environment and to provide physical facilities and related services for children, including the
10 housing, care, supervision, maintenance, and education of juveniles under the age of ~~seventeen~~
11 eighteen years, and for juveniles ~~seventeen~~ eighteen years of age and over who were under
12 ~~seventeen~~ eighteen years of age when they committed an alleged offense, throughout the parishes
13 within the district and other participating parishes.

14
15 * * *

16
17 **R.S. 15:1098.3. Purpose**
18

19 The commission may assist and afford opportunities to preadjudicatory and
20 postadjudicatory children who enter the juvenile justice system to become productive, law-
21 abiding citizens of the community, parish, and state by the establishment of rehabilitative
22 programs within a structured environment and provide physical facilities and related services for
23 children, including the housing, care, supervision, maintenance, and education of juveniles under
24 the age of ~~seventeen~~ eighteen years, and for juveniles ~~seventeen~~ eighteen years of age and over
25 who were under ~~seventeen~~ eighteen years of age when they committed an alleged offense,
26 throughout St. James Parish and participating parishes.

27
28 * * *

29
30 **R.S. 15:1099.3. Purpose**
31

32 A governing authority may assist and afford opportunities to preadjudicatory and
33 postadjudicatory children who enter the juvenile justice system to become productive, law-
34 abiding citizens of the community, parish, and state by the establishment of rehabilitative
35 programs within a structured environment and provide physical facilities and related services for
36 children, including the housing, care, supervision, maintenance, and education of juveniles under
37 the age of ~~seventeen~~ eighteen years, and for juveniles ~~seventeen~~ eighteen years of age and over
38 who were under ~~seventeen~~ eighteen years of age when they committed an alleged offense,
39 throughout the parish and participating parishes.

40
41 * * *

1 **R.S. 46:1933. Organization and powers**

2

3

* * *

4

5

B. Any multiparish juvenile detention home district may acquire title by purchase or donation to real and personal property for public purposes; may own, operate or maintain facilities for the housing, care, supervision, maintenance and education of juveniles under the age of ~~seventeen~~ eighteen years, and for juveniles ~~seventeen~~ eighteen years of age and over who were under ~~seventeen~~ eighteen years of age when they committed an alleged offense.

10

11

* * *