

Legislative Updates Regarding Juvenile Matters in Louisiana

By Katy Walker, Ph.D.



Over the past decade, courts and legislatures have increasingly repudiated the punitive responses that characterized juvenile sentencing in the 1990s. These policy reforms acknowledge and further the juvenile justice system's focus on rehabilitation and individualized treatment. Additionally, a large body of research has emerged in the past three decades demonstrating the need to further examine the use of incarceration in the juvenile justice system. Numerous studies have established that juvenile incarceration fails to help rehabilitate young people, finding that 70 to 80 percent of youth are arrested within two years of release. This research also shows that incarceration is no more effective in reducing future criminality or delinquency among young people than probation or alternative sanctions.¹

While the groundwork for juvenile justice reform in Louisiana was initiated in 2003,² there has been a resurgence of effort among lawmakers in recent years to follow through on this promise. In doing so, they have joined policymakers and stakeholders nationwide who recognize that young people have an enormous capacity for change and positive growth, notwithstanding the severity of their crimes.

During 2016 alone, the Louisiana Legislature passed a trilogy of sweeping reforms. That year, with the passage of the "Raise the Age Act" (Act 501), Louisiana joined 41 other states that have raised the age of juvenile jurisdiction to 17. The year 2016 also saw the enactment of a law (Act 499) to "right-size" the juvenile justice system by ensuring that children are not kept in state facilities for excessive periods of time and by mandating data reporting about youth in detention centers and juvenile prisons. Additionally, the "Safe and Fair Return Act" (Act 617) mandates that children in the custody of the Office of Juvenile Justice (OJJ) receive semi-annual review hearings to ensure that the children are receiving appropriate services and to determine whether they are making progress in custody in anticipation of their eventual release.

During the 2018 legislative session,

the Louisiana Legislature made further strides to bring the state into line with national best practices in juvenile law and procedures, passing a series of reforms that affect a range of juvenile issues, explained below.

Act 467: Rolling Back Mandatory Sentences for Youth

The passage of Act 467, signed into law by Governor Edwards on May 23, marks a historic shift in how the state treats young people who have committed more serious offenses. Specifically, Act 467 rolls back mandatory sentences for youth as articulated in La. Ch.C. art. 897.1, colloquially referred to as "the Vitter Law."³

Under previous law, youth 14 years of age and older and adjudicated in the juvenile justice system⁴ for first-degree murder, second-degree murder, first degree/aggravated rape or aggravated kidnapping were committed to secure care until the age of 21 ("juvenile life") without the opportunity to have their sentences modified. Additionally, for children adjudicated delinquent for armed robbery, while the judge had the discretion to impose whatever sentence he or she deemed appropriate (up to age 21), a child had to serve the entire length of the sentence imposed without the possibility of review or modification of the sentence.

The resulting dynamic of this law was that young people were incarcerated far past the point of rehabilitation,⁵ which was wasteful and counterproductive. Moreover, the inability of judges to modify these sentences not only discouraged children from doing well while in custody but also proved problematic for facility staff who lacked the ability to provide incentives to the children to excel under their care. Another detrimental consequence of the law was that children, upon completing their sentences, were released without any supervision or re-entry services to help them successfully re-enter their communities.

Under Act 467, however, a child age 14 or older and adjudicated for first-degree/aggravated rape (La. R.S. 14:42) or aggravated kidnapping (La. R.S. 14:44) may now have his or her case modified by a judge after serving at least three years in the custody of OJJ. In cases involving armed robbery (La. R.S. 14:64), a judge may modify a child's disposition after three years or, if the disposition is shorter than three years, after two-thirds of his time is served. Unfortunately, dispositions for first- or second-degree murder remain ineligible for modification. The provisions of the new law apply to all children in the custody of OJJ on or after Aug. 1, 2018.

These changes bring state law into line with an increasing body of research indicating that there is little or no correlation between a child's length of stay in a residential facility and his or her likelihood of reoffending.⁶ Indeed, research shows that placement in a juvenile facility beyond six months is ineffective at reducing recidivism and may even increase recidivism rates.⁷ Mandatory sentences also ignore the fact that, as youth mature, they typically outgrow the types of behavior that lead to contact with the juvenile or criminal justice systems. This is frequently referred to as the "age-crime curve" and holds true even for those youth who commit violent offenses.⁸

Act 467's amendments to La. Ch.C. art. 897.1, while imperfect, bring Louisiana's law into closer alignment with the purpose of the juvenile justice system, as well as recent Supreme Court cases recognizing the need for individualized sentencing in juvenile cases due to a juvenile's diminished culpability and heightened ability for rehabilitation.

Act 355: Ensuring Regular Post-Dispositional Hearings for Youth in State Custody

In 2016, state lawmakers passed legislation (Act 617) requiring routine in-person hearings before a judge for children in the custody of OJJ. The law

stipulates that all children in OJJ custody receive review hearings every six months to determine whether they are making progress in custody (La. Ch.C. art. 906). Additionally, for children serving time in secure care for a felony-grade offense that is not a crime of violence, a contradictory hearing must occur after nine months to determine whether continued confinement is necessary. The child may remain in OJJ custody only if the judge determines that his treatment cannot be completed in a less restrictive setting (La. Ch.C. art. 898).

Although these went into effect in 2016, confusion over who is ultimately responsible for scheduling the hearings resulted in very few of these legally mandated hearings being set. Act 355 — which went into effect Aug. 1, 2018 — clarifies that it is the court’s responsibility to set the hearing dates and specifies that the hearing date be set by the court at the time of disposition.

It also includes a schedule of hearings for children who were already entitled to them under current law. Thus, for children who are currently in state custody but have not yet received a required hearing, the court must schedule one no later than Sept. 30, 2018, for a date no later than Oct. 30, 2018. The new procedures and this schedule apply to both review hearings and contradictory hearings.

By facilitating multiple opportunities for a judge to review a child’s progress, mandatory post-disposition hearings ensure that a child is receiving the necessary treatment and services and create an incentive for youth by providing a chance for them to demonstrate their progress and growth. Perhaps most significantly, these hearings will help to ensure that children are not being held for excessive periods of time.

Data shows that Louisiana incarcerates children for extraordinary long lengths of time⁹ — particularly when compared to the rest of the nation. In fact, youth in Louisiana typically face extremely long sentences that do not necessarily correlate with the seriousness of their offense. Data shows that average sentences for violent and non-violent

felonies are nearly identical. Youth with non-violent felonies face, on average, the longest sentences. Further, as with sentence length, the amount of time a child has served does not necessarily correlate with the seriousness of his offense. In fact, youth serving time for non-violent felonies and misdemeanors were more likely to have already served the majority of their sentences than youth with violent felony offenses.¹⁰

Children incarcerated for long periods of time in the juvenile system increases recidivism and wastes public resources.¹¹ Mandated, semi-annual review hearings where the presumption is for not continuing detention will help cut down the excessive lengths of stay currently characteristic of Louisiana’s juvenile justice system by facilitating an opportunity for judges to consider motions to modify a child’s disposition and release him/her from custody. Further, regular in-person hearings allow judges to assess the safety and well-being of each child while in state custody, including the conditions of confinement.

Act 453: Ending the Practice of Indiscriminate Shackling

In much of Louisiana, juveniles who are detained pre-trial are routinely shackled in court. This typically happens without any regard for a child’s age or charge or whether the child poses a safety or flight risk. Beyond the obvious repercussion of emotionally and psychologically harming youth,¹² indiscriminate shackling, as in the case of adults, interferes with a child’s presumption of innocence¹³ and runs counter to the rehabilitative focus of juvenile courts. Act 453 remedies this troublesome practice by eliminating the use of indiscriminate shackling in juvenile court, allowing it only under very limited circumstances. In doing so, Louisiana joins 31 other states that have passed legislation limiting the use of restraints on juveniles.

Act 453 amends La. Ch.C. art. 408, providing that a child may not be shackled unless a request is made by law enforcement or prosecutors. A judge must

then find that the child presents a particularized risk of flight or physical harm to himself or others. The fact that a child is detained is not sufficient justification for restraints. If a request for a child to be shackled is made, the child’s attorney must be provided an opportunity to be heard and object on the record, but the child does not need to be present for the proceedings. This law only applies inside the courtroom — not in the detention center, during transportation, or if the child is waiting outside the courtroom for the hearing to begin.

Act 321: Clarifying OJJ’s Authority over Children in its Custody

Act 321 clarifies that OJJ has the authority to move a child into a less-restrictive setting within its custody continuum. The law further provides that, in cases where OJJ is seeking the release of a child from its custody, it must return to court for a contradictory hearing.

Louisiana’s higher courts have already ruled that OJJ maintains the authority to step a child down from a more secure to a less secure setting. As the 4th Circuit Court of Appeal stated in *State in the Interest of E.P.*:

Louisiana public policy provides “that commitment of a juvenile to the care of the department is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile.” La. Ch.C. art. 906(A) (2). La. Ch.C. art. 901(D) provides that OJJ “shall have sole custody of the child and . . . shall determine the child’s placement, care, and treatment, and the expenditures to be made therefore, through appropriate examinations, tests, or evaluations conducted under the supervision of the department.”¹⁴

Act 321 simply adjusts the statute to comply with case law. This law will

allow OJJ, where appropriate, to move youth into less-restrictive settings and better respond to the individualized needs of the young people in its custody. As stated above, research demonstrates that keeping children in secure care for too long actually increases the likelihood that they will commit another offense. Youth will be better served by OJJ freely exercising its authority to determine the appropriate care and treatment of youth in its custody and allow OJJ to better fulfill the rehabilitative mandate of the state's juvenile justice system.

Act 654: Delay of "Raise the Age"

Due to ongoing questions about the state's fiscal health and related concerns over OJJ's capacity and funding, the 2018 regular session also resulted in a minor setback for Louisiana's recent law change regarding the state's upper-age limit of juvenile court.

In 2016, the Legislature passed Act 501 to raise the age of criminal responsibility so that Louisiana's 17-years-olds would no longer be automatically prosecuted as adults. At the time, Louisiana was one of only nine states left in the country who had not passed legislation to change the upper-age limit of juvenile court. The original legislation changed the definition of a child, starting after June 30, 2018, to include 17-year-olds who commit 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. After June 30, 2020, the definition of a child would include anyone under age 18 who commits any delinquent act, including crimes of violence on or after July 1, 2020.¹⁵

During the 2018 session, the Legislature passed Act 654, which delays the effective date of the "Raise the Age" Act. Under the new law's revisions, the first phase of implementation will now take effect on March 1, 2019. The second phase of implementation, which will fully raise the age of criminal jurisdiction to 18, will take effect as originally scheduled in July 2020.

Fortunately, there can be no further

delays to the first phase of the law's implementation. The timeline for full implementation in 2020 should remain on track. Many of the aforementioned law changes — including Acts 467, 355 and 321 — will help safely reduce the number of youth in OJJ custody, freeing up beds and funding. Additionally, in the third special session, lawmakers allocated an additional \$4 million to OJJ to help cover any additional costs that might be required for implementation of the law.

Hope for More Changes Ahead

In 2003, the Louisiana Legislature explicitly acknowledged that the goals of the state's juvenile justice system should be prevention, protection, rehabilitation and restoration.¹⁶ Louisiana has made significant strides toward actualizing these four core principles, but significant work remains. Louisiana lawmakers should continue to move away from "tough on crime policies" by enacting policies and programs, among others, that divert more children away from the juvenile justice system, reduce unnecessary detention and keep children out of the adult system.

FOOTNOTES

1. The Annie E. Casey Foundation, "No Place for Kids: The Case for Reducing Juvenile Incarceration" (2011), 9-12.

2. In 2003, the Louisiana Legislature passed Act 1225, also known as the Juvenile Justice Reform Act. Act 1225 provided a framework for reorganizing and reforming the state's juvenile justice.

3. The bill that codified 897.1, HB 692, was sponsored by then-Rep. David Vitter.

4. All of these youth were eligible for prosecution in the adult system, pursuant to La. Ch.C. art. 305. 15- and 16-year-olds with these charges could be prosecuted as adults solely by the District Attorney. Thus, youth subject to the "Vitter law" were determined to be amenable to rehabilitation.

5. The Louisiana Children's Code "shall be liberally construed to the end that each child and parent coming within the jurisdiction of the court shall be accorded due process and that each child shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare." La. Ch.C. art. 102.

6. K.P. Winokur, A. Smith, S.R. Bontranger and

J.L. Blankenship, 2008, "Juvenile Recidivism and Length of Stay," *Journal of Criminal Justice*, Vol. 36, pp. 126-137; J. Myner, J. Santman, G. Cappelletty and B. Perlmutter, 1998, "Variables Related to Recidivism Among Juvenile Offenders," *International Journal of Offender Therapy and Comparative Criminology*, Vol. 42, No. 1, 65-90; A. Katsiyannis and T. Archwamety, 1997, "Factors Related to Recidivism Among Delinquent Youths in a State Correctional Facility," *Journal of Child and Family Studies*, Vol. 6, No. 1, pp. 43-55.

7. M. Lipsey and D. Wilson, 1998, *Effective intervention for serious juvenile offenders: A synthesis of research, Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*, edited by R. Loeber and D.P. Farrington. Thousand Oaks, CA, Sage Publications; J.C. Howell, 1998, *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework*, Thousand Oaks, CA, Sage Publications, p. 136.

8. See, Laurence Steinberg, Elizabeth Cauffman and Kathryn C. Monahan, "Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders," in OJJDP Juvenile Justice Bulletin (March 2015), www.ojjdp.gov/pubs/248391.pdf; and Terrie E. Moffitt, "Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review*, Vol. 100, No. 4 (1993).

9. Based on data provided to the Louisiana Center for Children's Rights by the Louisiana Office of Juvenile Justice.

10. *Id.*

11. Pew Charitable Trusts, "Issue Brief: Re-Examining Juvenile Incarceration," April 20, 2015.

12. American Psychological Association, "The Use of Restraint in Correctional Mental Health Care" (2006).

13. In the case of adults, the Supreme Court has ruled that the use of restraints is inherently prejudicial and unconstitutional unless justified by an essential state interest specific to the particular defendant. See, *Deck v. Missouri*, 125 S.Ct. 2007 (2005).

14. State in the Interest of E.P., 17-0495 (La. App. 4 Cir. 6/13/17, unpublished).

15. Act 501, www.legis.la.gov/legis/ViewDocument.aspx?d=1012088.

16. La. H.R. Con. Res. 56 (2003).

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