

2017 Regular Session

HOUSE BILL NO. 74

BY REPRESENTATIVE MARCELLE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDRENS CODE: Provides relative to disposition of children after adjudication of certain felony-grade delinquent acts

1 AN ACT

2 To amend and reenact R.S. 15:901(D)(1) and 906 and Children's Code Articles
3 116(introductory paragraph) and (24.2), 801, 897.1(A) and (B), 898(D), 901(E), and
4 909, to enact Children's Code Article 897.1(D), and to repeal R.S. 15:902.3(G) and
5 Children's Code Article 901(F), relative to disposition in delinquency cases; to
6 provide relative to disposition after adjudication of certain felony-grade delinquent
7 acts; to authorize modification of disposition and parole for juveniles adjudicated for
8 certain felony-grade delinquent acts; to provide relative to the duration of a
9 disposition based on a felony-grade adjudication; to apply existing guidelines to
10 dispositions for certain felony-grade adjudications; to provide relative to the
11 commitment, custody, and placement of children adjudicated delinquent for certain
12 felony-grade delinquent acts; to provide relative to applicability; to make technical
13 corrections based on this change in the law; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Children's Code Article 116(introductory paragraph) and (24.2), 801,
16 897.1(A) and (B), 898(D), 901(E), and 909 are hereby amended and reenacted and Children's
17 Code Article 897.1(D) is hereby enacted to read as follows:

18 Art. 116. Definitions

19 Except where the context clearly indicates otherwise, these definitions apply
20 for the following terms used throughout this Code:;

21 * * *

1 (24.2) "Secure placement" means a placement characterized by a range of
 2 moderate to high security level facilities that include construction, fixtures, and staff
 3 supervision designed to restrict the movements and activities of the residents, and to
 4 control, on a twenty-four-hour basis, the ability of the residents to enter and leave the
 5 premises, and which are intended for the treatment and rehabilitation of children who
 6 have been adjudicated delinquent. Secure placements shall include but are not
 7 limited to secure correctional centers for children and may include community-based
 8 secure detention facilities. However, no placement of a child to a community-based
 9 secure detention facility shall occur when a child has been adjudicated for the
 10 commission of a crime listed in Article ~~901(E)~~ 897.1(A) and (B) unless notice of
 11 such placement is provided to the committing judge and the district attorney.

12 * * *

13 Art. 801. Purpose

14 The purpose of this Title is to accord due process to each child who is
 15 accused of having committed a delinquent act and, ~~except as provided for in Article~~
 16 ~~897.1~~, to ~~insure~~ ensure that he shall receive, preferably in his own home, the care,
 17 guidance, and control that will be conducive to his welfare and the best interests of
 18 the state and that in those instances when he is removed from the control of his
 19 parents, the court shall secure for him care as nearly as possible equivalent to that
 20 which the parents should have given him.

21 * * *

22 Art. 897.1. Disposition after adjudication of certain felony-grade delinquent acts

23 A. After adjudication of a felony-grade delinquent act based upon a violation
 24 of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder; R.S. 14:42,
 25 aggravated or first degree rape; or R.S. 14:44, aggravated kidnapping, the court shall
 26 commit the child who is fourteen years or older at the time of the commission of the
 27 offense to the custody of the Department of Public Safety and Corrections to be
 28 confined in secure placement until the child attains the age of twenty-one years

1 without benefit of ~~parole~~, probation; or suspension of imposition or execution of
2 sentence; ~~or modification of sentence.~~

3 B. After adjudication of a felony-grade delinquent act based upon a violation
4 of R.S. 14:64, armed robbery, the court shall commit the child who is fourteen years
5 of age or older at the time of the commission of the offense to the custody of the
6 Department of Public Safety and Corrections to be confined in secure placement ~~for~~
7 ~~the length of the term imposed by the court at the disposition hearing~~ without benefit
8 of ~~parole~~, probation; or suspension of imposition or execution of sentence; ~~or~~
9 ~~modification of sentence.~~

10 * * *

11 D. The provisions of this Article apply to all children in the custody of the
12 Department of Public Safety and Corrections, office of juvenile justice, on or after
13 August 1, 2017.

14 Art. 898. Duration of a disposition based on a felony-grade adjudication

15 * * *

16 D. ~~When modification and parole is not prohibited by Article 897.1, if~~ If an
17 order of commitment to custody of the Department of Public Safety and Corrections
18 is subsequently modified and the child is placed on parole, the maximum term of
19 parole shall be the remainder of the sentence originally imposed.

20 * * *

21 Art. 901. Disposition guidelines; generally

22 * * *

23 E. ~~The general disposition guidelines set forth in Paragraphs A through D of~~
24 ~~this Article do not apply when a child has been adjudicated a delinquent for the~~
25 ~~violation of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder;~~
26 ~~R.S. 14:42, aggravated or first degree rape; R.S. 14:44, aggravated kidnapping; or~~
27 ~~R.S. 14:64, armed robbery in accordance with Article 897.1.~~

28 F. State agencies shall fully cooperate with any court which has authority
29 with respect to the placement of a child in foster care for the purpose of locating a

1 parent of the child. Such cooperation shall include making available all information
2 obtained from the Federal Parent Locator Service.

3 * * *

4 Art. 909. Modification authority; in general

5 ~~Except as provided for in Article 897.1, after~~ After the entry of any order of
6 disposition, the court retains the power to modify it, including changing the child's
7 legal custody, suspending all or part of any order of commitment, discharging
8 conditions of probation, or adding any further condition authorized by Article 897(B)
9 or 899(B). It may also terminate an order of disposition at any time while it is still
10 in force.

11 Section 2. R.S. 15:901(D)(1) and 906 are hereby amended and reenacted to read as
12 follows:

13 §901. Juvenile reception and diagnostic center; establishment, commitment of
14 juveniles, substance abuse inpatient program, order, report, fact of
15 commitment

16 * * *

17 D.(1) Upon commitment to the Department of Public Safety and Corrections,
18 the department shall have sole custody of the child and, ~~except as provided for in~~
19 ~~Children's Code Article 897.1,~~ shall determine the child's placement, care, and
20 treatment, and the expenditures to be made therefor, through appropriate
21 examinations, tests, or evaluations conducted under the supervision of the
22 department. The department shall comply with ~~Chapter 2 of Title VII-A and the~~
23 provisions of Chapter 17 of Title VIII of the Children's Code for any modification
24 of the original disposition when the adjudicated juvenile has been placed in the
25 custody of the department. ~~The department shall not modify any disposition under~~
26 ~~Children's Code Article 897.1.~~

27 * * *

1 §906. Release from commitment

2 A.(1) ~~Except as provided for in Children's Code Article 897.1, the~~ The
3 Department of Public Safety and Corrections may recommend to the committing
4 court the release of any juvenile committed to its care, who, in the opinion of the
5 department, is ready to be returned to his own home, or to a substitute home. Such
6 juvenile may be discharged by the court without supervision or may be placed under
7 supervision until further orders of the court.

8 B.(2) ~~Except as provided for in Subsection B of this Section, it~~ It is hereby
9 declared to be the public policy of this state that commitment of a juvenile to the care
10 of the department is not punitive nor is it in anywise any way to be construed as a
11 penal sentence, but as a step in the total treatment process toward rehabilitation of
12 the juvenile and that, therefore, the recommendations of the department should be
13 given careful consideration by the court in determining what is to the best interest
14 of the juvenile. If, after release from the care of the department, but while the
15 juvenile is still under the supervision of the court, the court deems it advisable to
16 return the juvenile to the care of the department, a recommitment order shall be
17 furnished the department.

18 ~~B. In cases governed by Children's Code Article 897.1, it is hereby declared~~
19 ~~to be the public policy of this state that commitment of a juvenile to the custody of~~
20 ~~the Department of Public Safety and Corrections for confinement in~~
21 ~~secure placement without benefit of parole, probation, or suspension of imposition~~
22 ~~or execution of sentence, or modification of sentence, is necessary and proper~~
23 ~~because for these very serious offenses the protection of society is the primary~~
24 ~~objective.~~

25 Section 3. R.S. 15:902.3(G) is hereby repealed in its entirety.

26 Section 4. The provisions of this Act shall apply to any child subject to the
27 provisions of Children's Code Article 897.1 who is in the custody of the Department of
28 Public Safety and Corrections, office of juvenile justice, on or after August 1, 2017.

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 74 Original

2017 Regular Session

Marcelle

Abstract: Authorizes modification of disposition and parole for, and provides relative to commitment, custody, and placement of, children adjudicated for certain felony-grade delinquent acts.

Present law (Ch.C. Art. 897) provides that after adjudication of any felony-grade delinquent act, the court may do any of the following:

- (1) Reprimand and warn the child, leaving him in parental custody or in the custody of "some other suitable person", with or without continuing supervision.
- (2) Place the child on probation.
- (3) Commit the child to the custody of the Dept. of Public Safety and Corrections or to the custody of a private or public institution or agency.
- (4) Suspend the execution of the whole or part of any order of commitment and place the child on probation subject to any of the terms or conditions authorized by law.

Present law (Ch.C. Art. 898) authorizes parole and modification of any disposition or order of commitment for juveniles adjudicated of a felony-grade delinquent act.

Present law (Ch.C. Art. 901) provides certain restrictions and guidelines for the court to consider before entering a judgment of disposition.

Present law (R.S. 15:901(D)) provides that upon commitment to the department, the department has sole custody of the child and shall determine the child's placement, care, and treatment, and further requires the department to comply with any modifications to the disposition.

Present law (R.S. 15:902.3) requires the department to periodically review the child's placement to ensure that the child is placed in the least restrictive placement most appropriate to their needs and consistent with the circumstances of the case and the protection of the best interests of society and the safety of the public within the state.

Present law (R.S. 15:906(A)) authorizes the department to recommend to the committing court the release of any juvenile committed to its care, if the department determines that the child is ready to be returned to his own home, or to a substitute home.

Present law (Ch.C. Art. 897.1) provides that these provisions of present law do not apply to any child is who 14 years of age or older after adjudication of a felony-grade delinquent act based upon a violation of the present law crimes of first degree murder, second degree murder, first degree rape, aggravated kidnapping, or armed robbery.

In such cases, present law (Ch.C. Art. 897.1) requires the court to commit the child to the custody of the Dept. of Public Safety and Corrections to be confined in secure placement until the child attains the age of 21 years or, in the case of armed robbery, for the length of the term imposed by the court at the disposition hearing. Disposition in these cases is without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence.

Proposed law, with regard to children who are 14 years of age or older and who are adjudicated for a felony-grade delinquent act based upon a violation of the present law crimes of first degree murder, second degree murder, first degree rape, aggravated kidnapping, or armed robbery, does all of the following:

- (1) Amends present law to authorize parole and modification of disposition.
- (2) Requires the court to use present law guidelines in determining the appropriate disposition for the child.
- (3) Authorizes the department to determine the child's placement, care, and treatment; requires the department to periodically review the child's placement; and authorizes the department to recommend to the committing court the release of the child if the department determines that the child is ready to be returned to his own home or to a substitute home.
- (4) Provides that proposed law applies to all children in the custody of the department on or after Aug. 1, 2017.

(Amends R.S. 15:901(D)(1) and 906 and Ch.C. Arts. 116(intro. para.) and (24.2), 801, 897.1(A) and (B), 898(D), 901(E), and 909; Adds Ch.C. Art. 897.1(D); Repeals R.S. 15:902.3(G) and Ch.C. Art. 901(F))