

LOUISIANA
CHILDREN'S CODE
HANDBOOK

2024–2025 Edition
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Introduction to the 2024–2025 Edition

The 2024–2025 Louisiana Children’s Code Handbook contains the new laws and amendments from the 2024 legislative session, as well as those from the 2024 second extraordinary legislative session. In those 2024 sessions, the Legislature took several significant steps to address real or perceived social problems through statutory enactment. This year’s Louisiana Children’s Code Handbook provides all these statutory revisions, along with updated commentary and notations about the latest developments in juvenile jurisprudence from the United States Supreme Court, as well as the Louisiana Supreme Court and the Louisiana Courts of Appeals. The Handbook includes the Louisiana Children’s Code along with additional standards and state statutes important for practicing attorneys, advocates, judges, and all stakeholders in the field of juvenile justice, family welfare and children’s rights.

Preface

This book is the twenty-sixth edition of the Children's Code Handbook volume of West's Louisiana Deskbook series. It follows the format of the other books in the series, particularly the Handbook on Louisiana Evidence Law. This Handbook on the Louisiana Children's Code is designed to provide the user with easy and convenient access to the Children's Code and other legislation and rules affecting juvenile law and procedure, by combining all relevant materials in a single volume that can be updated annually. The main portion of this Handbook contains the text of every Article in the Louisiana Children's Code followed by the Official Comments. After the Article and Comment is, where appropriate, an Authors' Note which contains the Authors' observations concerning the particular Article. The Authors have particularly noted the constitutional jurisprudence that overlays the Children's Code. In addition, Louisiana cases that are important to a better understanding of the application of the Articles have been noted. Other useful information, such as related legislation, cross-references to other Articles, and the purpose, intent, and history of particular provisions is provided in the Authors' Notes. Appendix A includes related Louisiana statutes that affect juvenile law and procedure. Appendix B contains the standards for juvenile detention facilities. Appendix C contains the Louisiana Supreme Court Special Rules for child abuse and neglect cases. The Louisiana Public Defender Board's Trial Court Performance Standards for attorneys practicing in juvenile courts are found in Appendices D and E. Appendix F contains the "new" Interstate Compact on the Placement of Children. Though not yet in effect, the reader may find these provisions interesting by comparison to the "old" ICPC, which remains in Chapter 2 of Title 16 of the Children's Code. Finally, the reader is directed to "The Drafting of the Children's Code" by Lucy S. McGough, following this preface, for a brief history of the Children's Code and a list of those persons who were involved with the Children's Code Project.

JACK HARRISON
August 2024
Baton Rouge, Louisiana

**2024 Second Extraordinary Legislative Session Acts
Affecting the Children’s Code**

Art. 412(N)	Enacted by	Acts 2024, No. 15
Art. 804(1)	Amended by	Acts 2024, No. 13
Art. 897.1(B)	Amended by	Acts 2024, No. 14
Art. 897.1(C)	Amended by	Acts 2024, No. 14
Art. 897.1(D)	Amended by	Acts 2024, No. 14
Art. 897.1(E)	Amended by	Acts 2024, No. 14

**2024 Regular Legislative Session Acts
Affecting the Children’s Code**

Art. 102	Amended by	Acts 2024, No. 93
Art. 323	Amended by	Acts 2024, No. 548
Art. 326(A)(7)	Amended by	Acts 2024, No. 548
Art. 326(C)	Enacted by	Acts 2024, No. 93
Art. 328.1	Enacted by	Acts 2024, No. 654
Art. 328.2	Enacted by	Acts 2024, No. 654
Art. 412(I)	Amended by	Acts 2024, No. 92
Art. 412(O)	Amended by	Acts 2024, No. 507
Art. 421.....	Amended by	Acts 2024, No. 92
Art. 603(17)(d)	Amended by	Acts 2024, No. 216
Art. 603(17)(e)	Amended by	Acts 2024, No. 216
Art. 610(A)	Amended by	Acts 2024, No. 216
Art. 616.1.1(B)	Amended by	Acts 2024, No. 507
Art. 616.1.1(C)(intro para)	Amended by	Acts 2024, No. 507
Art. 616.1.1(D)	Enacted by	Acts 2024, No. 507

Art. 617(A)(4)	Amended by	Acts 2024, No. 92
Art. 617(A)(intro para) .	Amended by	Acts 2024, No. 92
Art. 618(A)(2)	Amended by	Acts 2024, No. 92
Art. 618(A)(3)	Amended by	Acts 2024, No. 92
Art. 618(A)(intro para) .	Enacted by	Acts 2024, No. 92
Art. 625.1.....	Amended by	Acts 2024, No. 92
Art. 648	Amended by	Acts 2024, No. 92
Art. 672(A)(2)	Amended by	Acts 2024, No. 92
Art. 683(E)	Amended by	Acts 2024, No. 92
Art. 683(F)	Amended by	Acts 2024, No. 92
Art. 718(A)	Amended by	Acts 2024, No. 92
Art. 720(A)	Amended by	Acts 2024, No. 92
Art. 720(B)(1)	Amended by	Acts 2024, No. 92
Art. 720(B)(6)	Enacted by	Acts 2024, No. 92
Art. 720(C)	Amended by	Acts 2024, No. 92
Art. 720(D)	Amended by	Acts 2024, No. 92
Art. 725.4	Amended by	Acts 2024, No. 576
Art. 776(A)	Amended by	Acts 2024, No. 92
Art. 781(D)	Amended by	Acts 2024, No. 92
Art. 781(E)	Amended by	Acts 2024, No. 92
Art. 895	Amended by	Acts 2024, No. 92
Art. 905.1(G)	Amended by	Acts 2024, No. 124
Art. 905.1(H)	Enacted by	Acts 2024, No. 124
Art. 908(C)	Amended by	Acts 2024, No. 258
Art. 908(C)(3)	Amended by	Acts 2024, No. 124
Art. 908(D)	Amended by	Acts 2024, No. 258

2024 REGULAR LEGISLATIVE SESSION ACTS

Art. 908(E).....	Amended by	Acts 2024, No. 258
Art. 1004(B).....	Amended by	Acts 2024, No. 92
Art. 1004(D)	Amended by	Acts 2024, No. 92
Art. 1004(F)	Amended by	Acts 2024, No. 92
Art. 1007(B)	Amended by	Acts 2024, No. 92
Art. 1015.2(B)	Amended by	Acts 2024, No. 92
Art. 1016(A)	Amended by	Acts 2024, No. 92
Art. 1016(B)	Amended by	Acts 2024, No. 92
Art. 1019(C)	Amended by	Acts 2024, No. 92
Art. 1035(B)	Amended by	Acts 2024, No. 92
Art. 1036.2(E)	Amended by	Acts 2024, No. 92
Art. 1036(C)(intro para)	Amended by	Acts 2024, No. 92
Art. 1036(D)(intro para)	Amended by	Acts 2024, No. 92
Art. 1036(E)	Amended by	Acts 2024, No. 92
Art. 1037.1(A)	Amended by	Acts 2024, No. 92
Art. 1107.8(A)	Amended by	Acts 2024, No. 92
Art. 1124(C)	Amended by	Acts 2024, No. 92
Art. 1125(B)	Amended by	Acts 2024, No. 92
Art. 1132(D)	Amended by	Acts 2024, No. 92
Art. 1150(2)(e)	Repealed by	Acts 2024, No. 398
Art. 1151(A)(1)	Amended by	Acts 2024, No. 398
Art. 1151(B)	Amended by	Acts 2024, No. 398
Art. 1151(C)	Amended by	Acts 2024, No. 398
Art. 1152(A)(1)	Amended by	Acts 2024, No. 398
Art. 1152(A)(2)	Amended by	Acts 2024, No. 398
Art. 1152(A)(3)	Amended by	Acts 2024, No. 398
Art. 1152(C)(3)	Amended by	Acts 2024, No. 398

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Art. 1152(G)	Amended by	Acts 2024, No. 398
Art. 1154(A)	Amended by	Acts 2024, No. 398
Art. 1157(A)(1)	Amended by	Acts 2024, No. 398
Art. 1170(A)(intro para)	Amended by	Acts 2024, No. 92
Art. 1200(B)(7)(a)(iii) ...	Amended by	Acts 2024, No. 92
Art. 1223(B)(7)(a)(iii) ...	Amended by	Acts 2024, No. 92
Art. 1264	Amended by	Acts 2024, No. 92
Art. 1267(2)	Amended by	Acts 2024, No. 92
Art. 1409(T)	Amended by	Acts 2024, No. 92
Art. 1428	Amended by	Acts 2024, No. 92
Art. 1436	Amended by	Acts 2024, No. 92
Art. 1569(A)(4)	Amended by	Acts 2024, No. 92
Art. 1569(A)(7)	Amended by	Acts 2024, No. 92
Art. 1569(A)(intro para)	Amended by	Acts 2024, No. 92

THE DRAFTING OF THE CHILDREN'S CODE **by Lucy S. McGough**

In July, 1986, William D. Hawkland, then Chancellor of the L.S.U. Law Center, pledged the law school's sponsorship of the Children's Code Project. The overriding purpose of the project was to construct a comprehensive Children's Code out of the bits and pieces of laws affecting children which are scattered through eighty-nine separate titles and codes, from "a" (adoption) found in R.S. 9:4 through "y" (Youth Services, Division of) found in R.S. 46:1901.

The Honorable Nancy Amato Konrad of the Jefferson Parish Juvenile Court, who had just ended her service as Chair of the Juvenile Court Judges Benchbook Project, agreed to serve as the Chair of the Children's Code Project. Kären Hallstrom, court attorney for the Jefferson Parish Juvenile Court, was appointed Director of Research, a position she ably filled over the course of the entire project. Representatives were solicited from a sampling of courts and from every organization which was actively involved in legal proceedings affecting children or concerned about juvenile justice issues. Thus, what has made this law revision group especially effective is the fact that it was composed not only of judges and lawyers but also of state agency policymakers, social workers, sheriffs, teachers, administrators of private charitable organizations and institutions, and court clerks. This law revision has been accomplished by a group which included the voices of those who view the legal system from an external and more instrumental perspective.

While initially the Project Committee was composed of twenty-two citizens, ultimately fifty-nine individuals served as members. Some members who began serving in a representative capacity retired when their successors were named; others stayed on. New members were added as the Committee discovered a need for their particular expertise and perspective. Over the course of this five year effort, those who have served as staff members of the Children's Code Project Committee are:

LOUISIANA CHILDREN'S CODE PROJECT

Chair

Honorable Nancy Amato Konrad
Judge, Jefferson Parish Juvenile Court

Project Coordinator

Lucy S. McGough, Professor
Louisiana State University Law
School

Research Director

Kären Hallstrom, Court Attorney
Jefferson Parish Juvenile Court

Student Research Assistants

Michael Hale, Marsha Kemp, Susan Edelen,
and Rosemary Rummeler, LS.V. Law '88;
Charles S. Davoli, LS.U. Law '90; and
Katherine Hurst, LS.U. Law '91.

JOHN H. ALLEN, Louisiana Methodist Children's Home, Association of
Child Care Agencies, Ruston.

JESSE H. BANKSTON, Louisiana Board of Elementary & Secondary
Education, Baton Rouge.

LINDA BARRETT, District Attorneys Association, Pointe-a-Ia-Hache.

HONORABLE BRUCE M. BOLIN, Louisiana House of Representatives,
Minden.

HONORABLE C.R. BRACKIN, Judge, 6th Judicial District Court, Lake
Providence.

HONORABLE HAROLD J. BROUILLETTE, Judge, 12th Judicial
District Court, representing Louisiana District Judges Association,
Marksville.

HONORABLE HUGH BRUNSON, Judge, 15th Judicial District Court,
Crowley.

CELIA R. CANGELOSI, Louisiana Bar Association, Baton Rouge.

RAYMOND L. CANNON, Indigent Defender, 6th Judicial District,
Tallulah.

LINDA CLARK, Juvenile Detention Alternatives, Coordinator to the Ju-
venile Justice and Delinquency Prevention Advisory Board, Pineville.

JEAN CLAYBURN, Staff Counsel, Senate Judiciary Committee "A,"
Baton Rouge.

J. REGINALD COCO, JR., General Counsel, Louisiana Sheriff's Association, Baton Rouge.

EMILY DISTEFANO, Louisiana Council on Child Abuse, Baton Rouge.

HONORABLE GEORGE M. FOOTE, Judge (ret.), City Court of Alexandria, Alexandria.

HONORABLE ANDREW B. GALLAGHER, Judge, Caddo Parish Juvenile Court, Shreveport.

HONORABLE CLARENCE B. GIARRUSSO, Judge, Orleans Parish Juvenile Court, New Orleans.

HONORABLE ANITA H. GANUCHEAU, Judge, Orleans Parish Juvenile Court, New Orleans.

HONORABLE ANTHONY J. GRAPHIA, Judge, East Baton Rouge.

HONORABLE ERNESTINE S. GRAY, Judge, Orleans Parish Juvenile Court, New Orleans.

CONNIE GYER, Assistant District Attorney, Orleans Parish, New Orleans.

SIDNEY HALL, Office of General Counsel, Department of Social Services, Baton Rouge.

GAYLYN HARTLEY, Louisiana City Court Clerks Association, Bossier City.

DEBBIE HUDNAL, Louisiana Clerks of Court Association, Clinton.

DAVID R. KATNER, Professor of Clinical Law and Felix J. Dreyfous Teaching Fellow in Juvenile Law, Tulane Law School, New Orleans.

BRIENDA KELLEY, Deputy Assistant Secretary, Office of Community Services, Louisiana Department of Social Services, Baton Rouge.

Dr. ELIOT S. KNOWLES, Director, Rutherford House, Shreveport.

HONORABLE JOHN KOPFLER, Judge, City Court of Hammond, Hammond.

DELORES KOZLOSKI, Juvenile Justice Program Manager, Louisiana Commission on Law Enforcement, Baton Rouge.

ALYCE LAPPIN, Juvenile Justice Program Manager, Louisiana Commission on Law Enforcement, Baton Rouge.

F. CLAYTON LATIMER, Office of General Counsel, Department of

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Social Services, New Orleans. Parish Family Court, Baton Rouge.

DONNA LEE, Louisiana Trial Lawyers Association, Baton Rouge.

HONORABLE LAWRENCE L. LAGARDE, JR., Judge, Orleans Parish Juvenile Court, New Orleans.

HONORABLE CHARLES R. LINDSAY, Judge, Court of Appeal for the Second Circuit, Shreveport.

DAVID MARCELLO, Executive Director, The Public Law Center, Loyola Law School, New Orleans.

JOANN MARIER, District Attorney's Office, Orleans Parish, New Orleans.

WILLIE D. MAYNOR, Attorney-at-law, Baton Rouge.

HONORABLE RALPH R. MILLER, Louisiana House of Representatives, Norco.

HONORABLE SALVADORE T. MULE, Judge, Orleans Parish Juvenile Court, New Orleans.

RUBY NOBLE, Executive Director, Louisiana Council of Juvenile & Family Court Judges, Baton Rouge.

FRANK PEREZ, Deputy General Counsel, Department of Health & Hospitals, Baton Rouge.

MARY F. QUAID, Attorney, Civil Law & Procedure Committee, Louisiana House of Representatives, Baton Rouge.

HONORABLE ALWINE M. RAGLAND, Retired Judge, 6th Judicial District Court, Lake Providence.

HONORABLE KATHLEEN RICHEY, Louisiana Association of Criminal Defense Lawyers, Baton Rouge.

JANET MARY RILEY, Professor Emeritus, Loyola University School of Law, New Orleans.

HONORABLE ROBERT S. ROBERTSON, Louisiana Council of Juvenile & Family Court Judges, Morgan City.

RONALD ROSSITTO, Juvenile Justice and Delinquency Prevention Advisory Board and the District Attorneys Association, Lake Charles.

HONORABLE KALISTE J. SALOOM, Judge, City Court of Lafayette, Lafayette.

STEVEN SHECKMAN, Attorney-at-law, New Orleans.

MELANIE SHAW, Staff attorney, Volunteers of America of Greater New Orleans, New Orleans.

F. RAE SWENT, Louisiana Bar Association, Alexandria.

ROBERT TILLIE, Director, Renaissance Home, Alexandria.

BONNIE C. WILSON, Wilson & Sexton, Baton Rouge.

HONORABLE FELICIA TONEY WILLIAMS, Judge, 6th Judicial District Court, Tallulah.

ANNE TURISSINI, Indigent Defender Board, Orleans Parish, New Orleans.

HONORABLE RICHARD N. WARE, Judge, 39th Judicial District Court, Coushatta.

MARY BECK WIDMAN, Office of General Counsel, Department of Social Services, New Orleans.

HONORABLE FRITZ WINDHORST, State Senate, Gretna.

DON WYDRA, Assistant Secretary, Office of Youth Development, Department of Public Safety & Corrections, Baton Rouge.

Four goals have guided the Committee's research and drafting throughout its work. The first and overriding goal was to gather together all of the laws affecting the exercise of juvenile court jurisdiction. The jurisdiction of the Louisiana juvenile courts is very expansive, more sweeping than the laws of almost every other state. With the creation of the first special court for children, Acts 1908, No. 83, Louisiana juvenile courts acquired jurisdiction over delinquent children, abused and neglected children and the "prelinquents" known over the years variously as "wayward" children or "children in need of supervision". To this basic jurisdiction were gradually added adoption, RS. 9:403-407, 421-441, abandonment proceedings, RS. 9:403-407, and termination of parental rights actions. RS. 13:1600 et seq. Still later, mental health commitments of minors were added to the dockets of the juvenile courts, RS. 28:2, and juvenile court judges were empowered to consent to juvenile's marriages, R.S. 9:211-212, and abortions, RS. 40:1299.35.5, to decide when extraordinary life-sustaining procedures could be withdrawn from terminally ill children, *In re P.V.W.*, 424 So.2d 1015 (La. 1982), and to enter protective orders in cases involving intra-family violence, RS. 46:2131-2142.

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With the dawn of interstate cooperation in the late 1950's, the juvenile courts were further tasked with implementing interstate child support orders under the Uniform Reciprocal Enforcement of Support Act, RS. 13:1641 et seq., with facilitating interstate adoptions under the Interstate Compact on the Placement of Children, RS, 46:1700 et seq., and the Interstate Compact on Adoption and Medical Assistance, RS. 46:1795 et seq., as well as with reviewing cases involving runaways and providing cooperative supervision to adjudicated delinquents under the Interstate Compact on Juveniles, RS. 46:1451 et seq.

Finally Congress, in a series of revolutionary statutes, began structuring a national agenda for children. In 1974, it enacted the Juvenile Justice and Delinquency Prevention Act which called for the removal of nondelinquents from secure institutions and facilities, 42 U.S.C. §§ 602 et seq., P.L. 96-272 (1980). Under this law, no child may legally be removed from his family unless reasonable efforts have demonstrably occurred to avoid removal and if removal is necessary for the child's protection, to reunite the family. In 1984, the Child Support Enforcement Amendments preconditioned the receipt of federal child welfare monies on new state enactments which would expedite and enforce the collection of child support and standardize child support awards, 42 U.S.C. § 602 et seq., P.L. 98-378 (1984).

As a result of all of these additions and patchwork amendments, by 1984, the jurisdictional foundations and procedural machinery procedures of the juvenile courts were due for an overhaul. The first step was to write the instruction manual, a single Code which would encompass all of the relevant laws and make them more accessible to counsel, courts, and all professionals charged with their implementation.

The second goal of the Children's Code Project was to resolve ambiguity and to reconcile often conflicting laws in order to insure that all parts of the juvenile justice machinery worked efficiently together. As but one example of a recurring problem, there were three different definitions of the key concept of "abuse": one found in the child in need of care chapter of the Code of Juvenile Procedure, another found in the child abuse reporting law, and yet another found in the termination of parental rights statute. See C.J.P. Art. 13(14)(a), RS, 14:403(B)(1) and R.S. 13:1600(1). A more troubling conflict lay in the differences in the standing requirements and procedure governing abandonment proceedings and termination of parental rights cases, though both processes serve the identical public policy of freeing certain mistreated children for adoption. Compare RS. 9:403 with R.S. 13:1601-1603.

The third goal of the Children's Code Project was to insure that the statutory law accurately reflected settled jurisprudence, especially constitutional commands. Again, a few examples will illustrate this task. Although the Louisiana Supreme Court has found a constitutional right to bail for juveniles accused of delinquency, *State in Interest of Banks*, 402 So.2d 690 (La. 1981), the Code of Juvenile Procedure made no mention of bail. Although such a right might have been inferable from C.J.P. Article 40, how a child is admitted to bail, what security can be demanded, and what procedures are triggered if the child does not appear at trial, were all questions left unanswered. The Committee ultimately hand-tailored an admission to bail process for juveniles based upon the Code of Criminal Procedure and the juvenile bail statutes of other states.

Similarly, although in its eight-case series examining the constitutional rights of accused juveniles the United States Supreme Court has clearly recognized the guarantee against double jeopardy, *Breed v. Jones*, 421 U.S. 519 (1975), the Code of Juvenile Procedure did not take this right into account in its design. The Committee found that three changes were required in order to give full acknowledgment of this constitutional guarantee.

Other examples of revisions in the juvenile court's processes are the changes necessitated by both federal and state Supreme Court decisions recognizing the rights of putative fathers. Beginning in 1972 with *Stanley v. Illinois*, 405 U.S. 645 (1972) through *Michael H. v. Gerald D.*, 491 U.S. 110, 109 S.Ct. 2333 (1989), the Supreme Court has rendered over twenty cases which develop the constitutional rights of putative fathers and illegitimate children. Even since the enactment of the Code of Juvenile Procedure and the major revision of the adoption laws which occurred in 1979, Acts 1979, No. 686, several significant constitutional decisions have been rendered. Indeed, two decisions of the Louisiana Supreme Court invalidated adoption statutes and practices which failed to honor the constitutional rights of putative fathers who have demonstrated a concern for and commitment to their offspring. *In re J.M.P.*, 528 So.2d 1002 (1988); *In re B.G.S.*, 556 So.2d 545 (1990).

The fourth goal of the Children's Code Project was to write a true code, an internally consistent, harmonious set of substantive principles and procedures that would enable any reader to discover the requirements for any proceeding within the juvenile court's jurisdiction. Wherever possible, the Committee sought to bring into this Code the relevant law rather than simply drop-

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ping a cross-reference. Many professionals who are untrained in legal methodology must be able to access a Children's Code, and consequently the Committee tried to make the language of this Code as clear, comprehensible and self-contained as possible. When customary usage has established a label for a proceeding, for example, an "instanter" order authorizing the removal of endangered children in child in need of care proceedings, the Committee used that term within the Code. See Article 619. "Permanency planning" hearings, as they are known to protective services and foster care social workers who must work within federal statutes and regulations, are so labeled in the Children's Code. That term needs to become part of the common vocabulary of both the social work and legal professions. See Article 712.

Reform of existing laws has *not* been a goal of the Children's Code Project. Only two titles of this Code represent significant revisions of former law: Title XI governing voluntary surrenders of children for adoption, and Title VII, Families in Need of Services. Revision of the surrender process in adoptions were required by *In re J.M.P.* and *In re B.G.S.* Once those substantial changes were underway, lawyers specializing in adoption work and representatives of both private and public adoption agencies sought revisions which might better protect the interests of all affected parties, biological parents, adopting parents and most of all, the child, by instituting a more elaborate set of requirements for the act of surrender. Furthermore, the Committee found that more legislators were more enthusiastic about adoption reform than had been anticipated. Prompted in part by the notorious *Steinberg* case in New York, in which a six-year-old was brutalized and killed by her adoptive father, N.Y. Times, Nov. 3, 1987, more amendments were proposed requiring pre-placement clearance of an adoptive home in private adoptions while the Children's Code was pending before the Senate. See Articles 1171-1180.

Title VII, Families in Need of Services, represents a substantial consolidation of former proceedings known under the Code of Juvenile Procedure as Children in Need of Supervision and Parents in Need of Supervision. Only after unanimously agreeing that those laws were unworkable and after examining every possible alternative did the Committee decide that restructuring the court's authority was essential. Former procedures produced tunnel vision by focusing upon the child rather than the family as a unit, by imposing punishment rather than facilitating the receipt of needed services, and by intervening too late with too few resources. This new title, which delays full, statewide implementation until July, 1993, will permit the juvenile court to return to

its original role of coordinating community resources to assist and reinforce the family in an effort to prevent delinquency and family disintegration.

As the committee drafted and redrafted each title, it had the benefit of the research and recommendations of a small but capable and dedicated staff. "White papers" were produced researching the relevant law for every title, with numerous memoranda exploring particularly thorny issues or complex proceedings. These memoranda relied upon not only the relevant Louisiana statutes and jurisprudence but also the statutes of sister states, the provisions of various model acts, and the suggestions from academic commentary. The research was underwritten by grants from the National Council of Family and Juvenile Court Judges, the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice, and continuing support from the Louisiana Department of Social Services and the LS.U. Law Center. Without these resources to support research, administration, and secretarial assistance, this Committee of volunteer professionals would not have been able to achieve its goals.

Finally, as with any project of this magnitude and complexity, the Committee had the benefit of the work of those who had achieved the two earlier major revisions of the Louisiana juvenile justice system. The first occurred in 1950 when as a result of the comprehensive revision of the general laws, Chapter 6, Title 13 of the Revised Statutes created a single juvenile court system for the entire state. See Bennett, *Louisiana Revised Statutes of 1950*, 11 *Louisiana Law Review* 4 (1950). The second revision occurred when the Code of Juvenile Procedure was enacted in 1978. See Graphia, *Louisiana Code of Juvenile Procedure*, 5 *Southern University Law Review* 151 (1979).

The Children's Code Committee met twenty-one times over the past five years to debate and resolve policy and drafting issues. This code is the work product of thousands of hours of volunteer time given by the citizens of this state who officially served as members and others who provided valuable consultation on particular issues. The Committee deliberately resisted reform as a goal because it concluded that its most important contribution was to collect and harmonize existing laws so that the underlying policies could be discerned. Until we can see the shape of current policies, we cannot begin to dream new shapes which might better advance those policies.

A DECADE OF JUVENILE JUSTICE REFORM **by Lucy S. McGough**

In 1995, the Louisiana secure institutions made headlines around the country. Human Rights Watch released a report that Tallulah, the most notorious juvenile facility, located in Tallulah, Madison Parish in the northeast corner of the state, violated international human rights standards. Solitary confinement known as “isolation rooms” was routinely used, to the extent that more than forty percent of Tallulah’s youth had been locked up in those cells at some point during their incarceration. Some were locked up for twenty-three hours at a time. There were rumors about physical brutality and sexual abuse in the three other state-run juvenile institutions: Jetson Center for Youth (Baton Rouge), Swanson Center for Youth (Monroe) and Bridge City Center for Youth (New Orleans). The United States Department of Justice sent investigators and ultimately filed suit on July 9, 1998 charging that confinement conditions at all four of Louisiana’s youth “prisons” violated the federal Constitution. *United States v. Louisiana*, No. 98-947-B1 (M.D. La. 1998). That summer the New York Times published a series of exposes on the Orleans Parish juvenile court and the juvenile institutions to which the city’s youth were sent. Fox Butterfield, *Hard Time: A Special Report: Profits at Juvenile Prison Come with a Chilling Costs*, N.Y. Times, July 15, 1998, at A 14. Finally, the private nonprofit organization, Juvenile Justice Project of Louisiana, filed its own class action, *Brian B. v. Stander*, CA No. 98-886-B-M1 (M.D. La. 1998). The Juvenile Justice Project is partially funded by the Marguerite Casey Foundation as is the Project’s auxiliary nonprofit organization, Families and Friends of Louisiana’s Incarcerated Children, which provides outreach to families and investigates complaints about confinement and court processes.

The most shocking facts that emerged from these lawsuits were that the adolescents in these violent, dehumanizing institutions were not vicious criminals. The inmate populations were mostly composed of non-violent offenders, drug-abusing and mentally ill children, and a disproportionately high number of African American kids. The public’s failure to fund community treatment centers for alcoholics, drug abusers and the mentally ill shunted those who came into contact with the juvenile courts into dispositions in institutions far away from their homes, in unhomelike cells. Sending teenagers to these institutions was a street-cleaning exercise. More than seventy percent of Tallulah’s

youth had been sent there for non-violent offenses, such as joy-riding or drug addiction. In 2000, 3 out of every 5 of the 1,743 juveniles who were imprisoned in a juvenile secure facility in Louisiana were incarcerated for non-violent offenses. Researchers at the LSU Health Science Center found that one-third of all adjudicated juvenile offenders who were committed to the state had a diagnosis of serious mental illness and an additional six percent are diagnosed with mental retardation. Sixty-four percent of these floundering in the “deepest end” of the juvenile justice system have a substance abuse or dependence diagnosis. Debra K. DePrato, *Characteristics of Youth in Secure Care (Admits between Jan. 1, 2004–Dec. 31, 2004)*, LSU Health Sciences Center, School of Public Health (2005). Most of the faces behind bars were Black. Eighty-one percent of juveniles in secure custody were African-American, despite the fact that only approximately eighteen percent of Louisiana teenagers were African American. Charges of racism further fueled the call for reform. *Kids Count* (Annie E. Casey Foundation) website.

In his 2001 State of the Judiciary address to the legislature, Chief Justice Pascal Calogero called for “all three branches [of government] to examine the issue of the current state of our juvenile justice system and to take bold steps to improve it.” The legislature responded by creating the Juvenile Justice Commission (H.C.R. 94) to take public testimony about problems within the system and to make recommendations for change. The Commission’s members included Lt. Gov. Mitch Landrieu and Supreme Court Justice Kitty Kimball. (In addition, members now include a state Representative, Senator, Commissioner of Administration and the Vice-President of Southern University.) Since then, the Commission has met publicly and regularly, to hear testimony on various issues affecting the juvenile justice system. While only modest collaborations among state agencies have been achieved, the Commission’s oversight of the Office of Juvenile Services has made its operations and plans more transparent.

In 2003, on a modification petition filed by the Juvenile Justice Project of Louisiana in the Orleans Parish Juvenile Court, Judge Mark Doherty granted the proposed remedy, refusing to send class members and any more delinquents to Tallulah. There had been extensive testimony about brutality by prison guards, abuse of solitary confinement, forced “cockfights” between inmates and a lack of treatment, education or any other rehabilitation. That same year, the legislature enacted the Juvenile Justice Reform Act of 2003 which closed Tallulah as a juvenile facility. The 2004 Legislature approved Act 555 which

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mandated each judicial district to create a Children and Youth Planning Board to redirect planning and responsibility to the community level. Each planning board is required to submit an annual report to the Children's Cabinet, an organization composed of the Secretaries of the Departments of Health & Hospitals, Social Services, Education, Labor, Economic Development and the Office of Juvenile Services.

In 2004, the state Office of Juvenile Services (then the Office of Youth Development) began consulting, with support from the Annie E. Casey Foundation, with Missouri's Youth Services Institute to develop Louisiana's Model for Juvenile Justice ("LaMod") and a strategic plan for the achievement of the Office's goals. The Missouri model is considered the premier juvenile justice system with relatively low costs and only 30% recidivism of inmates three years after release. Douglas W. Nelson, *2008 Kids Count Essay: A Road Map for Juvenile Justice Reform 3* (Annie E. Casey Foundation). The model features a more home-like environment in secure facilities, therapeutic group processes led by staff called Youth Care workers and dorm sizes of 10-12 youth. The model was introduced in Bridge City in July 2005. The juvenile correctional system has also been downsized from over 2,000 youth in 2002 to a 2009 population below 500.

The state was released from federal oversight of its youth correctional institutions on May 1, 2006. The settlement requiring screening and appropriate placement of juveniles committed to the state and education and job training for all juveniles in institutions that remained open.

During the investigation of Tallulah and other institutions, attacks on juvenile court processes arose due to the publication of abuses in the denial of counsel and the adjudication of juveniles who were incompetent to stand trial. In 2001, the American Bar Association's Juvenile Justice Center published an empirical study on waivers of counsel in several states, including Louisiana. At that time, Article 810 of the Louisiana Children's Code permitted a waiver of counsel if three prerequisites were met: the child had consulted with either an attorney "or other adult interested in the child's welfare"; both the child and the adult advisor had been instructed by the court about the child's rights and the possible consequences of waiver, and the court found that the waiver was voluntary, free from physical or mental coercion. Despite stringent legal requirements, the ABA Report on Louisiana concluded that the right to counsel appointment process in many juvenile courts in Louisiana was a charade. Investigators found that in accused delinquents waived the assistance of counsel in as many as one-third to two-thirds of the cases. In some districts,

waivers occurred in ninety to ninety-five percent of the cases. *The Children Left Behind: A Review of the Status of Defense for Louisiana's Children and Youth in Delinquency Proceedings* (ABA Juvenile Justice Center, 2002).

Caddo Parish Juvenile Judge Paul Young explained the gap between the theory and reality of waivers in his testimony before the Commission on Juvenile Justice (Feb. 3, 2003):

Too often, the decision to waive counsel is not the child's or the parent's. The System encourages or intimidates the family and child to waive counsel. The system participants do so because it is more convenient for the System. It is easier for the Judge, District Attorney and probation officer to have their way if the System is not burdened with the child having an attorney . . . The System promotes the child's "right" to waive counsel because it is in the prosecutor's best interest, not because it promotes the child's legal interests. The best interest of the child never requires waiver of his right to counsel.

The Juvenile Justice Project of Louisiana gathered evidence of systemic abuse and presented affidavits to the Juvenile Justice Commission from individuals who had never been instructed about their right to counsel by juvenile courts and case analyses clearly demonstrating that counsel had mattered: had defense counsel been available, different outcomes for the accused children would have occurred. The Marguerite Casey Foundation provided strategic assistance to the Juvenile Justice Project during the formulation of the Commission's recommendations. After eighteen months work, the Commission adopted a set of principles reflecting best practices and modeled on the reforms of Missouri. The first executive act of the new Governor Kathleen Blanco was to separate administrative responsibility for juvenile prisons from those controlling the adult prison system, a pivotal recommendation articulated by the Commission. The Commission hesitated, recommending further study of waivers of counsel, but the 2003 Legislature reacted by referring possible revision to the Louisiana State Law Institute and its Children's Code Advisory Committee. (H.C.R.56 (La. 2003)). The following year, the Law Institute proposed that the right to counsel should be unwaivable in juvenile courts, regardless of the grade of the offense. Ultimately, compromise was necessary for passage. Article 810 was revised to prohibit waiver of counsel in three categories of cases: all felony-grade offenses when the recommended disposition in any case is placement in a mental institution or substance abuse facility; or when the child is confronted with probation or parole revocation. In misdemeanor-grade offenses, there would be a requirement of consultation with an attorney, parent or

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caretaker. (Acts 2004, No. 776). The availability of adequately trained defense counsel was increased dramatically by the creation of a state-wide system of indigent defense in the Louisiana Public Defender Reform Act (Act 307 (2007)).

The root of concern about waiver of counsel is a juvenile's lack of cognitive maturity and judgment. This was the strong intuition, fortified by experience, that was the impetus for the founding of the juvenile court as a separate institution for youthful miscreants. In 2003, what became popularly known as "The MacArthur Report" was published which was used by reformers in Louisiana not only to limit a juvenile's waiver of counsel but also to revise competency to stand trial procedures under the Children's Code. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 *Law & Human Behavior* 333 (2003) was a national empirical study funded by the John D. and Catherine D. MacArthur Foundation. The study took samples from four scattered sites and analyzed the decision-making of adjudicated juvenile delinquents with three comparison groups: uncharged juveniles living in the community at large, adults in prison and uncharged adults living in the community at large. In matters regarding trial-related understanding and reasoning about important information, researchers found that significant numbers of adolescents were only able to perform at a level of adults found mentally incompetent to stand trial: using the due process test for adult competency under *Dusky v. United States*, 362 U.S. 402 (1960), only thirty percent of 11- to 13-year-olds, nineteen percent of 14- to 15-year-olds, and twelve percent of 16- to 17-year-olds were incompetent. The maturation of the human brain does not end until the mid-20s; higher brain functions, including empathy, analysis, judgment and the related ability to assimilate information from various parts of the brain at the work of the prefrontal cortex which is the last part of the brain to develop. Elizabeth Sowell, et al., *In Vivo Evidence for Post Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neuroscience* 10 (1999).

Prompted by these research findings, the Children's Code Advisory Committee proposed to the Law Institute that the process for determining a juvenile's competency or "capacity" to proceed to trial be wholly reconstituted. Articles 832 to 838 were revised to reflect the importance of the youth's understanding, comprehension of his risk and ability to assist defense counsel in preparation of the defense. If mental incapacity is raised, counsel must be appointed if not already assigned and the delinquency proceeding stayed until the issue is resolved. The 2004 Legislature

enacted each of the proposals, except one to expand explicitly the definition of “mental incapacity to proceed” beyond mental illness or developmental disability to include causal conditions such as a learning disability or other cognitive impairment.

In June 2004, shortly before Hurricanes Katrina and Rita paralyzed south Louisiana and many governmental initiatives, the MacArthur Foundation announced that Louisiana had been selected as one of four states to receive support from its “Models for Change” program. The other two states were Illinois and Pennsylvania; Washington was added the following year. In underwriting what was undoubtedly the most munificent private juvenile justice initiative in the history of the juvenile courts, the Foundation pledged \$7.5 million over the next five years to underwrite the continued reform of the Louisiana juvenile justice system. The following December, despite the infrastructure losses brought by the hurricane, the Foundation announced that it would stand by its funding commitment to the state. In the public announcement, Foundation officials explained that Louisiana had been selected for the Models for Change program because of “the progress it had made since the 1990s in improving its juvenile justice system and the commitment of its state and local leadership to building on that momentum.”

MacArthur’s funding strategy called for each of the core states to identify the “leverage points” offered by successful local programs that could then be replicated statewide and ultimately nation-wide. Among the reforms suggested to the states were expediting the reintegration of youth who were released from institutions within a network of community services; building community programs and housing, preferably nonsecure facilities, for delinquents instead of warehousing them in large, centralized institutions; ensuring that selection of all programs and services would be “evidence based,” that is have already proved to be successful in rehabilitating juveniles; enhancing the availability and quality of defense counsel; diverting troubled adolescents to collaborative community programs and away from formal court processing and entry into the state system; diminishing the overrepresentation of minority youths in the juvenile courts and state institutions; and providing individualized and developmentally appropriate services for juveniles.

Administered by the Louisiana Board of Regents as the Lead Entity, Dr. Debra DePrato of LSU Health Sciences Center-New Orleans was named the Project Director. She and other leaders of the Louisiana Models for Change initiative identified three areas of targeted reform: expanding alternatives to formal processing, increasing access to evidence-based community services and

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reducing disproportionate minority contact, from arrest through disposition. Initial funding was granted to five local projects. The Rapides Children and Youth Planning Board was awarded a grant to appraise assessment and screening practices and developing a more effective method of collecting minority contact information. The Calcasieu Parish Office of Juvenile Justice Services was funded to create a Planning Board; thereafter, it was funded to develop a Community Assessment and Resource Center to foster collaborative work among agencies and leverage resources, especially for mental health and substance abuse services. The final pilot project is headed by the Jefferson Parish Children and Youth Planning Board, with a goal of finding effective diversionary programs and reducing disproportionate minority detention through the use of the Detention Screening Assessment. A sixth grant was awarded to the Louisiana Supreme Court to develop a juvenile drug court model and to reconsider Families in Need of Services as a court-supervised process.

Meanwhile, in 2006, the Annie E. Casey Foundation funded its Juvenile Detention Alternatives Initiative (JDAI) in three of the same parishes chosen by MacArthur—Caddo, Calcasieu and Jefferson—as well as two underserved parishes, Orleans and East Baton Rouge.¹ This national initiative, first funded by Casey in 1982, is a reform model that seeks similar goals as the MacArthur grants: reduce the use of secure detention, improve public safety outcomes, expand alternatives to incarceration, enhance conditions of confinement and reduce racial disparities. The Louisiana Commission on Law Enforcement and the Administration of Criminal Justice has been designated by the Governor as the state liaison with the Foundation. The Casey Foundation has invested over \$150,000 to cover travel and meeting expenses for the parishes involved in the Initiative.

As of 2009, MacArthur has increased its pledge of funding to over \$10 million and now supports seven more “partners” in Louisiana in addition to the original five localities. The subsequent grantees include offices and organizations that can improve some part of the juvenile justice network and whose political support is important for lasting systemic reform: The Louisiana Council of Juvenile and Family Court Judges Association, The Louisiana District Attorneys Association, The Louisiana Public Defender Board, the Office of Juvenile Justice, the Louisiana Children’s Cabinet, The Department of Psychology of the University of New

¹ In 2019, JDAI principles were given a statewide reach when the Louisiana State Legislature incorporated a number of these reforms into amendments to Title VIII of the Children’s Code. See Articles 814, 815 and 815.1 in Title VIII of this volume.

Orleans, the Louisiana Health Sciences Center School of Public Health and the Louisiana State University Law School. Through these grants, information and findings from the major areas of targeted reform are spread to professionals throughout the state and juvenile justice system.

Information and expertise developed by any core state is thereafter spread to other state juvenile specialists by the Foundation's action network which has expanded from the original four states to include representatives from eight new states: Maryland, Wisconsin, Kansas, North Carolina, California, Florida, Massachusetts, New Jersey, Connecticut, Colorado, Ohio and Texas. The three targeted informational collaborations are reducing racial disparities in the services and programs of the juvenile justice system; improving access to qualified defense counsel in delinquency proceedings; and the improvement of the mental health needs for children enmeshed in the juvenile justice. Each state has prioritized its needs and identified strategic innovations. Louisiana's Juvenile Indigent Defense Action Network adopted the improvement of defense services and specifically plans legislation to appoint counsel immediately upon arrest, to presume the right to appointed counsel for children due to indigence, to clarify that appointed counsel continues representation after disposition. The LSU Law School has developed a curriculum for a model juvenile defense clinic that can be adapted to the particular community resources and needs of any accredited American law school.

As a result of the national economic recession, all state departments, including the Office of Juvenile Justice, experienced reductions in funding. In testimony before the Juvenile Justice Commission, the Secretary, Dr. Mary Ivers, noted that the Office would be forced to cut \$12.1 million in contract services affecting community alternatives; however, it is moving ahead with regionalization of state institutions and other features of the strategic plan. At the same 2009 session, a bill headed "A Children's Bill of Rights" (S.B. 253) was introduced that sought to establish a set of fundamental rights for children held in detention or institutions and would create an ombudsman who could investigate and respond to complaints. The bill was sponsored by the Juvenile Justice Project of Louisiana and received considerable support, though ultimately it failed. More successful was Concurrent Resolution No.77 which requested that the judicial Council of the Supreme Court review national standards of practice and make recommendations for uniform standards and licensing procedures for local juvenile detention facilities and report its proposals to the 2010 Legislature.

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