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
Representative Stephanie Hilferty
Representative Marcus Hunter
Representative Katrina Jackson
Representative Edward "Ted" James
Representative Terry Landry
Representative Walt Leger, III
Representative Rodney Lyons
Representative Tanner D. Magee
Representative C. Denise Marcelle
Representative Dustin Miller
Representative Helena Moreno
Representative Barbara Norton
Representative Patricia Smith

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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
LOUISIANA STATE LAW INSTITUTE
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H. Clay Walker                    Shreveport

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Frank Foil, Co-Chair
Robert Morrison, III, Co-Chair
Judge Guy Holdridge, Acting Reporter

Mallory C. Waller, Staff Attorney
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;
A. The Louisiana Juvenile Jurisdiction Planning and Implementation Committee, hereafter referred to as the "committee", is hereby created as a committee of the Juvenile Justice Reform Act Implementation Commission established pursuant to R.S. 46:2751 et seq.

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

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

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

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

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

(2) Not later than April 1, 2017, and quarterly thereafter, the committee shall submit a written status report to the commissioner of administration, the
president of the Senate, and the speaker of the House of Representatives on
implementation of the plan as provided in this Subsection.

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

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

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

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

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

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

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

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

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

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

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

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

(11) Two parents of children who have been involved in the juvenile
justice system, one appointed by the executive director of the Cecil J. Picard
Center for Child Development and Lifelong Learning and one appointed by the
executive director of the Children's Coalition for Northeast Louisiana.
(12) An expert in juvenile justice, appointed by the chair of the
Children's Code Committee of the Louisiana State Law Institute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 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.

* * *

Section 3. (A) The Louisiana State Law Institute is hereby directed to study, and to recommend to the Legislature in a written report, such other amendments and additions to the Louisiana Children's Code, Louisiana Code of Criminal Procedure, and the Louisiana Revised Statutes as may be appropriate to effectuate the purpose of this Act to include seventeen-year-olds in the juvenile justice system. The Louisiana State Law Institute shall make its report, and shall recommend such legislation as it may deem appropriate, to the Legislature by March 1, 2017.

(B) The Louisiana Judicial Council is hereby requested to study, and to recommend to the Louisiana Supreme Court, such amendments and additions to Louisiana's Rules of Court as may be appropriate to effectuate the purpose of this Act to include seventeen-year-olds in the juvenile justice system.

(C) The Department of Children and Family Services is hereby directed to study, and to recommend for promulgation into law through the Administrative Procedure Act, such new or amended regulations for the safe operation of the state's juvenile detention centers as may be appropriate given the inclusion of seventeen-year-olds in the juvenile justice system.

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become

effective on the day following such approval.

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: ____________________

Codas: Words which are struck-through are deletions from existing law; words in **boldface type and underscored** are additions.
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)(I), 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
(4) "Delinquent child" means a child who has committed a delinquent act.

(5) "Felony-grade delinquent act" means an offense that if committed by an adult, may be punished by death or by imprisonment at hard labor. "Felony-grade delinquent act" 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 of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. 14:46.3(E).

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

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

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

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

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

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

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

* * *

Article 837. Procedure after determination of mental capacity

* * *

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

* * * 

Revised Statutes

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

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

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

* * *

R.S. 14:40.7. Cyberbullying

* * *

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

* * *

R.S. 14:73.10. Online impersonation

* * *

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

* * *

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

A.(1) No person under the age of seventeen eighteen years shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person.
(2) No person under the age of seventeen eighteen years shall knowingly possess or
transmit an indecent visual depiction that was transmitted by another under the age of seventeen
years in violation of the provisions of Paragraph (1) of this Subsection.

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

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

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

R.S. 15:902.1. Transfer of adjudicated juvenile delinquents

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

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

The governing authorities of the parishes may establish, within their parishes, an
industrial school for male youths of under the age seventeen of eighteen years, and under,
convicted in the juvenile court of the parish for offenses within the jurisdiction of the juvenile
court. Where any school has been so established, it shall be employed only for the delinquent
juveniles convicted within the parish, and shall be known as the "Parish Industrial School for
Youths."
R.S. 15:1096.2. Purpose

A. The purpose of the commission shall be to assist and afford opportunities to preadjudicatory and postadjudicatory children who enter the juvenile justice system, or who are children in need of care or supervision, to become productive, law-abiding citizens of the community, parish, and state by the establishment of rehabilitative programs within a structured environment and to provide physical facilities and related services for children, including 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, throughout the parishes within the district and other participating parishes.

R.S. 15:1098.3. Purpose

The commission may assist and afford opportunities to preadjudicatory and postadjudicatory children who enter the juvenile justice system to become productive, law-abiding citizens of the community, parish, and state by the establishment of rehabilitative programs within a structured environment and provide physical facilities and related services for children, including 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, throughout St. James Parish and participating parishes.

R.S. 15:1099.3. Purpose

A governing authority may assist and afford opportunities to preadjudicatory and postadjudicatory children who enter the juvenile justice system to become productive, law-abiding citizens of the community, parish, and state by the establishment of rehabilitative programs within a structured environment and provide physical facilities and related services for children, including 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, throughout the parish and participating parishes.
R.S. 46:1933. Organization and powers

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.