

## CHAPTER 25: RIGHTS OF JUVENILES\*

### A. INTRODUCTION

This Chapter has helpful information for you if you are under the age of 21. If you are not sure what any word or phrase means in this Chapter, you can look at the Glossary of Legal Terms in Appendix A.

First, this Chapter will tell you what to do if you think the government did not follow the right legal procedures (rules) in your case. There are some steps you can take to make sure that the outcome of your case is fair, both before and after it happens. This includes appealing your conviction. An “appeal” means you get to tell another court what you think the police, the prosecutor, your lawyer, or the judge did wrong. If your appeal succeeds, you might get a new trial, get out of detention, or have your sentence changed.

Second, this Chapter will tell you about the rights you have while you are incarcerated. When the government detains you, it has to follow certain rules to make sure that your rights are protected. If these rules are not being followed, there are several things you can do. First, you can file what is called a request for administrative review procedure (“ARP”). An ARP will explain your problem to those in charge of your facility and try to get help. Second, you can turn to the Project Zero Tolerance (“PZT”) system for help if you are facing violence or abuse. Third, you can ask the court to modify your disposition. Finally, you can file a special complaint against some state officials called a Section 1983 claim.<sup>1</sup> If you convince a court that you are not being treated properly, the court may issue an “injunction.” An injunction is an order that will force your caretakers to treat you better.

Chapter 38 of the main *Jailhouse Lawyer’s Manual (JLM)*, “Rights of Juveniles in Prison,” explains the rules that the government must follow if it accuses you of committing a federal crime. This Chapter explains the rules that the government must follow if it accuses you of breaking a Louisiana State law.

### B. WHAT ARE THE DIFFERENCES BETWEEN THE ADULT CRIMINAL SYSTEM AND THE JUVENILE DELINQUENCY SYSTEM IN LOUISIANA?

It is important to understand the differences between the adult Criminal System and the Juvenile Delinquency System. This is because you may be tried as an adult even if you are under the age of 17. If you were tried as an adult incorrectly, you may be receiving treatment that is not appropriate for you.

First, the purpose of the Criminal System is punitive. This means it focuses on punishing people for breaking the law. People are put in prison as punishment for their actions and to protect the community. However, the purpose of the Delinquency System in Louisiana is rehabilitative. This means that it focuses on teaching juvenile offenders to follow the law and improve their lives.<sup>2</sup>

Second, the Criminal System focuses on the crime, not the offender. For example, in adult criminal cases, the main question is whether you committed the crime. Even though you can try to explain your behavior, if a jury finds that you committed the crime, you will probably be punished. But the Delinquency System focuses more on the offender. The court is interested in three things: whether you

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\* This Supplement Chapter was written by Rebecca Azhdam, based in part on Chapter 38 of the main *JLM*, “Rights of Juveniles in Prison,” written by Kristin Lieske.

<sup>1</sup> For a detailed description of a § 1983 claim, see Chapter 16 of the main *JLM*: “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law.”

<sup>2</sup> See *State ex rel. S.D.*, 2002-0672, p. 25 (La. App. 4 Cir. 11/21/02); 832 So. 2d 415, 433 (observing that “the purpose of incarcerating juveniles . . . is treatment and rehabilitation, due process requires that the conditions and programs . . . must be reasonably related to that purpose”).

committed the crime, why you committed the crime, and what can be done to prevent you from committing a crime in the future.<sup>3</sup>

Third, juveniles in Louisiana have slightly different constitutional rights than adults in that they do not get a jury trial.<sup>4</sup> However, apart from jury trials, the Constitution of the United States and the Constitution of Louisiana give juveniles in juvenile proceedings the same rights that adults get in criminal trials.<sup>5</sup> Juvenile proceedings are appearances in court in which you, the judge, and lawyers are all present.

Fourth, in the adult Criminal System, all proceedings are open to the public unless the judge orders that they are closed for some special reason. This includes the trial and events before the trial. However, in Louisiana's Delinquency System, proceedings are closed to the public unless the case involves a crime of violence,<sup>6</sup> a second felony-grade delinquent act,<sup>7</sup> or certain other categories of crimes.<sup>8</sup>

Fifth, when you are found guilty as an adult in the Criminal System, you are given a "sentence." The sentence is based on your crime and criminal record. This is different from the Delinquency System. When you are found guilty as a juvenile in the Delinquency System, you are given a "disposition" instead of a sentence. A disposition is the time you must serve at a facility or in a program for the crime. A disposition is based on many things. These things include the reasons you committed the crime, how serious the crime was, and whether you have committed crimes before. Dispositions are "indeterminate." That means that the exact amount of time you have to serve may not be decided all at once. Instead, the disposition depends on how long the court thinks you need to fix your behavior. In Louisiana, the court can decrease the amount of time you must serve if the judge thinks you have been rehabilitated early, but cannot increase it.<sup>9</sup>

Lastly, juveniles in Louisiana are not always sent to detention facilities. There are programs often run by juvenile courts called "diversion programs" or "alternatives to detention" where juveniles may be sent. You will learn more about these later in this Chapter.

### C. WHY ARE JUVENILES TREATED DIFFERENTLY THAN ADULTS?

Laws treat juveniles differently from adults for a few reasons. First, people think that because juveniles are not as mature as adults, juveniles do not know why their actions were wrong the same way adults can. Also, juveniles may be more influenced by peer pressure. Second, people think juveniles are less dangerous to the public than adults. Third, people think it is easier to teach juveniles to follow the law in the future. Finally, the government thinks that juveniles can be taught why the crimes they committed are wrong. The goals of the juvenile justice system are to hold you responsible for your actions and provide you with treatment and education.<sup>10</sup>

<sup>3</sup> State *ex rel.* S.D., 14-439, p. 5 n.3 (La. App. 3 Cir. 10/1/14); 149 So. 3d 917, 921 n.3.

<sup>4</sup> See State *ex rel.* D.J., 2001-2149, p. 1 (La. 5/14/02); 817 So. 2d 26, 27.

<sup>5</sup> LA. CHILD. CODE ANN. art. 808 (2017).

<sup>6</sup> See LA. STAT. ANN. § 14:2(b) (2017) for a full description of which crimes count as "crimes of violence."

<sup>7</sup> See LA. CHILD. CODE ANN. art. 879(b)(1) (2017). A felony-grade delinquent act is an act that would be a felony if it were committed by an adult.

<sup>8</sup> LA. CHILD. CODE ANN. art. 879(b)(2) (2017) states that in juvenile delinquency proceedings involving first-degree murder, second-degree murder, aggravated or first-degree rape, aggravated kidnapping, armed robbery, negligent homicide, or vehicular homicide, the court must allow the victim, the victim's spouse, children, siblings, parents, grandparents, guardians, and legal custodians to be present in the courtroom at the adjudication hearing.

<sup>9</sup> See State *ex rel.* D.R., 2010-0406, p. 5 (La. App. 4 Cir. 10/20/10); 51 So. 3d 121, 124.

("Due . . . to the distinctive characteristics of juvenile proceedings, we do not agree that an indeterminate period of commitment *per se* renders the disposition illegal, as long as the court specifies a maximum."); State *ex rel.* S.D., 01-670, p. 12 (La. App. 5 Cir. 1/29/02); 807 So. 2d 1138, 1146 ("[T]he disposition must specify the maximum length of the term of commitment.").

<sup>10</sup> See *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (discussing general differences between juvenile and adult offenders, that, when taken together, demonstrate that juvenile offenders cannot reliably be classified as among the worst offenders); see also *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (holding that the differences between juvenile and adult offenders indicate that less culpability should attach to a crime committed by a juvenile than to a

## 1. Who is Considered a Juvenile in Louisiana?

Currently in Louisiana, juvenile courts have “original jurisdiction” over any child (which is anyone currently under the age of 18)<sup>11</sup> who has been accused of committing a delinquent act.<sup>12</sup> Original jurisdiction means that a court has the power to be the first to hear your case. If you were accused of committing a delinquent act before the age of 18, then you will be tried as a juvenile unless it was a certain type of crime.

### a. Can You be Tried as an Adult?

Even if you are under the age of 18, you may<sup>13</sup> be tried as an adult if you fit into either of the two categories:

- 1) *Charged as an adult*: You are formally charged (or “indicted”) with committing any of the following crimes, and you were fifteen years old or older<sup>14</sup> when the crime occurred<sup>15</sup>:
  - a. First degree murder
  - b. Second degree murder
  - c. Aggravated or first degree rape
  - d. Aggravated kidnapping
  - e. Attempted first degree murder
  - f. Attempted second degree murder
  - g. Manslaughter
  - h. Armed robbery
  - i. Aggravated burglary
  - j. Forcible or second degree rape
  - k. Simple or third degree rape
  - l. Second degree kidnapping
  - m. Aggravated battery committed with a firearm
  - n. A second aggravated battery
  - o. A second aggravated burglary
  - p. A second burglary of an inhabited dwelling
  - q. A second felony-grade violation of Part X or X-B of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950<sup>16</sup> involving the manufacture, distribution, or possession with intent to distribute controlled dangerous substances.
- 2) *Sent to Continued Custody Hearing*: You are not formally charged with any of the offenses listed above, but the juvenile court holds what is called a “continued custody hearing,” (explained in detail later in this Chapter), and finds “probable cause” that you did one of the things listed above. Probable cause means that a reasonable person could look at the evidence and circumstances in your case and decide that you committed the crime you are accused of.

If you are indicted (formally charged) with any of the above crimes, or the court holds a continued custody hearing and decides that there is probable cause that you committed any of those crimes, then your case may be sent from juvenile court to criminal court. Then you may be tried as an adult. If this

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comparable crime committed by an adult).

<sup>11</sup> LA. CHILD. CODE ANN. art. 116(3) (2017).

<sup>12</sup> LA. CHILD. CODE ANN. art. 305(A) (2017). A delinquent act is an act committed by a juvenile for which an adult could be prosecuted in a criminal court. Delinquent acts include crimes against persons, crimes against property, drug offenses, and crimes against public order, when juveniles commit such acts.

<sup>13</sup> LA. CHILD. CODE ANN. art. 305(B)(1)(a), (b) (2017). For crimes (a) through (c) listed in subsection (2), your case will automatically be moved to adult criminal court. For all the other crimes listed, the prosecutor or judge can decide whether or not to move your case to adult criminal court.

<sup>14</sup> LA. CHILD. CODE ANN. art. 305(B) (2017). There are also limited circumstances where you can be tried as an adult if you committed a crime when you were fourteen years old.

<sup>15</sup> LA. CHILD. CODE ANN. art 305(B)(2) (2017).

<sup>16</sup> This part of the law prohibits selling, lending, renting, leasing, giving, exchanging, exhibiting, displaying, or distributing drug paraphernalia to any unmarried person under the age of seventeen.

happens, then the criminal court will stay in control of your case even if you later plead guilty to a “lesser included offense.” A lesser included offense is a crime that is part of a more serious crime.<sup>17</sup> The process of transfer will be discussed in more detail later in this Chapter.

#### D. YOUR RIGHTS THROUGHOUT THE LEGAL PROCESS<sup>18</sup>

In order to detain you, the government has to obey certain rules to make sure that your rights are protected. If you are a juvenile and the government did not follow one of the rules below in your case, there are several steps you can take before and after your conviction, including filing an appeal. If your appeal succeeds, you may have your conviction vacated (reversed). Read the rules below and think about whether the government followed them in your case. If you think the government broke any of the rules below, you should tell your lawyer.

##### 1. Due Process Rights

As mentioned above, juveniles in Louisiana have many of the same constitutional rights as adults. This includes several important “due process” rights. Due process rights are rights that the government must respect when taking away your freedom. In Louisiana, juveniles’ due process rights include: the right to plead not guilty by reason of insanity, the right to a hearing to determine mental capacity,<sup>19</sup> the right to bail before adjudication,<sup>20</sup> and the right to a public trial.<sup>21</sup> In Louisiana, the only due process right that adults have and juveniles do not have is the right to a jury trial.<sup>22</sup>

##### 2. Right to Notice of Charges

According to the United States Constitution, juvenile defendants have a right to notice of charges. That means that they have a right to be told what they are being accused of. In order to fulfill this right, the government must notify you far enough in advance that you can prepare for court, and they must include a description of what you did wrong.<sup>23</sup> The Louisiana Constitution also says that defendants have the right to be told the reason for the accusations against them.<sup>24</sup> The Louisiana Children’s Code adds that the court must tell you what you are being accused of and why at your first appearance in court or at your appearance to answer the petition.<sup>25</sup> Both of those appearances are discussed more later in this Chapter.

##### 3. Right to an Attorney

The Fifth and Sixth Amendments to the United States Constitution say that criminal defendants have the right to an attorney at all “critical stages of the proceeding.” Those are the stages of the proceedings that are most important.<sup>26</sup>

Louisiana state law gives juvenile defendants even more rights. Louisiana law says that juveniles must have access to an attorney at every stage of proceedings, not just critical stages.<sup>27</sup> This includes interrogation (when you are being questioned by the police), pre-adjudication, adjudication, disposition, post-disposition, and appeal. All of these stages are described in more detail in Part E, “Legal Process,” of

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<sup>17</sup> LA. CHILD. CODE ANN. art. 305(D) (2017).

<sup>18</sup> LA. CHILD. CODE ANN. art. 808 (2017). These rights apply to juveniles under juvenile court jurisdiction in Louisiana.

<sup>19</sup> See *In re C.B.*, 97-2783, p. 12 (La. 03/11/98); 708 So. 2d 391, 398.

<sup>20</sup> See *In re C.B.*, 97-2783, pp. 12–13 (La. 03/11/98); 708 So. 2d 391, 398.

<sup>21</sup> See *In re C.B.*, 97-2783, p. 13 (La. 03/11/98); 708 So. 2d 391, 398.

<sup>22</sup> See *State ex rel. D.J.*, 2001-2149, p. 1 (La. 05/14/02); 817 So. 2d 26, 27.

<sup>23</sup> See *In Re Gault*, 387 U.S. 1, 33 (1967).

<sup>24</sup> LA. CONST. art. I, § 13.

<sup>25</sup> LA. CHILD. CODE ANN. art. 855 (2017) (requiring the court to advise juveniles of the nature of the delinquency proceeding, the nature of the allegations in the petition, their right to an adjudication hearing, their right to be represented by an attorney, their privilege against self-incrimination, the range of answers available to them, like admission; denial; denial by reason of insanity; and nolo contendere, and the possible consequences of their admission).

<sup>26</sup> *United States v. Wade*, 388 U.S. 218, 224 (1967).

<sup>27</sup> LA. CHILD. CODE ANN. art. 809(A) (2017).

this Chapter. Under Louisiana state law, if the court finds that your parents cannot afford to hire an attorney for you, the court must assign one to represent you.<sup>28</sup> You may choose to give up your right to an attorney under certain circumstances. This is called a waiver.

a. Waiving Your Right to an Attorney

You may waive (give up) your right to an attorney during an interrogation, but this waiver must be “knowing and voluntary.” That means that it must be your choice and you must understand what you are doing. If you waived your right to an attorney because you were forced or pressured to do so, or because you did not know what was happening, it is possible that your confession should have been “suppressed.” Suppressed means not used against you at trial. In order to figure out whether your waiver (choice to not speak to an attorney during interrogation) was knowing and voluntary, the court may look at several different factors. These factors include your:<sup>29</sup>

- 1) Age
- 2) Experience
- 3) Education
- 4) Background
- 5) Intelligence
- 6) Environment during interrogation
- 7) Presence of an adult who is interested in your well-being
- 8) Ability to understand the warnings given to you
- 9) Ability to understand the consequences of waiving your rights.

For example, in one case, the court found that an 11-year-old juvenile’s waiver of his rights was not knowing and voluntary. This is because he did not have an adult with him to explain his rights and detectives cursed at him and intimidated him.<sup>30</sup> In another case, the court found that a mentally retarded defendant’s waiver of *Miranda*<sup>31</sup> rights was not knowing and voluntary, even though the detective testified that he believed that the defendant understood his rights.<sup>32</sup> If you feel that your waiver was not knowing and voluntary, then you may be able to appeal your conviction. You may also be able to file a petition asking the court to set aside your adjudication or disposition.

You may knowingly and voluntarily waive your right to an attorney during the later stages of your case, including pre-adjudication, adjudication, and disposition, if:

- 1) You have talked to an attorney or with another adult interested in your well-being (called an “adult advisor”) about your decision;
- 2) The court has explained to both you and your adult advisor the possible consequences of giving up your right to an attorney;
- 3) You are mentally able to waive your rights and your waiver is voluntary (you were not pressured or forced to give up your rights);<sup>33</sup>
- 4) Your waiver is in writing, describing why you meet the three requirements above, and your waiver is signed by both you and your attorney or adult advisor.<sup>34</sup>

Even if you meet these conditions, there are a few situations where the court cannot allow you to waive your right to an attorney:

<sup>28</sup> LA. CHILD. CODE ANN. art. 809(B) (2017).

<sup>29</sup> State v. Fernandez, 96-2719, p. 5 (La. 04/14/98); 712 So. 2d 485, 487.

<sup>30</sup> See State ex rel. J.E.T., 09-67, pp. 24–25 (La. App. 3 Cir. 05/06/09); 10 So. 3d 1264, 1278–1279.

<sup>31</sup> Miranda v. Arizona, 384 U.S. 436 (1966) is the United States Supreme Court case that determined that the police are required to inform any detained persons of their constitutional rights, including the right against self-incrimination and the right to speak to a lawyer.

<sup>32</sup> See State v. Raiford, 2003-0098, pp. 26–27 (La. App. 4 Cir. 04/23/03); 846 So. 2d 913, 928.

<sup>33</sup> LA. CHILD. CODE ANN. art. 810(A) (2017).

<sup>34</sup> LA. CHILD. CODE ANN. art. 810(B) (2017).

- 1) It has been recommended to the court that you be placed in a mental hospital, psychiatric unit, or substance abuse facility;
- 2) You are charged with a felony-grade delinquent act (which is an act that would be a felony if committed by an adult);
- 3) You are appearing in a probation or parole revocation hearing;<sup>35</sup> or
- 4) An attorney is needed “in the interests of justice”<sup>36</sup> (to make sure the outcome of your case is fair).

#### b. Your Attorney’s Responsibilities

Your attorney has important responsibilities while representing you. It is important for you to know what these responsibilities are. First, it will let you know what to expect from your relationship with your attorney. Second, you may be able to appeal your conviction based on “ineffective assistance of counsel.”<sup>37</sup> You can claim ineffective assistance of counsel if your attorney did not uphold his responsibilities *and* your case probably would have turned out differently if it was not for his unprofessional behavior.<sup>38</sup> The courts give attorneys the benefit of the doubt when they are accused of not having done their job properly.<sup>39</sup> This means that ineffective assistance of counsel is usually a very hard thing to prove. For more information, *see* Chapter 12 of the main *JLM*, “Appealing Your Conviction Based on Ineffective Assistance of Counsel” and Chapter 3 of the *Louisiana State Supplement*, “Appealing Your Conviction Based on Ineffective Assistance of Counsel.”

While handling your case, your attorney must provide “competent representation.” This means that your attorney must have the legal knowledge and skill that is needed to represent you. Your attorney must prepare his work carefully throughout your case.<sup>40</sup> Your attorney must tell you who he is and what he does.<sup>41</sup> He must give you enough information to make a good decision about how to move forward with your case.<sup>42</sup> Your attorney must help you understand, as much as possible, what your options are. He must explain what the consequences of your choices might be.<sup>43</sup> Your attorney must also keep you up-to-date on the status of your case.<sup>44</sup> One of your attorney’s most important responsibilities is his going along with your decisions as to the goals of your representation, although he is free to make his own decisions about how to accomplish these goals.<sup>45</sup> However, he cannot go along with your decisions if they are illegal, unethical, or outside the scope of what your attorney is allowed to do. Your attorney must also go along with your decisions about what plea you will enter and whether you will testify.<sup>46</sup> Finally, your lawyer can only reveal information that is necessary to protect your interests. They may not act against your interests, even if it is personally or professionally convenient for him to do so.<sup>47</sup>

### E. STAGES OF THE LEGAL PROCESS

<sup>35</sup> LA. CHILD. CODE ANN. art. 810(D) (2017).

<sup>36</sup> LA. CHILD. CODE ANN. art. 810(C) (2017).

<sup>37</sup> *See* State v. Eiskina, 42,492, p. 3 (La. App. 2 Cir. 9/19/07), 965 So. 2d 1010, 1013 (“Claims of ineffective assistance of counsel are more properly raised in an application for post-conviction relief in the trial court because it provides the opportunity for a full evidentiary hearing . . . . When the record is sufficient, however, allegations of ineffective assistance of trial counsel may be resolved on direct appeal in the interest of judicial economy.”).

<sup>38</sup> *See* Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Wright, 598 So. 2d 493, 497 (La. App. 2 Cir. 1992).

<sup>39</sup> State v. Myers, 583 So.2d 67, 71 (La. App. 2 Cir. 1991) (“There is a strong presumption that the conduct of counsel falls within the wide range of responsible professional assistance.”).

<sup>40</sup> Louisiana Rules of Professional Conduct, Rule 1.1; *see* State *ex rel.* D.L., 11-835 (La. App. 5 Cir. 5/22/2012); 96 So. 3d 580 (holding that an attorney’s failure to file a motion to dismiss the delinquency petition based on the court’s failure to hold juvenile’s adjudication hearing within 30 days of the appearance constituted deficient performance); State v. Kamau, 47,328, pp. 4–5 (La. App. 2 Cir. 7/26/12); 131 So. 3d 871, 874–875 (holding that an attorney’s failure to raise numerous valid objections constituted deficient performance).

<sup>41</sup> Louisiana Rules of Professional Conduct, Rule 1.4(a)(5), (b).

<sup>42</sup> Louisiana Rules of Professional Conduct, Rule 1.4(a)(1).

<sup>43</sup> Louisiana Rules of Professional Conduct, Rule 1.0(e), 1.4(a)(2)

<sup>44</sup> Louisiana Rules of Professional Conduct, Rule 1.4(a)(3)

<sup>45</sup> Louisiana Rules of Professional Conduct, Rule 1.2(a).

<sup>46</sup> Louisiana Rules of Professional Conduct, Rule 1.2(a).

<sup>47</sup> Louisiana Rules of Professional Conduct, Rule 1.6.

This Section will explain what your rights are and what is supposed to happen at each stage of your case. As you read this Section, think about whether the government followed the rules in your case. If you think the government broke any of the rules below, you should tell your lawyer. If you are in detention waiting for your trial to begin, look closely at these Sections on arrest and custody, transfer, diversion, and competency. If your trial has already started, read the Sections on motions to vacate adjudication and deferred dispositional agreement. If your trial is over, pay close attention to the Sections on modification of disposition, appeals, and post-conviction relief.

### 1. Arrest and Custody

In order for an arrest to be legal, the police must have probable cause to think that you committed a crime or violated your parole.<sup>48</sup> Remember, probable cause means that a reasonable person could look at what happened in your case and decide that you committed the crime you are accused of. If the police take you into custody without a court order or warrant, they must either:

- 1) Explain what is happening and release you to your parents; or
- 2) Take you to a juvenile detention center or shelter care facility right away.<sup>49</sup>

If you are released to your parents, the officer who arrested you must submit a report to the court. This report must explain why he had probable cause to arrest you. He must file the report within 7 days after you are released.<sup>50</sup> If you are taken to a juvenile detention center or shelter care facility, the following things must happen:

- 1) The police must notify your parents as soon as possible;<sup>51</sup>
- 2) The officer who arrested you must submit a report to the court explaining why he had probable cause to arrest you within 24 hours after you are taken into custody;<sup>52</sup>
- 3) The court must review this report within 48 hours after you are taken into custody<sup>53</sup> and decide whether there was probable cause to arrest you;
- 4) If the court decides that there was probable cause, it must schedule a continued custody hearing (explained below) within 3 days after you are placed in a facility;<sup>54</sup> and
- 5) If the court decides that there was not probable cause, then you must be released.<sup>55</sup>

It is important to realize that juveniles can be arrested for some things that adults cannot be arrested for. These acts are usually called “status offenses.” For example, in one case, a court decided that officers could arrest a juvenile who had run away from home, even though running away from home would not be considered a crime for an adult.<sup>56</sup>

### 2. Continued Custody Hearing

If you continue to be held in a juvenile detention facility or shelter care facility after the police take you into custody, you must be brought in front of a judge within 72 hours.<sup>57</sup> At this court appearance, called a continued custody hearing, the court will decide whether there was probable cause to take you into custody in the first place. The court will also decide whether there is a need to keep you in detention.

<sup>48</sup> LA. CHILD. CODE ANN. art. 814(A) (2017).

<sup>49</sup> LA. CHILD. CODE ANN. art. 814(B)(1), (2) (2017).

<sup>50</sup> LA. CHILD. CODE ANN. art. 814(F) (2017).

<sup>51</sup> LA. CHILD. CODE ANN. art. 814(C) (2017).

<sup>52</sup> LA. CHILD. CODE ANN. art. 814(F) (2017).

<sup>53</sup> LA. CHILD. CODE ANN. art. 814(D) (2017).

<sup>54</sup> LA. CHILD. CODE ANN. art. 819 (2017).

<sup>55</sup> LA. CHILD. CODE ANN. art. 814(D) (2017).

<sup>56</sup> *See In re Moten*, 242 So. 2d 849, 853 (La. App. 4 Cir. 1970) (holding that entry into a house without a warrant to arrest the juvenile was justified by an exigent circumstance).

<sup>57</sup> LA. CHILD. CODE ANN. art. 819 (2017).

If the court decides to keep you in detention, it must set bail.<sup>58</sup> Bail means that you may be released temporarily until your trial, but sometimes you must pay some money to the court for this to happen.

You are allowed to have witnesses, testify on your own behalf, and cross-examine the state's witnesses at a continued custody hearing.<sup>59</sup> Hearsay evidence (what a witness says that someone else said) is allowed at a continued custody hearing.<sup>60</sup>

Information about poor conditions, problems, or lack of resources and services at your juvenile detention center is important. It may allow your attorney to argue that the facility is not appropriate for you. Tell your attorney if you experience any of these things while in detention.

### 3. Pre-adjudication

Pre-adjudication is the stage of your case before the judge looks at evidence and arguments. There are some points during pre-adjudication when the court may decide that your case should not move forward towards adjudication. If you are in detention waiting for your trial to begin, pay close attention to what your options are. Also, pay close attention to what your attorney can do to help you.

If you are evaluated and found to have a disability, the court needs to know. Some studies say that as many as seventy percent of incarcerated youth have a disability.<sup>61</sup> Some disabilities are invisible, unlike the need for a wheelchair or cane. For example, learning or emotional disabilities often lead to problems with other people. Proper evaluation and treatment of these problems can make rehabilitation easier. It can also make education and other programs more helpful.

If you have already been diagnosed with a disability but your previous Individualized Education Program ("IEP") was not followed while you attended school, you should tell your lawyer. For instance, if you were diagnosed with a learning disability, your IEP may have required you to have a tutor to help you with your studies. But if your school never gave you a tutor, their failure to follow the IEP could help you explain to the judge why you may have had trouble with rehabilitation programs before. If your lawyer can convince the judge that this is true, you may receive a lighter sentence.

### 4. Petition

Delinquency proceedings officially start when the government files a petition.<sup>62</sup> A petition is a document that says that you have committed a delinquent act. A copy of the petition and a "summons" (an order to appear before a judge) must be delivered to you and your parents.<sup>63</sup> If you are held in detention before your adjudication, then the petition must be filed within 48 hours after your continued custody hearing.<sup>64</sup> If it is not filed on time, then you must be released.<sup>65</sup>

### 5. Answer

In order to answer the claims the government makes against you in its petition, you must appear in court. If you have not had a continued custody hearing, this may be your first appearance in court. At the answer hearing, the court must decide whether you are able to understand what is going on. The court must tell you about your constitutional rights (including your right to an attorney). The court must also

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<sup>58</sup> LA. CONST. art. I, § 18; LA. CHILD. CODE ANN. art. 823 (2017).

<sup>59</sup> LA. CHILD. CODE ANN. art. 821(B) (2017).

<sup>60</sup> LA. CHILD. CODE ANN. art. 821(C) (2017).

<sup>61</sup> Dep't. of Justice, OJJDP Bull. No. NCJ 179359, Special Education and the Juvenile Justice System (2000), *available at* <http://www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf> (last visited Jan. 25, 2018).

<sup>62</sup> LA. CHILD. CODE ANN. art. 842 (2017).

<sup>63</sup> LA. CHILD. CODE ANN. art. 847 (2017); LA. CHILD. CODE ANN. art. 850(A) (2017); *see also* *In re Banks*, 402 So. 2d 690, 695 (La. 1981) (ordering the trial court to grant bail to two young girls pending their delinquency adjudications).

<sup>64</sup> LA. CHILD. CODE ANN. art. 843(A) (2017).

<sup>65</sup> LA. CHILD. CODE ANN. art. 843(B) (2017).



tell you about the consequences of admitting anything at the hearing.<sup>66</sup> There are a few different ways you can answer the government's petition<sup>67</sup>:

- 1) Admit that the claims in the petition are true;
- 2) Deny that the claims in the petition are true;
- 3) Deny that the claims in the petition are true and plead insanity;
- 4) Enter a response of "nolo contendere" (meaning that you neither admit nor deny the claims in the petition) with the permission of the court. This is also called a "plea of no contest."

If you are in custody, the petition may be filed before your continued custody hearing. If that happens, the court may order you to answer the petition at the continued custody hearing.<sup>68</sup> If you are not ordered to answer the petition at the continued custody hearing, then you must appear in court to answer within 5 days after the petition is filed.<sup>69</sup>

If you are not in custody, then you must appear in court to answer the petition within 15 days after the petition is filed.<sup>70</sup> If you have a good reason, the court may give you extra time.<sup>71</sup>

## 6. Transfer to Adult Criminal Court

In certain situations, your case may be sent from the juvenile court to the adult criminal court for prosecution. It is important to understand how transfers work, and all of the different ways that your case can end up in adult criminal court. It is almost always better for your case to stay in juvenile court. This is because rehabilitation is not the purpose of the adult system.<sup>72</sup> That means that you may therefore face a worse sentence and have a much harder time re-entering society if you are convicted in the adult criminal court. Also, once you are transferred to adult criminal court, you cannot be transferred back to juvenile court. This is true even if at the end of your trial you are convicted of a lesser crime than the one you were charged with.<sup>73</sup>

The first way your case can end up in adult criminal court is called "legislative waiver." Legislative waiver is when the adult criminal court automatically has the power to hear your case for the first time (which is called "original jurisdiction"). This happens if you were 15 years or older when they think you committed one of the following crimes<sup>74</sup>:

- 1) First-degree murder
- 2) Second-degree murder
- 3) Aggravated rape
- 4) Aggravated kidnapping

If you are indicted (which means formally charged) with any of the above crimes, or the court has a continued custody hearing and decides that there is probable cause that you committed any of the above crimes, then your case will be transferred to adult criminal court automatically.<sup>75</sup> To try to stop this from happening, your attorney must argue at your continued custody hearing that there is no probable cause. If

<sup>66</sup> LA. CHILD. CODE ANN. art. 855 (2015); *see also* State *ex rel.* K.G., 34535, p. 20–21 (La. App. 2 Cir. 1/24/01); 778 So. 2d 716, 728 ("[T]he court shall then advise [the child] of the following items . . . (7) the possible consequences of his admission that the allegations are true, including the maximum and minimal dispositions which the court might impose.").

<sup>67</sup> LA. CHILD. CODE ANN. arts. 856(A)(1)–(4) (2017).

<sup>68</sup> LA. CHILD. CODE ANN. art. 854(A) (2017); *see* State v. B.J.D., 35409 (La. App. 2 Cir 9/26/01); 799 So. 2d 563.

<sup>69</sup> LA. CHILD. CODE ANN. art. 854(A) (2017).

<sup>70</sup> LA. CHILD. CODE ANN. art. 854(B) (2017).

<sup>71</sup> LA. CHILD. CODE ANN. art. 854(C) (2017).

<sup>72</sup> *See* In re C.B., 97-2783, p. 10 (La. 3/11/98); 708 So. 2d 391, 396–397 ("Thus, the unique nature of the juvenile system is manifested in its noncriminal, or 'civil,' nature, its focus on rehabilitation and individual treatment rather than retribution, and the state's role as *parens patriae* in managing the welfare of the juvenile in state custody.").

<sup>73</sup> LA. CHILD. CODE ANN. art. 863 (2017); State v. Hamilton, 96-0107, p. 4 (La. 7/2/96); 676 So. 2d 1081, 1083.

<sup>74</sup> LA. CHILD. CODE ANN. art. 305(A) (2017).

<sup>75</sup> LA. CHILD. CODE ANN. art. 305(A) (2017).

the court disagrees and transfers your case to adult criminal court, you may be moved from a juvenile facility to a facility where adults are kept before trial.<sup>76</sup> Afterwards, everything in your case will happen in adult criminal court. You will face the same punishments as adults do if you are found guilty.

The second way your case can end up in adult criminal court is “prosecutorial waiver.” This is also called “direct file.” Prosecutorial waiver means that if you were 15 years old or older when they think you committed one of the following crimes, the government prosecutor can decide whether or not to move your case to adult criminal court<sup>77</sup>:

- 1) Attempted first degree murder
- 2) Attempted second degree murder
- 3) Manslaughter
- 4) Armed robbery
- 5) Aggravated burglary
- 6) Forcible or second degree rape
- 7) Simple or third degree rape
- 8) Second degree kidnapping
- 9) Aggravated battery committed with a firearm
- 10) A second aggravated battery
- 11) A second aggravated burglary
- 12) A second burglary of an inhabited dwelling
- 13) A second felony-grade violation of Part X or X-B of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950<sup>78</sup> involving the manufacture, distribution, or possession with intent to distribute controlled dangerous substances.

If you are in detention, the government prosecutor has 30 days from the date of your arrest to tell the juvenile court whether he plans to move your case to adult criminal court.<sup>79</sup> If the government prosecutor misses this deadline, then you may be released from detention.<sup>80</sup>

The third way your case can end up in adult criminal court is “judicial waiver by transfer hearing.”<sup>81</sup> This allows the juvenile court to decide whether to move your case to adult criminal court if you were 14 or older when they think you committed one of the following crimes<sup>82</sup>:

- 1) First-degree murder
- 2) Second-degree murder
- 3) Aggravated kidnapping
- 4) Aggravated rape
- 5) Aggravated battery that involves shooting a gun
- 6) Armed robbery that involves a gun
- 7) Forcible rape of a child at least two years younger than you

Judicial waiver by transfer can only happen after a transfer hearing in juvenile court. In that transfer hearing, the government must show by “clear and convincing” proof<sup>83</sup> that there is no way you

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<sup>76</sup> LA. CHILD. CODE ANN. art. 306(D) (2017).

<sup>77</sup> LA. CHILD. CODE ANN. art. 305(B) (2017).

<sup>78</sup> This part of the law prohibits selling, lending, renting, leasing, giving, exchanging, exhibiting, displaying, or distributing drug paraphernalia to any unmarried person under the age of seventeen.

<sup>79</sup> LA. CHILD. CODE ANN. art. 305(B)(3) (2017).

<sup>80</sup> *See State v. Hamilton*, 96-0107, p. 6 (La. 7/2/96); 676 So. 2d 1081, 1084 (holding that where the government prosecutor at first filed a petition in juvenile court charging the 15-year-old with armed robbery, then changed his mind over a month later, the youth should be released, although he would still be subject to further proceedings in criminal court).

<sup>81</sup> LA. CHILD. CODE ANN. art. 857(A) (2017).

<sup>82</sup> LA. CHILD. CODE ANN. art. 857(A) (2017).

<sup>83</sup> Clear and convincing proof is proof much more likely to be true than not, and that the trier of fact (judge) believes strongly is true.

can be rehabilitated in the juvenile system.<sup>84</sup> Before making a decision, the court must consider your age and maturity, the seriousness of the crime they think you committed, whether you have committed any past crimes, whether rehabilitation has worked for you in the past, whether you have physical or mental problems, and whether Louisiana's juvenile facilities have the resources needed to rehabilitate you.<sup>85</sup> There are several rules the government must follow at your transfer hearing<sup>86</sup>:

- 1) It must protect your right to due process and fair treatment (discussed in Section D(1) above);
- 2) You must be given access to an attorney;
- 3) Your attorney must be given access to records relevant to your case, including probation reports and other similar reports; and
- 4) The government must tell you why you are being transferred and include facts to support its decision, so that you can appeal it later if you need to.

If your case is transferred through this kind of waiver when you are 14 years old, you cannot be incarcerated beyond your 31st birthday.<sup>87</sup>

## 7. Diversion

“Diversion” is a process where you can be temporarily removed from the regular juvenile delinquency process if you promise to do certain things. For diversion to happen, you must have what is called an informal adjustment agreement (“IAA”) with the prosecutor and the court. The IAA will say that you must do certain things. These things may include community service, or youth court/drug court programs.<sup>88</sup> The court may move forward with diversion if both you and the government prosecutor agree. If you do all the things you promised to do in the agreement, you will be released from the court's supervision. The court must also dismiss the petition against you “with prejudice” (which means the government cannot file it again).<sup>89</sup> But if you do not do all the things you promised to do, your case will pick up where it left off and the regular delinquency process will be followed.<sup>90</sup> An IAA can happen before or after a petition is filed,<sup>91</sup> but must happen before “jeopardy” begins (after “jeopardy,” you can't be charged with the same crime for the same incident again).<sup>92</sup> The court cannot order a diversion that lasts for more than six months at first, but it can later extend the diversion for another six months.<sup>93</sup>

Entering into an IAA may be a good opportunity for you, because it can allow you to avoid a delinquency finding. A delinquency finding is a decision by the court that you committed a delinquent act. An IAA may also allow you to avoid probation or a juvenile detention facility. However, there are several things you should know before you enter into an IAA. First, if you did not actually commit a delinquent act, entering into an IAA will mean that you are giving up your chance to make the government prove its charges against you. If you are innocent, having to participate in certain programs may interrupt your life for no good reason. Second, if you do not think you can keep all the promises you are asked to make, it may not be a good idea to enter into an IAA. That is because the fact that you entered into an IAA and did not finish it may be used against you at the disposition stage of your trial, and could lead to a worse outcome for you.

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<sup>84</sup> LA. CHILD. CODE ANN. art. 862 (2017).

<sup>85</sup> LA. CHILD. CODE ANN. art. 862(A)(2) (2017).

<sup>86</sup> LA. CHILD. CODE ANN. art. 862 (2017); *State v. Everfield*, 342 So. 2d 648, 654 (La. 1977).

<sup>87</sup> LA. CHILD. CODE ANN. art. 857(B) (2017).

<sup>88</sup> LA. CHILD. CODE ANN. art. 841(B), (C) (2017) (declaring that incriminating statements you make during the agreement process cannot be used in a later adjudication hearing or criminal trial).

<sup>89</sup> LA. CHILD. CODE ANN. art. 841(B) (2017).

<sup>90</sup> LA. CHILD. CODE ANN. art. 841(B) (2017).

<sup>91</sup> LA. CHILD. CODE ANN. art. 839(B) (2017).

<sup>92</sup> LA. CHILD. CODE ANN. art. 839(B) (2017); LA. CHILD. CODE ANN. art. 811 (2017) (“When a child enters a denial to the petition, jeopardy begins when the first witness is sworn at the adjudication hearing. When he enters an admission to the petition, jeopardy begins when a valid disposition is made the judgment of the court.”).

<sup>93</sup> LA. CHILD. CODE ANN. art. 840(C) (2017).

## 8. Mental Capacity to Proceed

The question of your mental capacity to continue with the trial (your ability to understand the process and be able to help your attorney at the adjudication hearing)<sup>94</sup> may be raised at your continued custody hearing, and at any stage of the case after the continued custody hearing. Once the question of your mental capacity is brought up, your case will be put on hold until the question is resolved.<sup>95</sup>

If after a mental examination and a hearing, the court decides that you do not have the mental capacity to continue with the trial, there are several steps the court may take:

- 1) Dismiss the petition against you;
- 2) Decide that your family needs to receive certain services in order to help you (called FINS, or Family in Need of Services) and move forward with a disposition under the FINS guidelines;<sup>96</sup> or
- 3) Place you under the supervision of the Department of Health and Hospitals or a private mental institution (if the court thinks you may be dangerous to yourself or others).<sup>97</sup>

## 9. Adjudication

The adjudication stage in a delinquency case is similar to a trial in criminal court. At an adjudication hearing, the juvenile court judge will look at all the evidence that the government prosecutor and your attorney showed him<sup>98</sup> and then decide whether or not you committed a delinquent act “beyond a reasonable doubt” (the judge has to be very certain you committed the act).<sup>99</sup>

If you are being held in custody, your adjudication hearing must start within 30 days of your appearance in court to answer the petition,<sup>100</sup> unless the court extends this time for a good reason.<sup>101</sup>

If you are not being held in custody, then your adjudication hearing must start within 90 days of your appearance in court to answer the petition,<sup>102</sup> unless the court extends this time for a good reason.<sup>103</sup>

After your adjudication hearing is over, the court must immediately tell you what its decision is.<sup>104</sup>

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<sup>94</sup> LA. CHILD. CODE ANN. art. 804(7) (2017).

<sup>95</sup> LA. CHILD. CODE ANN. art. 832 (2017).

<sup>96</sup> FINS disposition procedures are outlined in Title VII, Chapter 12 of the Louisiana Children’s Code. LA. CHILD. CODE ANN. art. 777 (2017).

<sup>97</sup> LA. CHILD. CODE ANN. art. 837(B) (2017).

<sup>98</sup> LA. CHILD. CODE ANN. art. 878, 884 (2017); *see In re T.E.*, 2000-1810, p. 6 (La. App. 4 Cir. 04/11/01); 787 So.2d 414, 418.

<sup>99</sup> LA. CHILD. CODE ANN. art. 883 (20117); *see In re D.J.*, 2001-2149, p. 6 (La. 05/14/02), 817 So. 2d 26, 30 (“[D]elinquency adjudications must rest on proof beyond a reasonable doubt”).

<sup>100</sup> LA. CHILD. CODE ANN. art. 877(A) (2017); *see In re J.B.*, 2003-0587, p. 2 (La. App. 4 Cir 12/19/03); 863 So. 2d 669, 670 (“If the child is continued in custody . . . the adjudication hearing shall commence within thirty days of the appearance to answer the petition.”).

<sup>101</sup> LA. CHILD. CODE ANN. art. 877(D) (2017).

<sup>102</sup> LA. CHILD. CODE ANN. art. 877(B) (2017).

<sup>103</sup> LA. CHILD. CODE ANN. art. 877(D) (2017); *see In re R.D.C.*, 93-CK-1865 (La. 2/28/94); 632 So. 2d 745, 747 (Time limitations are mandatory and may only be extended for good cause. In making a determination of “good cause” the court must be mindful of causes beyond the control of the government prosecutor which may affect its ability to prepare for the hearing.).

<sup>104</sup> LA. CHILD. CODE ANN. art. 884(A) (2017); *see In re S.D.*, 01-670, p. 14 (La. App. 5 Cir. 01/29/02); 807 So. 2d 1138, 1148 (“Following the adjudication hearing, the court shall immediately declare whether the evidence warrants an adjudication that the child is delinquent. In exceptional circumstances, the court may take the matter under advisement.”).

## 10. Post-adjudication

If the court decides that you did commit a delinquent act, then you or your attorney may file a Motion to Vacate the Adjudication at any time before the disposition stage of your case begins.<sup>105</sup> Your delinquency adjudication must be vacated (reversed), and your case must be *dismissed* if the court thinks<sup>106</sup>:

- 1) The petition is flawed because it leaves out certain crucial information;
- 2) The delinquent act you were charged with committing does not actually violate any law;
- 3) The court that entered your adjudication didn't have the jurisdiction (authority) to do so;
- 4) The delinquent act you are being charged with constitutes "double jeopardy";<sup>107</sup> or
- 5) The government prosecutor did not meet the proper deadlines.

Your delinquency adjudication must be vacated (reversed) and a *new adjudication hearing* must be ordered if the court thinks<sup>108</sup>:

- 1) The adjudication does not answer the petition filed by the government, or it is otherwise flawed in important ways;
- 2) The adjudication was based on fraud or mistake;
- 3) New and "material" (affects how the case will come out) evidence is discovered;<sup>109</sup>
- 4) The adjudication goes against the law and the evidence;
- 5) The adjudication must be vacated to make sure there is a fair outcome in your case.<sup>110</sup>

## 11. Disposition

The disposition phase of your case is when the court decides what the consequences of your adjudication will be. This could include being sent to a juvenile detention facility.

### a. Deferred Dispositional Agreement

A deferred dispositional agreement ("DDA") is similar to a diversion/IAA in that it is a sort of detour from the normal delinquency process. The government prosecutor or your attorney can request a DDA at any point after your adjudication ends and before your disposition is decided. If you enter into a DDA, the court will temporarily pause your disposition hearing and place you on probation. Probation could include drug treatment, counseling, or other services that you need.<sup>111</sup> Both you and your parent or guardian must agree to a DDA.<sup>112</sup> A DDA can last for up to six months, although you may be released from it earlier<sup>113</sup> or later<sup>114</sup> by the court.

A DDA can be a very beneficial option for you. It allows you to receive the services you need while at the same time giving you the chance to have your delinquency adjudication set aside if you do what the agreement requires of you. You should consider entering into a DDA unless you know you will not be able

<sup>105</sup> LA. CHILD. CODE ANN. art. 887(A) (2017).

<sup>106</sup> LA. CHILD. CODE ANN. art. 887(A) (2017).

<sup>107</sup> "Double jeopardy" means that you were tried on the same charges in the same case after you were already found innocent or guilty.

<sup>108</sup> LA. CHILD. CODE ANN. art. 887(B) (2017).

<sup>109</sup> Article 851(3) of the Code of Criminal Procedure provides that a new trial shall be granted whenever "[n]ew and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty." LA. CODE CRIM. PROC. ANN. art. 851(3) (2017).

<sup>110</sup> LA. CHILD. CODE ANN. art. 887(C) (2017).

<sup>111</sup> LA. CHILD. CODE ANN. art. 896(A) (2017).

<sup>112</sup> LA. CHILD. CODE ANN. art. 896(B) (2017).

<sup>113</sup> LA. CHILD. CODE ANN. art. 896(D) (2017).

<sup>114</sup> LA. CHILD. CODE ANN. art. 896(D) (2017) (The court may extend the agreement for another 6 months, or for whatever period in which the child is a full-time participant in a juvenile drug court program, whichever period is longer.).

to meet all of its conditions, because if you are being offered a DDA then you have already been found delinquent and will face more serious consequences if your case goes forward towards final disposition.

#### b. Disposition Hearing

At a disposition hearing, the government prosecutor and your attorney may present evidence and question witnesses in order to help the court decide whether you need treatment or rehabilitation.<sup>115</sup> The disposition hearing can happen right after the adjudication, but it must happen within 30 days of the adjudication.<sup>116</sup> If the court finds that you do need treatment or rehabilitation, it must immediately make a disposition. Whatever disposition the court makes must be authorized by the Louisiana Children's Code.<sup>117</sup> The court should give you the least restrictive (least limits on your freedom) disposition possible according to the Children's Code and the circumstances of your case.<sup>118</sup>

### 12. Post-disposition

Unlike criminal court, a juvenile court has an ongoing responsibility to keep track of and protect the young people it is in charge of even after a disposition order.<sup>119</sup>

After the disposition in your case is entered, the court still has to power to change it at any time.<sup>120</sup> The court may choose to terminate (get rid of) your disposition altogether, change your custody, suspend (temporarily hold) its decision to send you to detention or a mental hospital, remove certain conditions of your probation, or add more conditions to your probation.<sup>121</sup>

A Motion for Modification of Disposition may be filed by the government prosecutor, you, your parents, your custodian, a probation officer, or by the court itself.<sup>122</sup> If the motion asks for you to be placed in less restrictive conditions (conditions that give you more freedom), the court does not have to hold a hearing before agreeing. However, if the motion asks for you to be placed in more restrictive conditions (conditions that give you less freedom), the court must hold a hearing before agreeing.<sup>123</sup>

A Motion for Modification of Disposition may include facts about issues regarding your treatment or rehabilitation that did not come up during the original disposition. It may also include facts such as:

- 1) Your progress towards rehabilitation. If you have cooperated with and completed all rehabilitative services that are needed for your treatment, then your disposition should be changed to reflect this. If you have "availed [yourself] of every rehabilitative program available," one court has held that you are "entitled [have a right] to a modification of disposition."<sup>124</sup>
- 2) Abuse or other problems with the conditions you face in detention. The use of excessive (more than necessary) force or corporal (physical) punishment violates your due process rights under the Fourteenth Amendment to the United States Constitution. The Louisiana Children's Code also says that when a child is removed from his parent's control, the court must "secure for him care as nearly possible equivalent to that which the parents should have given him."<sup>125</sup> Your parents are not allowed to abuse you,<sup>126</sup> and neither is anyone at the facility where you are being held.

<sup>115</sup> LA. CHILD. CODE ANN. art. 893(A) (2017).

<sup>116</sup> LA. CHILD. CODE ANN. art. 892 (2017).

<sup>117</sup> LA. CHILD. CODE ANN. art. 893(D) (2017); *see* In re S.T., 97-0216, p. 3 (La. App. 1 Cir. 9/19/97); 699 So. 2d 1128, 1129 ("At a disposition hearing, if the court finds the child is in need of treatment or rehabilitation as a delinquent child, the court is required to immediately make any appropriate disposition authorized by . . . the Children's Code.").

<sup>118</sup> LA. CHILD. CODE ANN. art. 901(B) (2017).

<sup>119</sup> LA. CHILD. CODE ANN. art. 102 (2017); LA. CHILD. CODE ANN. art. 905 (2017); LA. CHILD. CODE ANN. art. 909 (2017).

<sup>120</sup> LA. CHILD. CODE ANN. art. 909 (2017) (The court does not have the authority to modify the disposition of certain felony-grade delinquent acts).

<sup>121</sup> LA. CHILD. CODE ANN. art. 909 (2017).

<sup>122</sup> LA. CHILD. CODE ANN. art. 910 (2017).

<sup>123</sup> LA. CHILD. CODE ANN. art. 910(D) (2017).

<sup>124</sup> In re C.H., 2003-1279, p. 4 (La. App. 3 Cir. 1/28/04); 865 So. 2d 947, 950.

<sup>125</sup> LA. CHILD. CODE ANN. art. 102 (2017).

<sup>126</sup> LA. CHILD. CODE ANN. art. 102 (2017).

- 3) You are not receiving the rehabilitative treatment you need. It is the juvenile court's job to make sure that you are placed in an environment where you will get the services you need.
- 4) You could benefit from parole or other services to help you transition back into society before being released. One study found that that young people who spend a lot of their time "in the system" are especially in need of aftercare services, such as job placement and tutoring.<sup>127</sup>

### 13. Appeal

An appeal is when you ask a higher court to review certain parts of your case for legal mistakes. If the government did not follow the legal rules in your case, then you have the right to appeal in two ways. You can use the government's mistake to appeal your entire conviction. If your appeal works, then you may have your conviction overturned or erased. You can also challenge the mistake in order to get better living conditions. You can complain that you are not being treated fairly based on the rules that the government must follow for juveniles. If this challenge works, you may be able to switch to better living conditions or get into a new detention program. If possible, try to get a lawyer or an adult to assist you with any legal papers. You should talk to your lawyer about your options and the type of appeal that would be most likely to help you.

The most important part of your appeal is the way you describe the facts of your case. Especially in juvenile cases, judges have a lot of power and can make decisions "in the interests of justice" in ways they cannot for adults. For example, the judge may ignore any mistakes made by the government and refuse to overturn the conviction if the facts of your crime make you sound like a dangerous threat to the community. As a result, you should be very careful about how you talk about your crime and yourself, and help the judge understand any circumstances or facts that might work in your favor. You should never lie to a judge because this is a crime, but you do not need to draw attention to the most serious parts of your crime either. You need to show the judge that you have "rehabilitative potential." This means you have to show that you want to change your life and that you will not commit crimes in the future. A judge looking at your case will try to figure out which one is greater: your rehabilitative potential or the seriousness of your offense.

If you decide to file an appeal, you have the right to a lawyer.<sup>128</sup> Luckily, Louisiana law says that appeals involving juvenile delinquency must be handled quickly,<sup>129</sup> so an appeal can help you even if you have a short disposition.<sup>130</sup> In a delinquency case, an appeal may only happen after disposition.<sup>131</sup>

### 14. Post-conviction Relief

Like an appeal, a motion for post-conviction relief asks the court to review certain parts of your case for legal mistakes. However, a motion for post-conviction relief is filed with the juvenile court, not a criminal court or appeals court. If you succeed, your adjudication and disposition may be set aside.<sup>132</sup> However, you cannot ask for post-conviction relief if you can appeal the adjudication and disposition, or if you have an appeal pending (not yet complete).<sup>133</sup>

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<sup>127</sup> Metropolitan Crime Commission, *Juvenile Recidivism in Metropolitan New Orleans* 17–18, available at <http://www.laccr.org/wp-content/uploads/2016/04/Juv-Recid-Metro-NO-April-1999-3.pdf> (last visited Jan. 25, 2018).

<sup>128</sup> LA. CHILD. CODE ANN. art. 809 (2017).

<sup>129</sup> Procedures established by court rules to speed up the appeals process include denying the extension of a return date unless there is a showing of extraordinary circumstances (La. Ct. App. Unif. R. 5-3(a)), assigning cases "by preference to the next docket or cycle following any required briefing schedule," (La. Ct. App. Unif. R. 5-3(b)), and shortening briefing deadlines (La. Ct. App. Unif. R. 5-3(c)).

<sup>130</sup> See LA. CHILD. CODE ANN. art. 337 (2017) (delinquency appeals "shall be accorded preference in the court of appeal and shall be determined at the earliest practicable time").

<sup>131</sup> LA. CHILD. CODE ANN. art. 330(B) (2017).

<sup>132</sup> LA. CODE CRIM. PROC. ANN. art. 924(1) (2017).

<sup>133</sup> LA. CODE CRIM. PROC. ANN. art. 924.1 (2017).

The Louisiana Children’s Code does not have any instructions on how to ask for post-conviction relief, but the Louisiana Code of Criminal Procedure does, and these instructions apply in delinquency cases.<sup>134</sup>

You may ask for post-conviction relief if<sup>135</sup>:

- 1) The conviction was won in a way that violated the Constitution of the United States or the state of Louisiana;
- 2) The court did not have jurisdiction (authority);
- 3) The conviction made you experience “double jeopardy”;<sup>136</sup>
- 4) The law that created the offense for which you were convicted is unconstitutional;
- 5) The results of a DNA test prove that you are innocent; or
- 6) The prosecutor waited too long to bring a case against you.

### 15. **Expungement**

Records related to a delinquency case are confidential. However, some records are still kept by courts and other agencies. Under certain circumstances, these records can be given to you and to other people. In order to prevent this from happening, you can ask for your records to be expunged.

Expungement causes all your delinquency records to be erased and destroyed, which can help you put your past behind you and move on with your life. Even if the records have not affected you before, or you are not concerned about courts and other agencies having access to your records, it is probably a good idea to try to get your records expunged if you are eligible. This is because juvenile records can seriously impact your ability to go to college, get a job, and find housing. Expunging your records will give you a clean slate and make sure that people can only judge you based on who you are now rather than who you were when you committed a delinquent act.

You can ask the court to expunge your records at any time by filing a “Motion for Expungement and Sealing,” which is a form, and explaining in the motion why you should have your records expunged.<sup>137</sup> Your motion must be filed with the court that has the records you are seeking to expunge, or with the court that has authority over the agency that arrested you.<sup>138</sup> Your motion must be served personally or by certified mail.<sup>139</sup> Unless both you and the court or agency agree to waive it, a hearing must happen. If the court finds that you are eligible, the court may order expungement.

Your records qualify for expungement if<sup>140</sup>:

- 1) They have to do with behavior that did not lead to an adjudication;
- 2) They have to do with to delinquency adjudications involving Louisiana Law R.S. 14:83.3, 14:83.4, 14:89, or 14:89.2;
- 3) They have to do with a finding of Families in Need of Services;
- 4) They have to do with an adjudication that was not for murder, manslaughter, an offense requiring registration as a sex offender, or armed robbery;
  - a. Once that adjudication has been dismissed or closed; and
  - b. If you have no pending charges in adult court, no adult court felony convictions, or adult court misdemeanor criminal convictions involving a firearm

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<sup>134</sup> LA. CHILD. CODE ANN. art. 803 (2017).

<sup>135</sup> LA. CODE CRIM. PROC. ANN. art. 930.3 (2017).

<sup>136</sup> You were tried on the same (or similar) charges in the same case after you were already found innocent or guilty. *Double Jeopardy*, Black’s Law Dictionary (10th ed., 2014).

<sup>137</sup> LA. CHILD. CODE ANN. art. 917, 919B, 925 (2017). Previous versions of the Code said you could only ask the court to expunge your records after you turned 17, but that was changed in 2017.

<sup>138</sup> LA. CHILD. CODE ANN. art. 919(C) (2017).

<sup>139</sup> LA. CHILD. CODE ANN. art. 919(D) (2017).

<sup>140</sup> LA. CHILD. CODE ANN. art. 918 (2017).



- 5) They have to do with an adjudication for murder, manslaughter, a sex offense, kidnapping or armed robbery, if
  - a. It has been at least five years since your last juvenile case was closed or dismissed; and
  - b. You have no pending charges in adult court, no adult court felony convictions, or adult court misdemeanor criminal convictions involving a firearm.

## F. YOUR RIGHTS WHILE IN SECURE CARE

There are special rules when the government puts juveniles in detention or prison. This Section explains how these rules work, and what steps you can take to make your situation better, including requesting an administrative review procedure (“ARP”), and reporting your problem to Louisiana’s Department of Public Safety and Corrections (“DPSC”) Project Zero Tolerance system.

### 1. Constitutional Rights

#### a. Right to Rehabilitation

The Fourteenth Amendment to the United States Constitution says that when the purpose of incarcerating juveniles is for treatment and rehabilitation, you have a right to these things while you are in detention.<sup>141</sup> The Delinquency System in Louisiana is rehabilitative, which means that it focuses on teaching juvenile offenders to follow the law and improve their lives.<sup>142</sup> If you are not receiving the treatment and rehabilitation services you need, then this is a violation of your constitutional rights.

#### b. Humane Conditions of Confinement

If you are in the custody of the state, then you have the constitutional right to humane conditions of confinement. This means that you must get proper food, shelter, clothing, and medical care (discussed below).<sup>143</sup> If the conditions in the facility where you are being held are extremely bad, this could violate the Eighth Amendment of the United States Constitution.<sup>144</sup> For example, in one case, a court decided that filthy cells that exposed prisoners to serious health problems violated the Eight Amendment, when the prison staff knew about it and did nothing.<sup>145</sup> In another case, a court decided that cells that had roaches, poor lighting, and leaking water and sewage violated the Eight Amendment.<sup>146</sup>

#### c. Personal Safety and Protection from Harm

If you are a young person in the custody of the state, then you have a right to be free from physical violence according to the Fourteenth Amendment to the United States Constitution.<sup>147</sup> If you face violence from a guard at your prison or detention facility, this may also violate the Eight Amendment.<sup>148</sup> In Louisiana, guards and other staff at prisons or detention facilities have a “duty to use reasonable care

<sup>141</sup> See *State ex. rel.* S.D., 2002-0672, p. 25 (La. App. 4 Cir. 11/06/02); 832 So. 2d 415, 433–434 (“The Due Process Clause of the Fourteenth Amendment to the United States Constitution ‘requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.’”).

<sup>142</sup> See *State ex. rel.* S.D., 2002-0672, p. 25 (La. App. 4 Cir. 11/06/02); 832 So. 2d 415, 433 (observing that “the purpose of incarcerating juveniles . . . is treatment and rehabilitation, due process requires that the conditions and programs . . . must be reasonably related to that purpose.”).

<sup>143</sup> *Del A. v. Roemer*, 777 F. Supp. 1297, 1318 (E.D. La. 1991) (“Because the State has established a custodial relationship with plaintiffs, they have a right to adequate food, shelter, clothing, and medical care.”).

<sup>144</sup> *Palmer v. Johnson*, 193 F.3d 346, 351–352 (5th Cir. 1999).

<sup>145</sup> *Gates v. Cook*, 376 F.3d 323, 338 (5th Cir. 2004).

<sup>146</sup> See *McCord v. Maggio*, 927 F.2d 844, 846–847 (5th Cir. 1991).

<sup>147</sup> See *State ex. rel.* S.D., 2002-0672, pp. 25–26 (La. App. 4 Cir. 11/06/02); 832 So. 2d 415, 434 (finding a violation of the Fourteenth amendment when juvenile prisoner was punched, resulting in broken jaw). *S.D.* cites multiple cases where courts “condemned the use of force or corporal punishment against children in correctional facilities,” including the following: *Nelson v. Heyne*, 355 F. Supp. 451, 454–455 (N.D. Ind. 1972) (beatings with a paddle); *Morales v. Turman*, 383 F. Supp. 53, 72–75 (E.D. Tex. 1974) (physical beatings and use of tear gas); *Milonas v. Williams*, 691 F.2d 931, 942 (10th Cir. 1982) (grabbing children by the hair, pulling them backward and flinging them against walls).

<sup>148</sup> *K.M. v. Ala. Dep’t. of Youth Servs.*, 360 F. Supp. 2d 1253, 1259 (11th Cir. 2005).

to protect inmates from harm,”<sup>149</sup> (meaning they must use the same amount of care as any reasonable person would). In order to violate the Eight Amendment, a guard or other staff at a prison or detention facility must know that there is a great risk that you may be seriously harmed and ignore it.<sup>150</sup> If you are facing violence at your detention facility, *see* Section F(4)(c) below on Project Zero Tolerance.

#### d. Medical and Mental Health Care

The state must have what is called a “minimally adequate” mental health treatment system in place in all juvenile detention facilities.<sup>151</sup> This means that the facility must have staff who are trained, and who offer services like emergency mental health services, evaluation and creation of a treatment plan, follow-up evaluations, and regular mental health services, including counseling.<sup>152</sup>

A juvenile detention center could get in legal trouble if it does not provide enough services or services that are good enough to meet the needs of juveniles with mental or physical health problems.<sup>153</sup>

## 2. Education Rights

If you are in the custody of the state, you should be getting an education.<sup>154</sup> It is the Deputy Secretary of Youth Services’ policy to provide complete year-round educational and vocational (career-oriented) programs which are appropriate for youth in secure care facilities. The Office of Juvenile Justice of Louisiana has its own policies about what kind of education juveniles in secure facilities must receive, and the directors of each facility are responsible for making sure that the policies are followed.<sup>155</sup> The current policies say that you have the right to the following things while you are in secure care<sup>156</sup>:

- 1) An initial screening and educational test to figure out your educational needs. The test that you will have to take is called the Test of Adult Basic Education (TABE), and it is given during the admission process, before you enroll in school, every 3-6 months after that as needed, and/or when you leave the program. TABE is designed to test your reading, language and math skills.
- 2) An Individualized Learning Plan (ILP) that is developed when you are admitted, and includes
  - a. TABE results
  - b. Education needs
  - c. Your academic areas of strength and weakness
  - d. What accommodations (supports) you need to help you learn
  - e. Goals for what you should be achieving academically
- 3) Placement in your appropriate grade level, based on your age, the last grade you were in, your school and test history, and the results of your TABE test.
- 4) Transitional education placement, if you are two or more grade levels behind. Transitional education is a one-year process where students who are behind get extra help so that they can earn a high school diploma, HiSET, or State-approved Skills Certificate.
- 5) The opportunity to enter the program at your level and move through it at your pace.
- 6) Enough classroom space, and classroom space that encourages teaching and learning.
- 7) Enough materials and equipment to make sure you are able to keep up with the curriculum.

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<sup>149</sup> *Conerly v. State*, 2002-1852, p. 9 (La. App. 1 Cir. 6/27/03); 858 So. 2d 636, 645.

<sup>150</sup> *Adames v. Perez*, 331 F.3d 508, 512 (5th Cir. 2003).

<sup>151</sup> *State ex. rel. S.D.*, 2002-0672, p. 26 (La. App. 4 Cir. 11/06/02); 832 So. 2d 415, 434.

<sup>152</sup> *Gary W. v. Louisiana*, 437 F. Supp. 1209, 1219 (E.D. La. 1976) (requiring individualized assessments and treatment programs for mentally retarded, physically handicapped, and delinquent children in custody of state).

<sup>153</sup> *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Det. Ctr.*, 372 F.3d 572, 584–585 (3d Cir. 2004).

<sup>154</sup> *State ex. rel. S.D.*, 2002-0672, p. 26 (La. App. 4 Cir. 11/06/02); 832 So. 2d 415, 434 (“[J]uveniles in correctional facilities have a federal constitutional right to an adequate educational program.”).

<sup>155</sup> Office of Juvenile Justice Youth Services Policy No. B.7.1, *available at* <https://ojj.la.gov/wp-content/uploads/2017/03/B.7.1.pdf> (last visited Oct. 8, 2017).

<sup>156</sup> Office of Juvenile Justice Youth Services Policy No. B.7.1(VI), *available at* <https://ojj.la.gov/wp-content/uploads/2017/03/B.7.1.pdf> (last visited Oct. 8, 2017).

- 8) Library services that meet Louisiana Secondary Library Standards. This includes books that reflect the different reading levels, languages, interests, and ethnicities of the young people housed at the facility. Library materials must be provided to you as needed for your homework or pleasure reading.
- 9) Vocational (career and technical) education programs.
- 10) Mandatory school attendance requirements. Your work assignments, visitation, counseling, and other programs should not interfere with your school attendance.

a. Special Education Rights

If you are diagnosed with a disability, you are entitled to a free appropriate public education (“FAPE”), even while you are incarcerated.<sup>157</sup> You can request a review if your Individualized Education Program (“IEP”) is not being followed. If your IEP is not being followed or you are not getting FAPE, then you first must try to resolve your problem through administrative methods (contact the state Department of Education to find out more about administrative remedies) and, if that fails, through state court.<sup>158</sup> You can sue in federal court if you have gone through all the administrative and state remedies or if the administrative and state remedies fail.<sup>159</sup> The only reason your FAPE can be denied is for prison security. Students and parents also have the right to challenge any changes made to an IEP.

The Louisiana Department of Education has created an educational agency known as Special School District (“SSD”), which has control over all students with disabilities enrolled in residential facilities operated by the Department of Health and Hospitals (“DHH”) or Office of Juvenile Justice (“OJJ”) and certain private juvenile detention facilities.<sup>160</sup> If this applies to you, there are special services and schools that you may be eligible for.

### 3. Right to be Housed Separately from Adults

If your case has not been transferred to adult criminal court, you may still be taken to an adult facility for identification, processing, or to wait for transportation. Depending on the circumstances, you can be held there for up to 24 hours.<sup>161</sup> While you are in an adult facility, the sheriff or person in charge of the facility must make sure that you are supervised, and that you have “sight and sound” separation from the adults housed in the same facility.<sup>162</sup> That means you should not be able to clearly see or talk directly to any adult prisoner in the prison from where you are in the prison.

If you are a juvenile whose case was transferred to the adult criminal court, (see Section E(6) on transfer), then you may be taken to any of the following adult facilities<sup>163</sup>:

- 1) Adult Reception and Diagnostic Center (ARDC)
- 2) Elayn Hunt Correctional Center (EHCC)
- 3) Wade Reception and Diagnostic Center (WRDC)
- 4) David Wade Correctional Center (DWCC)
- 5) Louisiana Correctional Institute for Women (LCIW)

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<sup>157</sup> 20 U.S.C. § 1412 (a)(3)(A) (2012); *see also* Handberry v. Thompson, 446 F.3d 335, 347 (2d Cir. 2006) (holding that the Individuals with Disabilities Education Act requires that states identify all children with disabilities and meet their needs).

<sup>158</sup> Handberry v. Thompson, 446 F.3d 335, 341–344 (2d Cir. 2006).

<sup>159</sup> Handberry v. Thompson, 446 F.3d 335, 343 (2d Cir. 2006).

<sup>160</sup> Special School District, *available at* <http://www.louisianabelieves.com/schools/special-school-district> (last visited Dec. 28, 2017).

<sup>161</sup> LA. CHILD. CODE ANN. art. 306(B) (2017).

<sup>162</sup> LA. CHILD. CODE ANN. art. 306(B) (2017).

<sup>163</sup> LA. ADMIN. CODE tit. 22, pt. I, § 709(D) (2017).

If you are housed in one of the facilities above, you will participate in the same work, education, and other rehabilitative programs as adults, and will have to follow the same classification (grouping) and disciplinary (what happens if you break the rules) processes as adults. Security supervision and security rules will also be the same for you as for the adult inmates housed in your facility.<sup>164</sup>

#### 4. What to Do if Your Rights in Secure Care are Violated

##### a. Administrative Remedy Procedure

If you are in the custody of the Office of Juvenile Justice (“OJJ”), then you may file a grievance (complaint) about the conditions you are facing.<sup>165</sup> This grievance is called an Administrative Remedy Procedure (“ARP”) and the rules you must follow when filing one can be found in the Louisiana Administrative Code and in internal policies and procedures of OJJ.<sup>166</sup> While you can file an ARP by yourself, you may want to get your lawyer’s help. Your lawyer can make sure that your ARP follows all the proper rules so that you can ask a court to review the outcome of your ARP later on if you need to.

You must file an ARP within 90 days of whatever incident you are complaining about, and you can get an ARP complaint form at any OJJ facility.<sup>167</sup> However, you do not have to fill out any special form to file an ARP. Your ARP can be written on any type of paper and only needs to include<sup>168</sup>:

- 1) The phrase “this is an ARP”;
- 2) A description of the problem; and
- 3) What you would like the OJJ to do about it.

Your complaint may be rejected if it is not filed within 90 days, or if it does not follow the rules above.<sup>169</sup>

Give your ARP complaint to the ARP coordinator.<sup>170</sup> If your ARP is accepted, the director of your facility has 21 days to answer it.<sup>171</sup> If your ARP is rejected, you have 10 days to appeal this rejection by filing a Step Two Review Request (“STRR”). You should give your STRR to your case manager or put it in the designated collection location for the ARP coordinator to pick it up.<sup>172</sup> The final decision on your STRR will be mailed from the Office of Youth Development within 21 calendar days after the Office received your appeal.<sup>173</sup>

##### b. Judicial Review

If you are not happy with the outcome of your STRR, you may ask the juvenile court to review the OJJ’s denial of your complaint.<sup>174</sup> This is called judicial review. You must ask for judicial review within 30 days from the day that you get the decision denying your Step Two appeal.<sup>175</sup> You may ask for judicial review with or without the help of your lawyer. If you decide to represent yourself, you can write a letter to the court describing what was in your complaint, and the steps you took to solve your problem through the ARP system.<sup>176</sup> If your lawyer is representing you, he must file a formal petition with the court.<sup>177</sup> If

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<sup>164</sup> LA. ADMIN. CODE tit. 22, pt. I, § 709(D)(5) (2017).

<sup>165</sup> LA. CHILD. CODE ANN. art. 912(A) (2017).

<sup>166</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713 (2017).

<sup>167</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(E)(3)(b) (2017).

<sup>168</sup> LA. ADMIN. CODE tit. 22, pt. I, §§ 713(E)(3)(a), (c) (2017).

<sup>169</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(G)(3) (2017).

<sup>170</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(E)(3) (2017).

<sup>171</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(F)(6) (2017).

<sup>172</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(G)(1) (2017).

<sup>173</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(G)(3) (2017).

<sup>174</sup> LA. CHILD. CODE ANN. art. 912(B) (2017).

<sup>175</sup> LA. ADMIN. CODE tit. 22, pt. I, § 713(H)(1) (2017); LA. CHILD. CODE ANN. art. 912(C) (2017).

<sup>176</sup> LA. CHILD. CODE ANN. art. 912(C) (2017).

<sup>177</sup> LA. CHILD. CODE ANN. art. 912(C) (2017).

the court agrees that you did everything you could do to resolve the problem within the ARP system, and that your complaint is valid, then the court will hold a hearing to try to solve your problem.<sup>178</sup>

c. Project Zero Tolerance

In 1996, the State of Louisiana created the Project Zero Tolerance (“PZT”) system. The system is used to look into and respond to all claims of abuse against juveniles in Louisiana’s juvenile secure care facilities. Every juvenile secure care facility in Louisiana has a PZT investigation staff. If you are being abused, either by staff or by other youth in your facility, you can make a report to PZT by calling the PZT hotline (1-800-626-1430) from whatever telephone is available to you. You can also ask a parent or other person to call the hotline for you. When PZT receives a report of abuse or violence, it must investigate and write up a report. A PZT investigation may involve interviewing you and others, watching video surveillance tapes, and reading any documents related to the incident. When its investigation is over, PZT will decide whether your claims are true or not.

d. The Prison Rape Elimination Act

In 2003, the federal government passed the Prison Rape Elimination Act (PREA), the first federal law dealing with sexual assault in prisons. PREA defines “prison” as “any federal, state, or local confinement facility, including local jails, police lockups, juvenile facilities, and state and federal prisons.” Short-term lockups, such as holding facilities, and local jails, even if they are small, are also subject to PREA’s rules. The goal of the law is to prevent, detect, and respond to sexual abuse in facilities where people are incarcerated. According to PREA, there are several things your juvenile facility must do to meet this goal:

- 1) It must provide multiple internal ways for you to privately report sexual abuse and sexual harassment, retaliation (revenge) by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have led to this abuse or harassment.<sup>179</sup>
- 2) It must provide at least one way for you to report abuse or harassment to a public or private entity or office that is not part of the facility.<sup>180</sup>
- 3) It cannot make you use an informal grievance process (such as the ARP process mentioned above) to deal with an event involving sexual abuse.<sup>181</sup>
- 4) It must make sure that you don’t have to submit your complaint to the person you are accusing of abusing you.<sup>182</sup>
- 5) It must make a final decision on your complaint within 90 days after you submit it.<sup>183</sup>
- 6) If you or someone else makes a complaint that says you may be in serious risk of imminent (soon to happen) sexual abuse, then your facility must forward your complaint to someone who can take quick action, must provide a first response within 48 hours, and must provide a final response within 5 days.<sup>184</sup>

For more information about PREA and how it can help you, please see Chapter 24 of the main *JLM*, “Your Right to Be Free from Assault by Prison Guards and Other Prisoners.”

e. 42 U.S.C. § 1983 Claims

If you think that officials at your facility have violated your Eighth Amendment rights, you may sue the officials or guards using Section 1983 of Title 42 of the United States Code (42 U.S.C. § 1983). Section 1983 is a federal law that allows you to sue state officials who have violated your constitutional

<sup>178</sup> LA. CHILD. CODE ANN. art. 912(D) (2017).

<sup>179</sup> 28 C.F.R. § 115.51(a) (2017).

<sup>180</sup> 28 C.F.R. § 115.51(b) (2017).

<sup>181</sup> 28 C.F.R. § 115.52(b)(3) (2017).

<sup>182</sup> 28 C.F.R. § 115.52(c)(1) (2017).

<sup>183</sup> 28 C.F.R. § 115.52(d)(1) (2017).

<sup>184</sup> 28 C.F.R. § 115.52(f)(2) (2017).

rights while acting “under color of any” state law.<sup>185</sup> You can sue federal officials in a similar suit, called a *Bivens* action.<sup>186</sup> You can also use Section 1983 to sue local officials as long as you can show that they too acted under “color of state law.” (You may be able to sue local officials under state tort law as well.) But note that you can only sue municipalities (towns, cities, or counties) under Section 1983 if your injury was the result of an official municipal policy or custom.<sup>187</sup> In other words, a local government will be held liable (at fault) only if an injury can be shown to be a direct result of the local government’s official policy. Therefore, a local government is not liable under Section 1983 “for an injury inflicted solely by its employees or agents”<sup>188</sup> who were not following official local policy or custom, even though the local officials may be individually liable under Section 1983.

You should read Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law,” to learn more about Section 1983 claims. Part E of Chapter 16 of the main *JLM* explains *Bivens* actions and Part C gives more information on qualified immunity.

#### f. Other Options

There are several other steps you can take to try to fix problems you are facing with the conditions of your detention. You can ask for a modification of disposition (mentioned above) by explaining to the court why your rights in secure detention are being violated. After you have done everything you can under the ARP system, you can also take action in federal or state court asking for money or for an injunction (an order that will force your caretakers to provide you with better treatment). For more information on how to do this, *see* Chapter 16 of the main *JLM*.

### G. CONCLUSION

If you are a juvenile, federal laws and Louisiana state laws give you various rights and protections with respect to the legal process and the conditions of your detention. To receive these protections, you must first make sure you fit the eligibility requirements described above. Then, speak with your lawyer about the next steps to take, including a possible appeal of your case or bringing a separate lawsuit if your rights have been violated.

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<sup>185</sup> 42 U.S.C. § 1983 (2012).

<sup>186</sup> *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397, 91 S. Ct. 1999, 2005, 29 L. Ed. 2d 619, 627 (1971).

<sup>187</sup> *See, e.g., Williams v. Kaufman County*, 352 F.3d 994, 1013–1014 (5th Cir. 2003) (holding a county could be held liable for unlawful searches of detainees when the relevant policymaker, in this case the sheriff, authorized the policy).

<sup>188</sup> *Irwin v. City of Hemet*, 22 Cal. App. 4th 507, 525, 27 Cal. Rptr. 2d 433, 442 (Cal. Ct. App. 1994) (quoting *Monell v. Dep’t. of Soc. Servs.*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037–2038, 56 L. Ed. 2d 611, 694 (1978)).

## APPENDIX A

### GLOSSARY OF LEGAL TERMS

***Adjudication***

This is what they call a trial in juvenile court. It is the court hearing where the district attorney's office must try to prove the minor committed the acts he or she is accused of.

***Answer***

A court hearing after the petition has been filed, where the juvenile may admit to all the claims the district attorneys has made, or deny them. If the juvenile denies committing these acts, the case will be set for an adjudication hearing.

***Appeal***

When a person asks a higher court to review the decision made in his case by a lower court with the hope that the higher court will find mistakes and overturn that decision.

***Child***

In delinquency cases, a child is someone younger than 21 who commits a delinquent act before turning 17 years old.

***Competency***

Before a juvenile can be adjudicated for an offense, the juvenile must be able to understand the process and be able to help their attorney at the adjudication hearing. If it is determined that the juvenile cannot—either because of mental illness or developmental disability—the child is found to be incompetent or not competent. The court will then decide if the juvenile can be found competent or restored to competency after classes, or if they are permanently incompetent.

***Continued Custody Hearing***

If a juvenile is taken into custody, much like when an adult is arrested, instead of being released back to their parents, a hearing must be held within three days. This hearing is the continued custody hearing.

***Delinquent Act***

A delinquent act is an offense that would be a crime if committed by an adult.

***Disposition***

Similar to sentencing in adult court, the judge will decide at disposition what sort of treatment, supervision, or rehabilitation the child needs, such as community service, restitution, probation, or placement in secure care.

***Diversions***

Program run by the district attorney as an alternative to being prosecuted in juvenile court. If the juvenile successfully completes diversion, they are not adjudicated for that offense and the case against them is dismissed.

***Drug Court***

A program within the juvenile court system designed for juveniles who are substance abusers. Juveniles in the program are supervised by probation officers, have frequent testing to see if they're using alcohol/drugs, and have many weekly court hearings before the Drug Court Judge.

***Expungement***

Process to have the records of an arrest or a finding of delinquency destroyed. If your record is "expunged," no record of ever having been involved with the juvenile court system will exist.

***Felony grade delinquent act***

An act that would be a felony if it were committed by an adult. An act is a felony for an adult if it could be punished by hard labor, that is, by being sent to a state prison. Youth cannot be punished at hard labor, but it is still sometimes important to know whether an act is felony-grade or misdemeanor-grade.

***Jurisdiction***

Jurisdiction has two separate definitions. First, it is the power of a court to decide a case. If a court has the power to decide your case, we say the court has “jurisdiction.” Second, it is a geographic area in which a court may exercise its power to decide a case. For example, New York and New Jersey are different “jurisdictions” because New York courts only have authority to decide cases brought in New York.

***Misdemeanor grade delinquent act***

An act that would be a misdemeanor if it were committed by an adult. An act is a misdemeanor if it is not a felony, that is, if it cannot be punished by hard labor for an adult.

***Parole***

If a juvenile has been sentenced to secure care, such as a detention facility, that juvenile may be allowed to be released earlier than the period of time ordered. The Department of Safety and Corrections Office of Juvenile Justice makes the decision as to whether a juvenile may be paroled.

***Petition***

A written request filed in Court by the district attorney’s office that claims a juvenile committed misdemeanor or felony grade acts and asks the Court to hear the case and make a decision.

***Probation***

A youth can be given probation as a disposition—that’s like a “sentence”—after he or she is adjudicated delinquent. Probation usually means that the youth has to follow rules that the judges makes, but gets to live at home.

***Prosecutor***

The attorney who works for the state or federal government who is in charge of preparing the case against you. Prosecutors usually work for the District Attorney in the state system or the U.S. Attorney in the federal system. Your lawyer and/or parent/guardian should be with you whenever you speak to the prosecutor. You have a right to have your lawyer present to help.