

Regular Session, 2012

HOUSE BILL NO. 982

BY REPRESENTATIVE BARROW

JUVENILES: Provides relative to the standards, licensing, and disclosure requirements of juvenile detention facilities

1 AN ACT

2 To enact R.S. 15:1110(F), 1110.1, and 1110.2, relative to juvenile detention facilities; to
3 provide for annual licensing fees; to provide for fines, sanctions, and penalties; to
4 provide for the Juvenile Detention Licensing Trust Fund and for its uses; to require
5 and provide relative to the disclosure of recordation on the state central registry for
6 the abuse or neglect of children for certain persons associated with the juvenile
7 detention facility; to provide for a process of appeal; to provide for an effective date;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 15:1110(F), 1110.1, and 1110.2 are hereby enacted to read as
11 follows:

12 §1110. Detention standards; licensing; fees

13 * * *

14 F. There shall be an annual license fee for any license issued to a detention
15 facility as follows:

16 (1) For a detention facility authorized to care for six or fewer juveniles, the
17 license fee shall be four hundred dollars.

18 (2) For a detention facility authorized to care for at least seven but not more
19 than fifteen juveniles, the license fee shall be five hundred dollars.

1 (3) For a detention facility authorized to care for sixteen or more juveniles,
2 the license fee shall be six hundred dollars.

3 §1110.1. Operating without or in violation of license or regulations; penalties

4 A. Whoever operates a juvenile detention facility without a valid license
5 issued by the Department of Children and Family Services pursuant to R.S. 15:1110
6 shall be fined one thousand dollars for each day of operation without the valid
7 license. In addition to seeking civil fines imposed pursuant to the provisions of this
8 Section, if any juvenile detention facility operates without a valid license issued by
9 the department, the department may file suit in the district court in the parish in
10 which the facility is located for injunctive relief, including a temporary restraining
11 order, to restrain the institution, society, agency, corporation, person or persons, or
12 any other group operating the facility, from continuing the violation.

13 B.(1) No person shall operate any juvenile detention facility in violation of
14 any provision of R.S. 15:1110, or any other state or federal statute, regulation, or any
15 department rule adopted pursuant to the Administrative Procedure Act that governs
16 the ownership or operation of juvenile detention facilities.

17 (2) In lieu of revocation of the facility's license, the department may issue
18 a written warning that includes a corrective action plan to any person or entity
19 violating these requirements when the violation creates a condition or occurrence
20 relating to the operation and maintenance of a juvenile detention facility that does
21 not pose an imminent threat to the health, safety, rights, or welfare of a child.
22 Failure to implement a corrective action plan issued pursuant to the provisions of this
23 Section may result in either the assessment of a civil fine or license revocation or
24 may result in both actions being taken by the department. Such civil fines shall not
25 exceed two hundred fifty dollars per day for each fine assessment; however, the
26 aggregate fines assessed for violations determined in any consecutive twelve-month
27 period shall not exceed two thousand dollars.

28 (3) The department shall adopt rules in accordance with the Administrative
29 Procedure Act that provide specific factors for determining the type of sanction to

1 be imposed including severity of risk, actual harm, failure to implement a written
2 corrective action plan, mitigating circumstances, the history of noncompliance and
3 an explanation of the treatment of continuing noncompliance, an explanation of the
4 treatment of continuing repeat deficiencies, evidence of good faith effort to comply,
5 and any other relevant factors. The department shall develop and adopt rules and
6 regulations required by this Paragraph with input and guidance from the Louisiana
7 Juvenile Detention Association. The authority to impose sanctions pursuant to this
8 Section shall commence on the effective date of the rules promulgated pursuant to
9 this Section.

10 C.(1) The department shall adopt rules and regulations in accordance with
11 the Administrative Procedure Act to provide for notice to the juvenile detention
12 facility of any violation, for a departmental reconsideration process for sanctions
13 issued, and for an appeal procedure, including judicial review.

14 (2) An appeal of any department decision for a violation of any provision of
15 this Part shall be suspensive. All appeals filed pursuant to the provisions of this
16 Section shall be heard by the division of administrative law pursuant to Chapter 13-B
17 of Title 49 of the Louisiana Revised Statutes of 1950. The division shall furnish the
18 facility or agency a copy of the decision, together with notice of the procedure for
19 requesting judicial review.

20 D. The department may institute all necessary civil court actions to collect
21 finances imposed that are not timely appealed. No juvenile detention facility may claim
22 imposed fines as reimbursable. Interest shall begin to accrue at the current judicial
23 rate on the day following the date on which any fines become due and payable. All
24 costs of any successful action to collect such fines, including travel expenses and
25 reasonable attorney fees, shall be awarded to the department in addition to the fines.

26 E.(1) Civil fines collected pursuant to the provisions of this Section shall be
27 deposited immediately into the state treasury.

28 (2) After compliance with the requirements of Article VII, Section 9(B) of
29 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,

1 and prior to the monies being placed in the state general fund, an amount equal to the
2 amount deposited as provided in Paragraph (1) of this Subsection shall be credited
3 to a special fund hereby created in the state treasury to be known as the "Juvenile
4 Detention Licensing Trust Fund". The monies in the fund shall be subject to annual
5 appropriation and shall be available exclusively for use by the Department of
6 Children and Family Services for the education and training of employees, staff, or
7 other personnel of juvenile detention facilities.

8 (3) The monies in the fund shall be invested by the treasurer in the same
9 manner as the monies in the state general fund, and all interest earned from the
10 investment of monies in the fund shall be deposited in and remain to the credit of the
11 fund. All unexpended and unencumbered monies remaining in the fund at the end
12 of the fiscal year shall remain in the fund.

13 (4) The secretary of the Department of Children and Family Services may
14 promulgate rules and regulations in accordance with the Administrative Procedure
15 Act to provide for the administration of the fund.

16 §1110.2. Disclosure requirements; penalties

17 A. Any owner, operator, current or prospective employee, or volunteer of a
18 juvenile detention facility licensed by the Department of Children and Family
19 Services shall report annually and at any time upon the request of the department, on
20 the state central registry disclosure form promulgated by the department, whether or
21 not his name is currently recorded on the state central registry for a justified finding
22 of abuse or neglect and that he is the named perpetrator.

23 B. All such completed state central registry disclosure forms shall be
24 maintained in accordance with the department licensing regulations. Any state
25 central registry disclosure form that is maintained in a juvenile detention facility
26 licensing file shall be confidential and subject to the confidentiality provision of R.S.
27 46:56(F) pertaining to the investigations of abuse and neglect.

28 C. Any owner, operator, current or prospective employee, or volunteer of a
29 juvenile detention facility licensed by the department who knowingly falsifies the

1 information on the state central registry disclosure form shall be fined not more than
2 five hundred dollars, imprisoned for not more than six months, or both.

3 D. Any owner, operator, current or prospective employee, or volunteer of a
4 juvenile detention facility licensed by the department who discloses that he is
5 currently recorded on the state central registry for a justified finding of abuse or
6 neglect shall be entitled to a risk assessment evaluation provided by the department
7 to determine that the individual does not pose a risk to children and shall have the
8 right to file an appeal in accordance with R.S. 49:992 of the Administrative
9 Procedure Act. Any such determination by the risk evaluation panel shall be kept
10 on file at all times by the department.

11 E. The department shall promulgate rules and regulations to implement the
12 provisions of this Section. The rules and regulations shall include but not be limited
13 to establishing criteria for risk evaluation requests, the composition of the risk
14 evaluation panel, and establishing criteria for risk evaluation determinations.

15 Section 2. This Act shall become effective on January 1, 2013.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Barrow

HB No. 982

Abstract: Provides relative to the standards, licensing, and disclosure requirements of juvenile detention facilities.

Present law provides relative to the licensing standards of juvenile detention facilities and requires all juvenile detention facilities to be licensed pursuant to the provisions of present law by Jan. 1, 2013.

Proposed law provides for the following:

- (1) The assessment of an annual licensing fee for all detention facilities.
- (2) Penalties for the operation of a juvenile detention facility without a valid license.
- (3) Authorizes DCFS to seek injunctive relief in addition to the penalties imposed by proposed law.
- (4) Authorizes DCFS to issue a written warning that includes a corrective action plan to any facility which operations in violation of present law and provides that the failure to implement such corrective action plan may result in the assessment of a civil fine

- not to exceed \$250 per day, license revocation, or both; the aggregate of such civil fines shall not exceed \$2,000 for any consecutive 12-month period.
- (5) Directs the department to adopt rules to provide factors for determining the type of sanctions imposed, to provide notice to the facility of any violation, and to provide for an appeal procedure including judicial review.
 - (6) Creates the "Juvenile Detention Licensing Fund" where all civil fines collected pursuant to the provisions of proposed law shall be deposited and shall be used for the education and training of employees, staff, or other personnel of juvenile detention facilities.
 - (7) Requires any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility to report whether or not his name is currently recorded on the state central registry for a justified finding of abuse or neglect.

Effective Jan. 1, 2013.

(Adds R.S. 15:1110(F), 1110.1, and 1110.2)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Increased the amount of the fines imposed for the operation of a juvenile detention facility without a valid license.
2. Amended provision relative to the operation of juvenile facilities in violation of present law to authorize the department to issue a written warning which includes a corrective action plan in lieu of assessing civil fines.
3. Added provision which states that the failure to implement the corrective action plan issued pursuant to present law may result in the assessment of a civil fine not to exceed \$250 per day, license revocation, or both; the aggregate of such civil fines shall not exceed \$2,000 for any consecutive 12-month period.
4. Added the failure to implement a corrective action plan to the list of factors that the department considers in determining the type of sanctions to be imposed.
5. Made technical corrections to incorporate these changes.

House Floor Amendments to the engrossed bill.

1. Removed provision which authorized criminal prosecution in addition to the penalties imposed pursuant to proposed law.
2. Amended the specific factors that shall be considered in the department's determination of the type of sanction to impose.
3. Removed the provision which stated that the aggregate fines assessed pursuant to proposed law shall not exceed \$5,000.
4. Removed provisions which required any appeal of a department decision to be heard in a summary proceeding and required that such proceedings be given precedence over other pending matters.

5. Removed the provision which required the juvenile detention facility to furnish bond with its application for an appeal of a department decision.
6. Amended the list of exclusive uses for which the monies in the "Juvenile Detention Licensing Trust Fund" are available.
7. Made technical corrections.