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December 19, 2024
OPINION 24-0142

Senator Jimmy Harris
2021 Lakeshore Drive
Suite 204
New Orleans, La 70122

Councilmember Helena Moreno
1300 Perdido Street
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New Orleans, La 70112

57- A Juveniles

La Ch. C. Art 813 La Ch. C. Art 823 La Ch. C. Art 828
La Ch. C. Art 814 La Ch. C. Art 824
La Ch. C. Art 817 La Ch. C. Art 825
La Ch. C. Art 826 La Ch. C. Art 827

The Louisiana Children's Code expressly gives the authority to bring a child into custody to a peace officer or a probation officer having territorial jurisdiction over the child, pursuant to a court order or warrant, or when the officer has probable cause to believe the child has committed a delinquent act. However, pursuant a bond agreement as a condition of release on bail, a Court may have the authority to authorize a third party provider, when accompanied by a bail bondsman, to deliver/transport a child into custody who has violated the conditions of release.

Dear Senator Harris and Councilmember Helena Moreno,

You have each separately requested an opinion from this office¹ pertaining to what extent the City of New Orleans may utilize a third party, with non-law enforcement employees, to assist in monitoring juveniles. According to your opinion request, the City and various stakeholders in the criminal justice system are exploring strategies aimed at better enforcing the City's ankle monitoring program for juvenile offenders in an effort to improve public safety. As your questions are nearly identical in nature, we have consolidated our response into one opinion.

Question: Whether the City of New Orleans may retain a third party, whose employees are not peace officers or probation officers, to bring juveniles who violate their conditions of release into custody.

Answer: The Louisiana Children's Code expressly gives the authority to bring a child into custody to a peace officer or a probation officer having territorial jurisdiction over the child, pursuant to a court order or warrant, or when the officer has probable cause to believe the child has committed a delinquent act. While the Code appears to give preference to peace officers and probation officers, a court may have the authority to authorize a third party provider, pursuant a bond agreement as a condition of release on bail and when accompanied by a bail bondsman, to deliver/transport a child into custody who has violated the conditions of release.

¹ Our office does not typically issue opinions to a single council member in the absence of a resolution from the Council body; however as we received the same request from Senator Harris, we are responding to both requests in one opinion response.

Pursuant to La. Ch.C. Art. 813(A), the court may issue an order directing that a child be taken into custody upon presentation to the court of a written statement of facts sworn to before an officer authorized by law to administer oaths, by a peace officer, probation officer, district attorney, or other person designated by the court alleging facts showing that there is probable cause to believe either that:

- (1) The child has committed a delinquent act.²
- (2) The child has violated the terms of his probation or otherwise has violated the terms of his release.

If a court issues an order directing that the child be taken into custody, this order may only be executed by a peace officer or the child's probation officer having territorial jurisdiction over the child. See La. Ch.C. Art. 813(C).

Under La. Ch.C. Art. 814, a child may be taken into custody without a court order or warrant by a peace officer or probation officer if the officer has probable cause to believe that the child has committed a delinquent act. Specifically, Art. 814 reads:

A. A child may be taken into custody without a court order or warrant by a peace officer or probation officer if the officer has probable cause to believe that the child has committed a delinquent act. When the officer has probable cause to believe that the child has committed a delinquent act, the officer, in lieu of taking the child into custody, may issue a verbal warning to the child.

B. If a child is taken into custody without a court order or warrant, the officer shall have the responsibility to either:

(1) Counsel and release the child to the care of his parents upon their written promise to bring the child to court at such time as may be fixed by the court.

(2) Follow the appropriate procedures set forth in Article 815.

C. If the officer does not release the child to the care of his parents, the officer shall promptly notify the child's parents that he has been taken into custody.

² Louisiana Children's Code Article 804(3) defines a "delinquent act" as an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there, or under federal law, except traffic violations. It includes an act constituting an offense under R.S. 14:95.8, an act constituting an offense under R.S. 14:81.1.1(A)(2), and a direct contempt of court committed by a child. "Delinquent act" shall not include a violation of R.S. 14:82, 83.3, 83.4, 89, or 89.2 for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. 14:46.3(E).

D. The officer shall immediately execute a written statement of facts, sworn to before an officer authorized by law to administer oaths, supporting the existence of probable cause to believe either that the child committed a delinquent act or that the child has violated the terms of his probation or otherwise has violated the terms of his release. This affidavit shall be submitted to the juvenile court. Within forty-eight hours after the child has been taken into custody, including legal holidays within the time computation, the court shall review the affidavit, and if it determines that probable cause exists, the child shall be held for a continued custody hearing pursuant to Article 819. If the court determines that probable cause does not exist, the child shall be released from custody. The provisions of this Paragraph shall not be construed to require the officer who executed the written statement to personally appear in court for any determination of probable cause in connection with the child being taken into custody.

E. The officer shall submit a report to the district attorney or an officer designated by the court to receive such reports. The report shall include:

- (1) The name, address, date of birth, sex, and race of the child.
- (2) The name and address of the parents, or spouse, if any, of the child.
- (3) A plain and concise statement of the facts and circumstances of the officer's taking the child into custody.
- (4) A plain and concise statement of facts and circumstances showing probable cause that the child committed a delinquent act.
- (5) A statement indicating whether the child was released, or escorted to a juvenile detention center, or placed in a shelter care facility.

F. If the child is released pursuant to Paragraph B or D of this Article, the report shall be submitted by the officer within seven days from the child's release. If the child is not so released, the report shall be submitted within twenty-four hours of the child being taken into custody.

Under La. Ch.C. Art. 817 and Art. 821, as a condition of release a court may impose various restrictions upon the child's travel, place of abode, association with other people, or employment during the period of this release **and** may also require bail or other security, in accordance with Art.823 through 826, as it finds necessary in to ensure the appearance of the child for subsequent and hearings and adjudication. In such instances, upon posting a bond or other security as required by the court **and** also agreeing to the conditions required for release, a child may then release from custody prior to adjudication. Pursuant to Art. 828, any failure to comply with the conditions of release imposed may constitute a breach of the bail agreement and the court may revoke the release and issue an order directing a child be returned to custody and when applicable may authorize a commercial surety obligated under a bail bond to take a child into custody.

La. Ch.C. Art. 817 - Release from custody

A. As soon as practicable after a child is received by a juvenile detention center or shelter care facility, the court or an individual or entity authorized by the court to make the determination, shall, upon determining it to be appropriate, release the child to the care of his parents or other relatives upon their written promise to bring him to court at such times as may be fixed by the court. The court may also impose reasonable restrictions upon the child's travel, place of abode, association with other people, or employment during the period of this release.

B. If the court finds that these conditions are insufficient to assure the presence of the child at later proceedings, the court may require the posting of bail in accordance with Chapter 6 of this Title.

C. If the court finds that release under neither Paragraph A or B of this Article is appropriate, it may authorize the continued custody of a child pending a hearing in accordance with Chapter 5 of this Title.

D. If custody is continued, an appropriate representative of the arresting agency shall be responsible for transporting the child to the adjudication or dispositional hearing, or both, and transporting the child back to the juvenile detention center or to such state or local facility as determined by the court through its order or judgment or disposition.

La. Ch.C. Art. 823 - Right to bail or other security for release

A. Except as provided for in Paragraph C of this Article, upon application by the child, parent, guardian, or legal custodian, a child shall have a right to bail for release from custody prior to adjudication by the deposit of a bond or other security as determined by the court and upon agreeing to any other reasonable conditions found necessary to insure appearance of the child for adjudication.

B. In any case when the child has appeared as ordered and otherwise met the conditions of the bail, the bail shall not be used to satisfy fines and costs except as specified by this Chapter or unless agreed to by the person who executed the bail.

C. A child charged with the commission of a delinquent act which would otherwise be deemed a capital offense under Title 14 of the Louisiana Revised Statutes of 1950 shall not be admitted to bail if the state shows that the proof is evident and the presumption great that the child is guilty of the capital offense. The court shall hold a contradictory hearing to resolve the child's application for bail in these circumstances.

La Ch.C. Art 824 – Criteria for setting bail or alternative forms of security

In determining the amount of bail, alternative security deposits, and conditions of release, the court shall consider:

- (1) The nature and circumstances of the delinquent act.
- (2) The weight of the evidence.
- (3) The child's prior delinquency record, if any.
- (4) The financial ability of the child and family to post money bail.
- (5) The probability of the child's appearance at any scheduled hearing, considering the following:
 - (a) The child has failed to appear at some previously scheduled hearing.
 - (b) The child has violated a condition of his probation or release.

- (c) The child has absented himself from home or his usual place of abode without the consent of his parent.
- (d) The child is habitually disobedient and is ungovernable and beyond the control of his parent.
- (e) The potential danger of release to the child and to the public as it affects the probability of appearance.

La Ch.C. Art. 825 - Types of security

If the court determines that some sort of security is required to insure the child's presence for the adjudication, it shall set bail and may require any of the following forms of security:

- (1) The child, parent, guardian, or legal custodian may have executed a bail bond in accordance with Article 314 of the Code of Criminal Procedure and deposit with the clerk the full amount of the bail secured by a deposit in cash or other authorized security, all of which shall be returnable upon satisfactory performance of the bail conditions.
- (2) The child, parent, guardian, or legal custodian may have executed a bail bond and may deposit with the court or its designee a sum of money equal to ten percent of the bail, but in no event shall such deposit be less than twenty-five dollars. When the conditions of the bail bond have been discharged, the clerk shall return to the accused, unless the court orders otherwise, ninety percent of the sum which had been deposited and shall retain as bail bond costs ten percent of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than five dollars.
- (3) The court may in the best interests of the child and his family agree to the deposit of other reasonable items of value or to the encumbrance of property as security to insure appearance for adjudication. These items will be returned to the child or other obligor upon the child's appearance for adjudication and the court's notice to the clerk for return.
- (4) The child and his parents may sign a personal bail undertaking without the necessity of furnishing a surety,

without depositing any special security, or without meeting any of the requirements for a personal surety as defined by Article 315 of the Code of Criminal Procedure.

La Ch.C. Art 826 – Conditions of release

A. A condition of every type of bail authorized in Article 825, and the only condition for which a security on the bail bond may be subject to forfeiture, is that the released child appear at any place and upon any date to which the proceeding is transferred or continued.

B. Every bail order shall also contain the condition that the released child not commit any further delinquent acts while at liberty on such bail bond or security deposit.

C. The court may also impose as a condition of release:

- (1) That the child regularly attend school.
- (2) That the child voluntarily participate in a pretrial drug testing program which meets the requirements of Article 336 of the Code of Criminal Procedure.
- (3) Any other condition of release that is reasonably related to assuring the child's appearance before the court.

D. A violation of any condition by the child or his parents, guardian, or legal custodian shall be considered as a constructive contempt of court.

La Ch.C. Art 827 – Judgment of release from continued custody

A. The court authorizing a child's release from continued custody shall issue an order containing bail provisions, if any, and a statement of conditions imposed upon the child. This order shall also set forth the date of the child's next court appearance.

B. The court shall advise the child and his parents, guardian, or legal custodian of the child's duty to appear as well as of any conditions specified in the order.

C. The child and his parent, guardian, or legal custodian shall sign the agreement of security and release and acknowledge the conditions of release imposed by the court.

La Ch.C. Art 828 - Violation of conditions of release

A. Any failure to comply with the conditions of release, including failure to appear before the court as scheduled, may constitute a breach of the bail agreement. Any such breach of the agreement constitutes constructive contempt of court and failure to appear constitutes the offense of bail jumping.

B. Where there is a breach of the bail agreement or the court is satisfied with good cause that the bail agreement should be modified, the court may order the child and his parent, guardian, legal counsel, and the surety, if any, to appear before the court, or the court may issue an order directing that the child be taken into custody and brought before the court.

C. When the child's parents, guardian, legal custodian, or the child's counsel has good cause to believe that the child has violated or will violate the conditions of the bail agreement, which violation will result in the child's failure to appear before the court as directed, he may report the breach or impending violation to the court, surrender the child, and request revocation of the bail agreement.

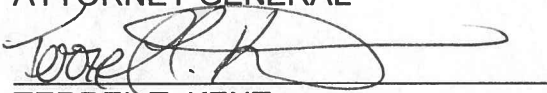
D. If a surety obligated under a bail bond, executed pursuant to Article 825(1), has good cause to believe that the child has violated or will violate the conditions of the bail agreement, which will result in the child's failure to appear before the court as directed, he may report the breach and apply to the court for an instant order for the child to be taken into custody. Unless authorized by the court, the surety shall not arrest or take the child into custody.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY:

A handwritten signature in black ink, appearing to read "Terrel T. Kent", written over a horizontal line.

TERREL T. KENT
ASSISTANT ATTORNEY GENERAL

LM: TK