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Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 1. Secretary's Office

§101. Access to and Release of Active and Inactive Offender Records

A. Purpose. This department regulation establishes the secretary's policy and procedures for access to and release of active and inactive offender records.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole and Director of Prison Enterprises. Each unit head shall ensure appropriate unit written policies and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all affected people.

C. Policy. The secretary's policy is access to and release of active and inactive offender records shall be governed in accordance with federal and state laws and by the procedures contained within this department regulation.

D. Definitions

Incarceration Verification (Letter of Incarceration)—a standardized form used to fulfill requests for letters of incarceration, pursuant to R.S. 15:714. The incarceration verification shall contain, at a minimum, the offender's or ex-offender's name, the dates of incarceration or supervision, the admission date, the release date, and the last location of incarceration. The incarceration verification is not to be used as a comprehensive criminal history record. The incarceration verification verifies the period of time an offender/ex-offender was incarcerated or on supervision and is related to the most recent felony charges recorded in the DPS and C system-of-record as of the date of the form's completion. The document is intended to support an individual's successful transition from incarceration or supervision as it relates to employment, healthcare, housing, transportation, or family reunification.

Law Enforcement Agencies—those agencies designed to enforce federal, state or municipal laws and who receive public funds as their primary source for operation, for example: sheriffs' offices, local police departments, and state police, departments of corrections, U.S. attorneys, district attorneys and the Federal Bureau of Investigation (FBI.)

Offender/Ex-Offender—anyone in the physical custody of the Department of Public Safety and Corrections (DPS and C) or under the supervision of the Division of Probation and Parole. For the purpose of this regulation, ex-offenders are those offenders who are no longer in the physical custody of the DPS&C or no longer under the supervision of the Division of Probation and Parole.

E. Release of Information and Records

1. The presentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the Board of Pardons and Committee on Parole, the prison record, and any other information obtained by the boards or the department, in the discharge of official duties, shall be confidential, shall not be subject to public inspection, and shall not be disclosed directly or indirectly to anyone, except as in accordance with this regulation.

2. All information pertaining to an offender's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature (including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender, and discharge date) shall be released to the general public at any time upon proper request.

> NOTE: This provision shall not apply to any public official correspondence which requests, or may be determined to be in support of, or in opposition to, the parole or pardon of an offender which was received prior to August 15, 1997.

3. Except as noted below, any communication with the Committee on Parole or Board of Pardons urging parole, pardon, clemency, commutation of sentence, or otherwise regarding an offender shall be deemed a public record and subject to public inspection.

> EXCEPTION: Any letter written by, or on behalf of, any victim of a crime committed by an offender under consideration for parole, pardon, clemency, or commutation of sentence, or any letter written in opposition to parole, pardon, clemency, or commutation of sentence shall be confidential and shall not be deemed a public record and subject to public inspection.
>
> This exception shall not apply to letters written by any elected or appointed public official, meaning: these letters are not confidential and may be released in accordance with Paragraph E.2 of this Section.

4. Information on a particular offender may be released without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the following:

a. Committee on Parole;

b. Board of Pardons;

c. governor;

d. sentencing judge;

e. district attorneys;

f. law enforcement agencies;

g. DPS and C personnel, including legal representatives and student workers;

h. appropriate governmental agencies or public officials, when access to such information is imperative for the discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means; and

i. court officers with court orders specifying the information requested.

5. Fingerprints, photographs, and information pertaining to arrests and disposition of criminal charges, as well as information regarding escapes, may be released to law enforcement agencies without special authorization.

6. The unit head or designee may approve the reading but not copying, of confidential information by the following:

a. social service agencies assisting in the treatment of the offender or ex-offender; or

b. approved researchers who have guaranteed in writing anonymity of all subjects.

NOTE: No information shall be given or shall be allowed to be read without the offender's or ex-offender's written consent to the release of the information.

7. The unit head or designee may approve the selective reading (but not copying) of information by a private citizen or organization aiding in the rehabilitation of, or directly involved in the hiring of, the offender or ex-offender under the following conditions:

a. It appears the withholding of the information would be to the offender's or ex-offender's disadvantage;

b. The requested information is necessary to further the rehabilitation or the likelihood of hiring the offender or ex-offender;

c. The requested information is not reasonably available through other means.

NOTE: No information shall be given or shall be allowed to be read without the offender's or ex-offender's written consent to the release of the information.

8. Each unit head or designee shall utilize a consent to release information for the purpose of releasing information pursuant to Paragraphs E.6 and 7 of this Section, and a copy shall be placed in the offender's master prison record.

F. Release of Information Regarding Registered Crime Victims

1. Both the information contained in a Victim Notice and Registration and the fact that a notification request exists are confidential. Any questions from outside the department about whether or not particular individuals have requested notification or whether or not there has been a notification request for particular offenders shall be referred to the Crime Victims Services Bureau.

2. See established policy and procedures for additional information.

G. Subpoenaed Records

1. Whenever records of an offender or ex-offender are subpoenaed, they shall be submitted to the appropriate court for a ruling to determine whether or not the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determinate in camera. If the court makes any one of the following determinations, the information shall be withheld:

a. the information is not relevant to the proceedings; or

b. the information was derived from communications which were obviously made in the confidence that they would not be disclosed; or

c. the confidentiality is essential to the future useful relations between the source and the recorder of the information.

2. Should the court authorize disclosure of the records in accordance with the subpoena, the party who caused the subpoena to be issued shall pay a fee for the cost of production of the records in accordance with R.S. 39:241, unless the court determines that the party has been granted pauper status in accordance with law. (See established policy and procedures for additional information.)

H. Records Not Subpoenaed Submitted to the Courts for Review

1. The department reserves the right to submit any record to the appropriate court for a ruling as to whether or not the information should be provided to the party requesting the information.

I. Access and Release of Medical Records

1. R.S. 44:7 and established policy and procedures shall govern access to and release of offender medical records.

J. Department's Access to Information and Records of Other Agencies

1. During the course of any investigation which the department is legally authorized to conduct, or for the purpose of rehabilitation of offenders or ex-offenders, the department shall have access to information and records under the control of any state or local agencies which records are reasonably related to the investigation or rehabilitation of the offender.

K. Offender Access to Records

1. Information contained in the offender's record shall be confidential and shall not be released to the offender except in accordance with this regulation.

2. An offender may have access to his master prison record, a sentence computation worksheet, any court documents that are related to the term of his instant incarceration, non-confidential unusual occurrence reports, disciplinary reports, and information related to educational achievements and participation.

3. Letter of Incarceration. An offender or ex-offender who was or is confined to any Louisiana prions, jail, work release facility, or correctional institution or who was or is under probation or parole supervision is entitled to receive, upon request, a Letter of Incarceration, which document shall provide documentation, verification, or proof the offender's or ex-offender's confinement in the prison, jail, work release facility, or correctional institution or supervision while on probation or parole.

a. Within seven days of receipt of a request, the offender or ex-offender shall be provided with a letter of incarceration, utilizing the Incarceration Verification.

b. The warden at each facility shall designate personnel responsible for completing the form for those individuals who are incarcerated at, or who release from, their respective facilities.

c. The probation and parole director shall designate personnel responsible for completing the form for those individuals who are on active supervision or who have completed supervision by the Division of Probation and Parole.

d. The chief of operations shall designate personnel responsible for completing the form for those individuals who are incarcerated at, or who release from, local-level basic jail guidelines (BJG) facilities.

e. If a releasing offender requests an Incarceration Verification, it shall be included in the transition document envelope for individuals releasing with them from secure custody, in accordance with established policy and procedures.

4. An offender may view and make notes of his State Police and/or FBI rap sheet, but shall not be given a copy.

5. An offender shall not have access to another offender's active or inactive records.

6. The following is a non-exhaustive list of additional information which shall not be accessible to the offender:

a. presentence reports;

b. post-sentence reports;

c. pre-parole reports;

d. clemency investigations;

e. information revealing or tending to reveal the identity of confidential informants;

f. admission summary;

g. correspondence from any non-departmental source directed solely to institutional officials;

h. correspondence or inquiries originated by institutional personnel;

i. investigations conducted by non-departmental agencies, for example: District Attorney, State Police, FBI, etc.;

j. investigations conducted by Corrections Services;

k. non-disciplinary, court-related institutional investigations; and

l. correspondence from victims or witnesses, including Victim Notice and Registration.

NOTE: Each unit head shall ensure written procedures are established for offenders to follow when requesting copies of documents from their records and the fees charged for such copies as stated in Subsection K. of this Section.

L. Information Requests

1. Verbal requests for information are acceptable to the extent a verbal request complies with this regulation. However, the unit head or designee shall reserve the right to require a written request before releasing any information. In that case, the individual or entity making the request shall certify in writing that they shall not release the information to any other individual or entity.

M. Fees

1. The fee schedule for copies of public records is set in accordance with established policy and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:7, 15:540-542, 15:546-548, 15:549(C), 15:574.12, 15:840.1, C.Cr.P. Art. 877 and 894.1.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of the Director, LR 2:107 (April 1976), amended by the Department of Public Safety and Corrections, Corrections Services, LR 30:75 (January 2004), repromulgated LR 30:264 (February 2004), amended LR 35:85 (January 2009), LR 47:888 (July 2021).

§105. Regulation of Air Traffic

A. Purpose. To state the secretary's policy regarding air traffic at correctional institutions.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that all incoming and outgoing aircraft to and from the institutions be monitored.

D. General Procedures

1. Individuals who have reason to come to the institutions via aircraft must request permission and receive authorization in advance, by telephone or in writing, to land at the institution - specifically to land on the airstrip at the Louisiana State Penitentiary or Dixon Correctional Institute.

2. Requests shall be directed to the warden's office during regular business hours, Monday through Friday. Calls received after hours or on weekends or holidays shall be handled by the duty officer.

3. The individual requesting permission to land must provide the following information:

a. reason for coming to the institution;

b. date and expected time of arrival;

c. number and names of persons aboard aircraft; and

d. type of aircraft, color and registration number.

4. The warden's office shall notify the control center of approved air traffic. The control center shall notify the designated prison tower officer(s) or other appropriate officers of the incoming air traffic, the expected time of arrival and description of the aircraft. The tower officer shall, in turn, inform the control center when the aircraft arrives. The control center shall then dispatch security to meet the incoming aircraft and to verify the identification of the occupants and provide ground transportation when necessary.

5. A log shall be maintained by security of all aircraft that lands or departs from an institution. This log shall contain the date, time of arrival, type of aircraft, color, registration number and the names of passengers.

6. Low flying aircraft attempting to land anywhere within the vicinity of any institution shall be reported to the control center immediately. The control center shall notify security and other appropriate personnel as designated by the warden.

7. Each warden is responsible for developing written procedures for handling unauthorized and/or emergency landing situations and for securing offenders in the immediate area.

8. Private aircraft may be stored on state property with the warden's approval. If approved, the owner shall maintain liability insurance on the aircraft at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 31:1097 (May 2005), amended LR 36:1017 (May 2010).

§109. Louisiana Sex Offender Assessment Panels

A. Purpose—to facilitate the identification and management of those offenders who may be sexually violent predators and/or child sexual predators and to develop written policy and procedures for the sex offender assessment panels consistent with statutory requirements, public safety and administrative efficiency. The provisions of this regulation shall apply to all sex offenders and child predators in accordance with Act no. 205 of the 2009 Regular Session who are released by any means from the department's custody on or after August 15, 2006.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, director of probation and parole, chairman of the board of pardons, chairman of the board of parole and the sheriff or administrator of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to identify those offenders who meet the statutory requirements of a sexually violent predator and/or child sexual predator through the sex offender assessment panel (SOAP) review process. The panels shall evaluate all sex offenders and child predators in accordance with the provisions of this regulation prior to their release from incarceration.

D. Definitions

Child Predator—a person who has been convicted of a criminal offense against a victim who is a minor as defined in R.S. 15:541(12).

Child Sexual Predator—a judicial determination as provided for in R.S. 15:560 et seq., for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (24) and who is likely to engage in additional sex offenses against children because he has a mental abnormality or condition which can be verified, or because he has a history of committing crimes, wrongs, or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children.

Court—the judicial district court where the offender was sentenced for the instant offense.

Criminal Offense Against a Victim Who is a Minor—a conviction for the perpetration or attempted perpetration, or conspiracy to commit an offense outlined in R.S. 15:541(12). Persons convicted of any of these offenses are considered *child predators* (see definition in this Subsection).

Judicial Determination—a decision by the court that an offender is or continues to be a child sexual predator or a sexually violent predator.

Mental Abnormality—a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others. Nothing in this definition is intended to supersede or apply to the definitions found in R.S. 14:10 or 14 in reference to criminal intent or insanity.

Regional Facility—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each warden of a regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPSC offenders housed in local jail facilities within their respective region.

Sex Offender—an offender committed to the custody of the Department of Public Safety and Corrections for a crime enumerated in R.S. 15:541(24). A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal or federal law equivalent to such offense. An individual convicted of the attempt or conspiracy to commit any of the defined sex offenses shall be considered a sex offender for the purposes of this regulation.

Sexually Violent Predator—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (25) and who has a mental abnormality or anti-social personality disorder that makes the person likely to engage in predatory sexually violent offenses.

E. Panel Composition and Guidelines

1. A total of three sex offender assessment panels are hereby created within the Department of Public Safety and Corrections. An executive management officer within the secretary's office shall serve as the administrator for all panels. Three executive staff officers, employees of the department (one for each of the three panels), shall serve as coordinator for an assigned panel. Each panel shall consist of three members as follows.

a. One member shall be the secretary or designee who shall be chairman.

b. One member shall be a psychologist licensed by the Louisiana State Board of Examiners of Psychologists who has been engaged in the practice of clinical or counseling psychology for not less than three consecutive years who is employed by the Department of Public Safety and Corrections or the Department of Health and Hospitals or a physician in the employ of the Department of Public Safety and Corrections or the Department of Health and Hospitals or under contract to the Department of Public Safety and Corrections whose credentials and experience are compatible with the evaluation of the potential threat to public safety that may be posed by a child sexual predator or a sexually violent predator.

i. Note—if the psychologist or physician is an employee of the Department of Health and Hospitals, the secretary of both departments shall consult and jointly select the member.

c. The warden (or deputy) at the state facility where the offender is housed or the warden (or deputy) of the regional facility for offenders housed in local jail facilities, or a probation and parole officer with a minimum of ten years experience or a retired law enforcement officer with at least five years of experience in investigating sex offenses may serve as the third panel member at the discretion of the secretary.

2. A majority of the members of each panel shall constitute a quorum. All official actions of a panel shall require an affirmative vote of a majority of the members of the panel.

3. Each panel shall meet at least once quarterly and upon the call of the chairman or upon the request of any two members.

4. Notwithstanding the provisions of R.S. 15:574.12, each panel shall review presentence reports, prison records, medical and psychological records, information and other data gathered by the staff of the division of probation and parole, the district attorney from the judicial district which prosecuted the case and information provided by or obtained from the victim(s) and the offender (which may include a personal interview), and any other information obtained by the department.

5. Panels shall have the duty to evaluate every offender who is currently serving a sentence for a conviction of a sex offense and/or child predator who is to be released from the custody of the department or a local jail facility, by any means, to determine if the offender may be a child sexual predator and/or a sexually violent predator in accordance with the provisions of R.S. 15:560 et seq.

F. Procedures

1. Each panel shall evaluate every offender currently serving a sentence for a conviction of a sex offense and/or child predator as stated in Paragraph E.5 of this Section and who is required to register pursuant to the provisions of R.S. 15:542 at least six months prior to the release date of the offender.

2. A panel's evaluation shall primarily be conducted by file review of all relevant information available to the department, including the information specified in Paragraph E.4 of this Section. Information and/or recommendations received from individuals other than those employed by the department or the local jail facility where the offender is housed shall be made in writing. Interview, telephone or video conferencing may be conducted at the discretion of the panel.

3. Panel decisions shall be recorded by individual vote. Official results shall be maintained by the respective panel coordinator. Each panel coordinator is responsible for maintaining a separate file on each offender reviewed by the panel.

4. If a panel affirmatively votes that an offender may be a sexually violent predator and/or a child sexual predator, the panel shall forward the determination and the recommendation for such designation to the sentencing court. The recommendation shall include the factual basis upon which the recommendation was based and shall include a copy of all information that was available to the panel during the evaluation process.

5. Upon receiving a recommendation from a panel, the sentencing court will review the recommendation that an offender is a sexually violent predator and/or a child predator.

6. If, after a contradictory hearing the sentencing court finds by clear and convincing evidence and renders a judicial determination that the offender is a sexually violent predator

or a child sexual predator, the offender shall be ordered to comply with the following:

a. supervision by the division of probation and parole, upon release from incarceration, for the duration of his natural life;

b. registration as a sex offender in accordance with the provisions of R.S. 15:542 et seq., for the duration of his natural life;

c. provide community notification in accordance with the provisions of R.S. 15:542 et seq., for the duration of his natural life;

d. submit to electronic monitoring pursuant to the provisions of R.S. 15:560.4 for the duration of his natural life; and

e. abide by the supervised release conditions enumerated in R.S. 15:560.3(A)(4) through (14), which may include treatment for persons convicted of sex offenses when deemed appropriate or ordered to do so by the offender's probation and parole officer as stated in R.S. 15:560.3(A)(10).

7. If a judicial determination is rendered that an offender is a sexually violent predator or a child sexual predator, the panel administrator shall notify the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities of the designation, as well as the division of probation and parole.

8. Upon receipt of notification from the panel administrator, the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities shall ensure that the sex offender pre-registration process is initiated in accordance with established procedures.

G. Electronic Monitoring of Child Sexual Predators or Sexually Violent Predators

1. Each offender determined by the court to be a child sexual predator and/or a sexually violent predator pursuant to the provisions of this regulation shall be required to be electronically monitored by the division of probation and parole in a fashion that provides for electronic location tracking.

2. Unless it is determined pursuant to established procedure that an offender is unable to pay all or any portion of the costs for electronic monitoring, each offender to be electronically monitored shall pay the cost of such monitoring.

3. The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

4. Only in the case that an offender determined to be a child sexual predator and/or a sexual violent predator is unable to pay his own electronic monitoring costs, and there are no funds available to the department to pay for such monitoring, may the requirements of electronic monitoring be waived.

H. Notification of Release

1. The office of adult services shall notify the office of state police when a child sexual predator and/or sexually violent predator has been released from imprisonment. The Office of State Police shall then send out an alert by means of a predator alert system to local law enforcement officials to inform them of such releases.

I. Appeal of Decision

1. An offender determined to be a sexually violent predator and/or a child sexual predator may petition the court for a review of this determination not more than once every three years, provided that the sex offender is currently receiving treatment from a court or treatment provider approved by the department, and good cause for such reconsideration is shown by the offender.

2. If the court grants the petition for review and should the department be notified of the rehearing and the court's decision, the division of probation and parole shall document the case accordingly.

J. Rights of Action

1. Any employee who participates in the Louisiana sex offender assessment panels review process pursuant to this regulation shall be immune from civil or criminal liability when the actions taken are in good faith in a reasonable manner in accordance with generally accepted medical or other professional practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:560 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1631 (August 2008), LR 36:534 (March 2010), LR 38:429 (February 2012).

Chapter 2. Personnel

§201. Equal Employment Opportunity (Includes Americans with Disabilities Act)

A. Purpose—to establish the secretary's commitment to equal employment opportunities and to establish formal procedures regarding reasonable accommodation for all employees, applicants, candidates for employment (including qualified ex-offenders) and visitors.

B. Applicability—deputy secretary, undersecretary, chief of operations, assistant secretary, regional wardens, wardens, director of Probation and Parole, director of Prison Enterprises, employees, applicants, candidates for employment (including ex-offenders) and visitors. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to assure equal opportunities to all employees, applicants, candidates for

employment (including ex-offenders) and visitors without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, disability or age.

1. Exceptions:

a. where age, sex or physical requirements constitute a bona fide occupational qualification necessary for proper and efficient operations;

b. where the implications of nepotism restrict such employment or employment opportunity; and

c. preferential hiring will be given to veterans in accordance with Chapter 22 of the Civil Service Rules.

2. Equal opportunities will be provided for employees in areas of compensation, benefits, promotion, recruitment, training and all other conditions of employment. Notices of equal employment opportunities will be posted in prominent accessible places at each employment location.

3. Equal access to programs, services and activities will be provided to all visitors. Advance notice of a requested accommodation shall be made during normal business hours to ensure availability at the time of the visit.

4. If any employee is made aware of or has reason to believe that a visitor to the unit is deaf or hard of hearing, the employee is required to advise the person that appropriate auxiliary aids and services will be provided. The employee should then direct the visitor to the unit ADA coordinator or designee. Likewise, such information must be forthcoming in response to any request for auxiliary aid or services.

D. Definitions

Age Discrimination in Employment Act (*ADEA*)—a federal law to protect individuals 40 years of age and over from arbitrary discrimination in employment practices, unless age is a bona fide occupational qualification. The state of Louisiana has passed similar legislation and the term *ADEA* will refer to both federal and state prohibitions against age discrimination in this regulation.

Americans with Disabilities Act (*ADA*)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to programs, services and activities of the department, as well as to employment opportunities.

Applicant—a person who has applied for a job and whose qualification for such is unknown.

Auxiliary Aids and Services—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Candidate—a person who has successfully passed the required test and/or meets the Civil Service minimum qualifications for the job sought.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs or activities of the department.

Equal Employment Opportunity (*EEO*)—the operation of a system of human resources administration which ensures an environment that will provide an equal opportunity for public employment to all segments of society based on individual merit and fitness of applicants without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, disability or age (except where sex, age or physical requirements constitute a bona fide occupational qualification necessary to the proper and efficient operation of the department).

a. The Equal Employment Opportunity Commission (EEOC) is the federal regulatory body for EEO related complaints and charges.

Essential Functions—basic job duties that an employee/applicant must be able to perform, with or without reasonable accommodation.

Ex-Offender—those offenders who are no longer in the physical custody of the DPS and C or no longer under the supervision of the Division of Probation and Parole.

Family and Medical Leave—leave for which an employee may be eligible under the provisions of the Family and Medical Leave Act of 1993.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major life activity must be long term.

Qualified Individual with a Disability—an individual with a disability (as previously defined herein) who can perform the essential functions of the job with or without reasonable accommodation.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc., that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

Seniority—a calculation of the number of years of service to the department and used in comparison to another

employee's or applicant's number of years of service to the department. Seniority may be used as a factor in employment decisions but may never be used as a substitute for age discrimination.

Visitor—for the purpose of this regulation, includes any non-departmental employee who is authorized to be on institutional grounds (i.e., volunteers, contractors, official guests, etc.).

E. Procedures

1. Coordination of ADA Matters

a. The secretary will establish and designate a headquarters ADA coordinator. This employee is charged with reviewing, recording and monitoring ADA matters for the department and will also advise and make recommendations to the secretary or designee regarding such matters as appropriate.

b. Each unit head will designate a primary unit ADA coordinator to coordinate unit ADA matters. All units will prominently post the name and telephone number of the unit ADA coordinator.

2. Initiation of Requests for Accommodation

a. A qualified requestor with a known disability of a long term nature should be accommodated where reasonably possible, providing the accommodation does not constitute a danger to the requestor or others and does not create undue hardship on the department or its employees.

NOTE: If a requestor is an employee, applicant or a candidate for employment, the requestor must be able to perform the essential functions of the job with the accommodation.

b. The ADA does not require that a request for accommodation be provided in any particular manner; therefore, the department is charged with having knowledge, or deemed with having knowledge, of the request regardless of the form of the request.

c. If an employee, applicant or candidate for employment informs anyone in his chain of command, human resources personnel or the unit ADA coordinator that he has difficulty performing his job duties or participating in a program or service due to a medical condition, the employee, applicant or candidate for employment is deemed to have made a request for accommodation.

d. If a visitor informs an employee that he cannot participate in the visiting process or any other program or service that the visitor is entitled to participate in, the visitor is deemed to have made a request for accommodation.

e. Once any request for accommodation has been received, either verbally or in writing, the person receiving the request should immediately relay the request to the unit ADA coordinator or designee.

f. An employee, applicant, candidate for employment (including ex-offenders) or visitor may complete a request for accommodation form. The requestor completing the form must forward it to the unit ADA coordinator for processing.

3. Accommodation Review Process

a. Upon receipt of the completed request for accommodation form, the unit ADA coordinator shall seek to determine the following:

i. if the medical condition is of a temporary or long-term nature;

ii. if additional medical information is needed from the requestor's physician or through a second opinion. At this point of the process, the unit ADA coordinator may inform the requestor that his doctor must complete an essential function form to determine the following:

NOTE: The Index of Essential Job Functions contains the Essential Functions Form for each job category used by the Department. The Index is maintained in each unit Human Resources Office.

(a). what specific symptoms and functional limitations are creating barriers;

(b). if the limitations are predictable, subject to change, stable or progressive;

(c). how the limitations impact the requestor's ability to perform the job, and for visitors, how the limitations impact the requestor's ability to fully participate in the activities and services to which the requestor is entitled;

iii. the condition impairs a major life activity.

b. If questions remain, staff may contact the requestor's treating physician directly.

c. The unit ADA coordinator shall ensure that a formal request is submitted on a request for accommodation form and provide assistance as needed.

d. Once the initial information is gathered, a dialogue between the requestor and unit ADA coordinator regarding resolution of the problem shall begin.

e. The discussion may include the following matters.

i. If the problem is of a temporary nature, use of FMLA or sick leave, Workman's Compensation or a temporary halt of some job duties may resolve the problem.

ii. If a second medical opinion is needed, this is to be performed at the department's cost with a physician of the department's choosing.

iii. If the medical condition is deemed to be a qualified disability, this decision shall be documented.

NOTE: Due to the nature of a disability, the disability may progress and require additional modifications at a later date.

iv. The goal is to reach a mutually acceptable accommodation, if possible. The secretary or designee shall make the final decision on what the actual accommodation will be.

f. An exception to the need to make an accommodation includes, but is not limited to the following:

i. not a qualified disability;

ii. threat to one's self or others. Considerations are as follows:

(a). duration of the risk involved;

(b). nature and severity of the potential harm;

(c). likelihood that potential harm will occur;

(d). imminence of the potential harm;

(e). availability of any reasonable accommodation that might reduce or eliminate the risk;

iii. undue hardship. The decision to use this exception may be made by the headquarters ADA coordinator only after consultation with the undersecretary. A written description of the problem with the requested accommodation and the difficulty anticipated by the unit should be sent to the headquarters ADA coordinator. Considerations are as follows:

(a). scope of the accommodation;

(b). cost of the accommodation;

(c). budget of the department;

(d). longevity of the accommodation;

iv. alteration would fundamentally change the nature of the program, service or activity.

4. Decision

a. Consideration should be given on a case-by-case basis.

b. The granting of leave can be an accommodation.

c. Once the decision to accommodate or not is made, the requestor shall be informed in writing of the decision of whether or not an accommodation will be made, the reason for the decision and the accommodation to be made, if applicable, including any specific details concerning the accommodation. The requestor must also be informed of the right to appeal the decision to the headquarters ADA coordinator.

i. For each decision, a copy of the packet of information containing the decision, all information used to reach the decision and all attempts to resolve the request shall be forwarded to the headquarters ADA coordinator. The unit ADA coordinator shall ensure that all requests for accommodation are properly and timely entered into the department's ADA database.

d. The original of the packet of information concerning the request with the decision shall be maintained in a confidential file for three years after the requestor has left the department's employ or notification has been received that a requestor no longer wishes to be afforded visitor status.

5. Appeal

a. The requestor has the right to appeal the unit's decision for the following reasons only:

i. the finding that the medical condition is not a qualifying disability;

ii. the denial of an accommodation; or

iii. the nature of the accommodation.

b. The requestor shall forward the appeal of the unit's decision to the headquarters ADA coordinator.

c. At the discretion of the headquarters ADA coordinator, additional information or medical documentation may be requested.

d. After consultation with the undersecretary, the headquarters ADA coordinator shall issue a written appeal decision to the requestor, a copy of which shall also be sent to the appropriate unit head and unit ADA coordinator.

e. No additional appeal will be accepted as the headquarters ADA coordinator's decision shall be final.

6. Recordkeeping

a. The headquarters ADA coordinator shall maintain records of all requests for accommodation made throughout the department.

b. To ensure uniform and consistent compliance with the provisions of this regulation, the headquarters ADA coordinator shall maintain and track statistics concerning all requests for accommodation from employees, applicants, candidates for employment and visitors and the nature and outcome of the accommodations requested.

c. If a pattern becomes apparent following review of the statistics, the headquarters ADA coordinator will seek to remedy and/or correct any problems noted and report same to the secretary.

7. Essential Job Functions

a. General Requirements

i. Employment candidates must complete an essential functions form at the time of interview for employment and/or return to employment. Employees may be required to complete an up-to-date essential functions form as appropriate and when deemed necessary by the unit head in order to ensure that the fundamental mission of the department is sustained.

ii. The index of essential job functions contains the essential functions form for each job category used by the department. The index is maintained in each unit human resources office.

b. Employee and Unit Specific Requirements. Employees may be required to complete an up-to-date essential functions form under the following conditions (not necessarily all inclusive):

i. exhaustion of sick leave and if applicable, exhaustion of FMLA entitlement;

ii. expressed inability to participate in a mandatory work-related activity (i.e., training) and/or to perform essential job functions; and/or

iii. appearance of the inability to perform essential job functions. When any of the described conditions exist, the unit head will require the employee to provide a new essential functions form and "medical certification" from the employee's health care provider so the employee's status under the ADA can be assessed. The medical certification form must include a prognosis, whether the condition is temporary or permanent, when the condition began, the expected date of return to duty, whether the employee is able to perform the essential functions of the job with or without accommodation and a description of the accommodation needed.

NOTE: In certain situations, a second opinion by an independent third party may be appropriate. This opinion will be at the unit's expense.

8. Conciliation Options for EEO and ADA Concerns

a. Should a requestor feel that he has experienced discrimination in any manner or not be satisfied with the results of the request for accommodation, he may seek conciliation through Corrections Services' grievance process, through the EEOC for employment related complaints and/or the U.S. Department of Justice (USDOJ) for issues not related to employment.

b. Requestors are encouraged to use the internal procedures to address and resolve complaints to the extent possible. Use of these internal procedures does not restrict a requestor from filing with the appropriate federal agency prior to exhaustion of the department's internal process(es).

9. Departmental Conciliation of EEO and ADA Matters

a. The headquarters Human Resources Section shall coordinate the department's response(s) to complaints and charges of discrimination regarding equal employment opportunity matters. Complaints/charges may be addressed through the internal grievance procedure when such a grievance has been filed and heard at the appropriate unit levels.

b. For formal charges generated by the EEOC or the USDOJ, the unit head and the applicable unit's attorney will develop the department's response and conciliation opinion (if applicable.) Any unit receiving a "notice of charge of discrimination" document from the EEOC or similar notice from the USDOJ shall forward the notice to the headquarters legal services upon receipt.

10. Employment Applications of Ex-Offenders

a. All applications for employment received from persons who are ex-offenders will be reviewed by a committee appointed by the secretary. The committee shall be composed of the chief of operations or designee, assistant secretary or designee and the headquarters human resources director or designee. Consideration will be given to the unit head's recommendation, the ex-offender's crime, sentence, institutional record and length of time free from other convictions. The committee's recommendations will then be submitted to the secretary or designee for review with the unit head.

b. Ex-offenders will not be eligible for employment in positions which require an employee to carry a firearm in the performance of duty. This restriction is based on applicable Civil Service job qualifications and state and federal law.

11. Training

a. The department shall provide comprehensive annual training for all departmental personnel regarding this regulation.

b. Additional information pertaining to EEO, ADA and ADEA is available in any human resources office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1308 (June 2000), amended LR 35:2194 (October 2009), LR 42:2191 (December 2016).

§203. Request for Accommodation

Attachment A

REQUEST FOR ACCOMMODATION Louisiana Department of Public Safety and Corrections Corrections Services	Institution: Division:
SECTION: 1 - Requestor Complete Sections 1, 2, and 3. Please PRINT all information. Return the completed request to the Unit ADA Coordinator.	
TO: (Facility/Office/Unit Head)	Date: (Month/Day/Year)
Requestor:	ID#
Address:	
Requestor: (Check only one) Employee ____ Inmate ____ Other _____ (Briefly Identify)	

SECTION 2: - Request is for what Area? Check only One.	
_____ Personal Disability Accommodation	_____ Structural Accessibility
_____ Program Participation	_____ Other - Specify
SECTION 3: - Briefly state the problem and the proposed solution - Use additional pages as needed.	
RESPONSE TO REQUEST	
Date Received: (Month/Day/Year)	_____Approved _____Modified _____Disapproved
Comments:	
AUTHORIZATION:	Date: (Month/Day/Year)
RFA Number - Assigned by ADA Coordinator	Entered/Logged Into Master File (Date) Copy sent to ADA HQ Coordinator (Date)

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:225, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1311 (June 2000).

§205. Medical Certification Form

Attachment B

MEDICAL CERTIFICATION FORM	
Employee Name:	Date:
Unit:	
Job Title:	
Telephone Number:	SS#
The following information is needed to assess the employee's request under the Americans with Disabilities Act.	
Type of Prognosis: (Please explain in detail)	
Is this Condition: _____Temporary _____ Permanent	
Date the Condition Began:	Date of Return to Work:
Does this condition allow the employee to perform the Essential Functions of his job? ____YES ____NO	
If not, please describe what type of accommodation is needed for which essential function.	
Other Comments:	
Employee's Signature:	Date:
Supervisor's Signature:	Date:
Health Care Provider's Signature:	Date:

Department of Public Safety & Corrections
Corrections Services
Headquarters ADA Office
P.O. Box 94304
Baton Rouge, Louisiana 70804

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:225, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1312 (June 2000).

§207. Drug-Free Workplace

A. Purpose—to provide a comprehensive program of substance abuse education and to establish guidelines for employee drug and alcohol testing.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, director of probation and parole and director of prison enterprises. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all concerned.

C. Policy. Substance abuse is a major contributor to criminal activity and is particularly detrimental to the department's mission to provide for the safety of employees and the public. Employees who engage in substance abuse may not be able to perform the essential functions of their positions and may be less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and offenders. Therefore, it is the secretary's policy to promote increased

employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

D. Definitions

CAP-FUDT-Certified Laboratory—a laboratory certified for forensic urine testing by the College of American Pathologists.

Collection Site—a designated place for the employee to provide a urine specimen to be analyzed for the presence of drugs.

Custodian of Records—a staff person responsible for the direct accountability of drug test results.

Drug Testing—

a. for the purpose of this regulation, drug testing programs shall be comprised of two testing components:

i. preliminary analysis (using the testing instrument available on the current contract issued by the procurement and contractual review division and approved by the secretary); and

ii. formal testing;

b. the application of formal testing may be contingent upon the results of the preliminary analysis. Alcohol testing consists only of administering the approved test and replicating any positive results.

Employee—any individual employed by or appointed to a position with corrections services (including student workers and temporary appointments and, for the purpose of this regulation, employees of Allen Correctional Center and Winn Correctional Center) or by an outside agency or provider who works in an institution or division or any individual under contract with corrections services who works in an institution or division.

a. (This does not necessarily confer "employment" status on independent contractors or employees of outside agencies, but serves to define a class of people who are subject to participation in the drug-free workplace program.)

Formal Testing—a second analytical procedure following a positive result on a preliminary analysis to identify the presence of a specific drug which is independent of the preliminary analysis using a different technique and/or chemical principle. Formal testing is conducted by a CAP-FUDT or SAMSHA-certified laboratory.

Medical Review Officer (*MRO*)—a licensed physician designated by the unit head who is responsible for receiving positive preliminary analysis results. The MRO must possess knowledge of substance abuse disorders and appropriate medical training to determine and evaluate an individual's positive result together with his medical history and other relevant biomedical information.

Offender—anyone in the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Preliminary Analysis—an immunoassay screen to detect the presence of drugs or metabolites using approved drug testing instruments. (See Paragraph H.1 for additional information.) The results of the preliminary analysis are to be used solely to indicate the need for additional formal testing, except for those who are being tested for pre-employment purposes. In this case, when the preliminary analysis is positive, it shall be sufficient cause to either remove the prospective employee from consideration for employment or appointment or be cause for conducting formal testing. If formal testing is conducted and the result is positive, this shall be cause for the prospective employee's elimination from consideration for employment or appointment.

SAMSHA-Certified Laboratory—a laboratory certified for forensic drug testing by the Substance Abuse and Mental Health Services Administration.

SAMSHA Guidelines—the mandatory guidelines for federal workplace drug testing programs as published in the Federal Register on April 11, 1988 (53 FR 11970), revised on June 9, 1994 (59 FR 29908), further revised on September 30, 1997 (62 FR 51118) and any further revised guidelines issued by SAMSHA.

Safety/Security Sensitive Position—any job which directly or indirectly affects the safety and security of others. For the purpose of this regulation, safety/security sensitive positions are those which involve direct contact with offenders and those having access to confidential information relative to the care, confinement or supervision of offenders.

Unit Head—the head of an operational unit, specifically, the undersecretary, warden, director of probation and parole and director of prison enterprises.

E. General. Each unit head is responsible for implementation of a substance abuse education program that requires compliance with this regulation. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances and from reporting to work or working while under the influence of alcohol, illegal drugs or impaired by prescription drugs.

F. Type of Testing

1. Pre-Employment. Drug testing shall be conducted prior to employment. (See Paragraph D.9 for additional information.) The unit human resources office is responsible for ensuring all new employees are given a copy of this regulation upon hire. All new employees shall sign and date the receipt of drug-free workplace regulation. A copy of this form shall be maintained in the employee's personnel file.

2. Reasonable Suspicion/Probable Cause. Reasonable suspicion/probable cause screening and subsequent testing, as appropriate, may be based on:

a. observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol

or when the odor of alcohol, marijuana smoke or other substance is present;

b. abnormal conduct or erratic behavior;

c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");

d. information provided by reliable and credible sources or independently corroborated;

e. newly discovered evidence that the employee tampered with a previous drug or alcohol test;

f. credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.

3. Post Accident/Incident. An employee shall be subject to drug and alcohol testing following an accident or incident that occurs during the course and scope of their employment if the employee's action or inaction may have been a causative factor and such incident:

a. involves circumstances leading to a reasonable suspicion of the employee's drug or alcohol use or impairment;

b. results in a fatality; or

c. results or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5).

i. An employee who is involved in an accident or incident that results in bodily injury or property damage may be subject to drug and alcohol testing.

ii. Should an employee refuse after being directed to submit to drug or alcohol testing as a result of an accident or incident, impairment shall be legally presumed under R.S. 23:1081 and state of Louisiana workers' compensation law benefits may be denied.

4. Rehabilitative. Staff testing positive without a legitimate explanation and whose employment is not terminated shall be subject to participation in a rehabilitation program. As a condition for returning to work after participating in such a program, the employee must agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are participating in a rehabilitation program, substance abuse aftercare program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.)

5. Random. All employees who occupy safety/security sensitive positions (as defined in this regulation) shall be subject to random drug testing. On a monthly basis, a list of employee numbers representing at least 5 percent of a unit's employees shall be selected at random by a computer-generated selection process. This list shall be provided to each institution, the Division of Probation and Parole, Division of Prison Enterprises and headquarters.

a. The Office of Information Services shall generate the list of employee numbers at the prescribed interval and ensure that the lists are distributed directly to each unit head.

i. (Alternatively, if a unit has a drug-testing services contract with a CAP-FUDT or SAMSHA-certified laboratory, the production of this list may be included as part of those services.)

b. Unit heads shall establish a policy for matching the employee numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.

c. All tests shall be conducted during the selected employees' work hours; no employee shall be called in on his day/night off specifically for the purpose of a random drug test.

d. The conduct of this program shall be in accordance with Subsection H of this Section.

6. Promotion. Drug testing shall be conducted prior to promotion.

G. Substances to be Tested. In accordance with R.S. 49:1005, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine in the random testing or preliminary testing process. This does not preclude testing for any other illegal drugs (e.g. methamphetamines), alcohol, or abused prescription medication if there is reasonable suspicion or probable cause.

H. Conduct of the Drug Testing Program

1. Preliminary Analysis

a. The testing instrument available on the current contract issued by the procurement and contractual review division and approved by the secretary shall be utilized as a preliminary analysis to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. The collection process shall be done on-site by unit staff who have received the appropriate training. (Formal testing may be utilized initially in lieu of preliminary analysis when the unit head or designee determines that this is the most efficient method.)

b. When the test produces a positive result, the MRO shall be notified. The MRO shall obtain a list of medication used by the employee at the time of the test and shall give the employee the opportunity to provide a medical history and/or discuss the test results.

c. Upon review and evaluation of all available information, the MRO shall determine the need for formal testing.

d. If formal testing is deemed necessary by the MRO, the employee shall be escorted to a collection site by a unit staff person.

e. Pursuant to Paragraph D.9 of this Section, it is not mandatory that the MRO review the results of a pre-employment preliminary analysis which results in a positive finding.

f. All employee preliminary testing shall be reported on the employee drug/alcohol field test.

2. Formal Testing

a. Formal testing shall be conducted by a CAP-FUDT or SAMSHA-certified laboratory and shall be performed in compliance with SAMSHA guidelines.

b. All urine specimens for drug testing shall be collected, stored and transported in strict accordance with SAMSHA guidelines. The cut off limits for drug testing shall also be in accordance with SAMSHA guidelines with the exception of initial testing for marijuana. The initial cut off level for marijuana shall be no less than 50 nanograms/ML and no more than 100 nanograms/ML as specified by the testing entity.

c. In the event of a positive result on a formal drug test, the laboratory's staff shall provide a copy of the results to the employee and to the unit head.

I. Conduct of the Alcohol Testing Program

1. Pursuant to established policy and procedures, employees are prohibited from reporting for or being on duty under the influence of alcohol or other intoxicants (or when the odor or effect is noticeable). Towards this end, employees may be required to submit to alcohol testing while on duty under circumstances defined in Subsection F.

2. A portable breathalyzer or other instrument and approved by the secretary shall be used to determine a violation of this regulation. In the event of a positive reading on the portable breathalyzer, a second test shall be conducted.

3. The alcohol test can be administered only by those persons specifically authorized by the unit head and who have been trained in the use of the testing instrument(s).

J. Training Required. A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace and indicators of substance use or abuse is required for all full time employees.

K. Record Keeping and Reporting Requirements

1. The custodian of records designated by each unit head shall maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed and a summary of the results of each type of test.

2. All test results shall be retained for a minimum of three years after the employee resigns, retires or is dismissed from employment.

3. Pursuant to R.S. 49:1012, all information, interviews, reports, statements, memoranda and/or test results received through the unit's drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. All such confidential information shall be maintained in a secure manner.

4. A monthly report utilizing the employee drug testing report of drug testing activities shall be compiled by the headquarters human resources office for submission in the C-05-001 report.

5. By November 1 of each year, each unit's business office shall submit a report to the headquarters human resources office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing and the effectiveness of the program. In conjunction with the undersecretary's office, the headquarters human resources office shall compile the department's annual employee drug testing report for submission to the Division of Administration annually by December 1.

L. Impaired Ability Due to Prescription or Over the Counter Medication

1. Employees in safety/security sensitive positions are required to notify their immediate supervisor when they are taking medication which may affect their ability to perform the essential functions of the job prior to the start of their work day/shift.

2. Upon notification, supervisors must immediately contact the unit's MRO or designee to determine if the employee can safely perform the job duties while under the influence of the stated medication.

3. Employees who may cause a direct threat to the safety and security of the public, staff or offender population while under the influence of such medication shall not be allowed to complete the workday and shall be placed in enforced sick leave.

M. Violation of this Regulation

1. The disciplinary penalties and guidelines shall be utilized in the administration of this regulation. Refusal to submit to testing may result in disciplinary action. Formal testing with positive results may be cause for initiation of disciplinary action.

2. When confirmed positive formal test results do not result in termination, referral to the employee assistance program or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate and may be made.

3. Any time there is a reasonable suspicion that any employee is impaired and could be a direct threat or cannot safely perform their essential functions due to the use of drugs (prescribed or other) or alcohol consumption, the employee shall be immediately removed from the employee's workstation and taken to a secure location (away

from any possible contact with offenders) for preliminary or formal testing.

4. If any employee tests positive for drugs or alcohol during either the random, preliminary or formal testing, the employee will be placed on appropriate leave status and escorted off the premises. If impaired, assistance shall be provided to ensure the employee is transported to a safe location. The employee shall not be allowed to return to work until the condition is resolved or no earlier than the next scheduled workday if the unit head or designee so approves the return to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Corrections Services, LR 25:522 (March 1999), amended LR 26:1308 (June 2000), LR 35:958 (May 2009), LR 39:3321 (December 2013), amended by the Department of Public Safety and Corrections, Corrections Services, LR 44:608 (March 2018).

Chapter 3. Adult Services

Subchapter A. General

§303. Searches of Visitors

A. Purpose. To establish the secretary's policy regarding searches of visitors at state correctional facilities and to set forth the procedures to be followed when searching visitors.

B. Applicability. Deputy Secretary, Chief of Operations, Assistant Secretary, Regional Wardens and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for implementing and notifying all affected persons of its contents.

C. Policy. The United States and Louisiana Constitutions prohibit unreasonable searches. Pursuant to R.S. 14:402, it is a crime to bring contraband into a correctional facility. Therefore, it is the secretary's policy to respect the prohibition against unreasonable searches while acting in the public interest to halt the flow of contraband into correctional facilities under the jurisdiction of the department through implementation of a policy regarding visitor searches. Such searches shall be conducted in a professional manner that minimizes indignity to the visitor while still accomplishing the objective of the search. Only staff trained in effective search techniques shall conduct searches.

D. Definitions

He/His—pronouns which include both male and female unless specifically stated otherwise.

Health Care Personnel—individuals whose primary duty is to provide health services to offenders in keeping with their respective levels of health care training, experience and authority.

Institutional Grounds—any tract of land owned by the state which is under the control of the Department of Public Safety and Corrections, Corrections Services.

NOTE: Parking lots are also part of the institutional grounds whether fenced or not.

Official Institutional Guest—includes, but is not limited to: law enforcement officers; employees of the department who are based at headquarters or other units; elected officials; approved news media representatives; members of the Parole Board and the Pardon Board; judges; magistrates; commissioners of the Nineteenth Judicial District Court and court reporters who accompany them; civil service referees and other institutional guests as designated by the warden. (It is anticipated that official institutional guests would primarily be under staff escort or observation while on institutional grounds.)

Personal Searches—

a. *Property Search*—a search of personal property brought onto institutional grounds including, but not limited to, vehicles, lunchboxes, purses, coats, jackets and briefcases.

b. *Pat-Down Search* (also *Frisk Search*)—a search of a fully clothed visitor for the purpose of discovering contraband. Pat-down searches are conducted by an employee of the same sex.

i. The visitor being searched may be required to empty his pockets, purse or any other item in his control where contraband may be stored or carried.

ii. The visitor being searched may be required to remove any wig or hairpiece being worn. This portion of the search must be conducted in a private place and out of the view of others.

iii. The visitor being searched may also be required to remove all outerwear (coats, jackets, hats, caps, belts, gloves, shoes, socks, etc.) in order for these items to be inspected. He may also be required to run his hands through his hair and to open his mouth for inspection. The visitor will not be required to remove articles of clothing, which are the visitor’s basic dress (shirt, pants, dress, skirt, etc.)

iv. The person conducting the search shall use his hands to touch the visitor being searched, through his clothes, in such a manner to determine if something is being concealed. If the person conducting the search discovers an unusual lump, bulge, etc., he may order the visitor being searched to disclose the source. Failure to comply with this order constitutes reasonable suspicion to conduct a general search or a strip search and/or to refuse the visit.

c. *General Search*—a search whereby a visitor is required to remove his clothing down to his underwear (shorts for male visitors and camisole or bra and panties for female visitors) in order that the clothing may be inspected for contraband and the visitor's person be visually observed. Visitors who claim they are not wearing underwear will still be required to remove their basic dress. This search shall be conducted in a private place by an employee of the same sex as the visitor being searched and out of the view of others.

d. *Strip Search*—a visual search of a visitor's nude body, conducted by employees of the same sex as the visitor.

Strip searches shall be conducted in a private place and out of the view of others. The visitor being searched may be required to bend over, squat, turn around, raise his arms and lift the genitals. (The foregoing list is exemplary, not exclusive.) The clothing of the visitor being searched shall be thoroughly inspected prior to returning it. Strip searches shall be conducted in a respectful and dignified manner.

e. *Visual Body Cavity Search (Strip Search/Genital Examination)*—a search having the characteristics of a strip search with the addition of a visual search of the anal and/or vaginal openings, whereby the visitor being searched is required to open the cheeks of the buttocks and/or the lips of the vagina. The visitor's clothing shall also be thoroughly inspected prior to returning it. Such searches shall be conducted by officers of the same sex as the visitor, in private and based on articulable factors that the visitor is carrying contraband.

f. *Body Cavity Search*—a search of a person's body cavities conducted by trained health care personnel only.

Probable Cause—articulable factors supported by reasonable suspicion that contraband is being concealed. Probable cause exists when facts and circumstances within the officer's knowledge and about which he has reasonable trustworthy information are sufficient to support a reasonable suspicion that an offense has been or will be committed and that contraband may be found at the place to be searched or on the visitor.

Reasonable Suspicion—suspicion supported by facts and circumstances which lead an employee of ordinary caution to believe that a visitor is concealing contraband in or on his body. Factors to consider in determining reasonable suspicion include, but are not limited to, the following:

a. nature of the tip or information;

b. reliability of the informant;

c. degree of corroboration of the tip or other information; or

d. other facts contributing to suspicion.

Visitor—any non-offender or non-employee of the department who is on institutional grounds for any authorized visit, or who is attempting to gain entry to the grounds for a visit, to conduct business with staff, for purposes of a tour or as a volunteer, etc.

E. When Searches Are Permitted

1. Property Search

a. Property searches of visitors may be conducted at any time when deemed appropriate by the warden or designee.

b. Property searches of official institutional guests may be conducted at any time, but would generally be conducted only when there is reasonable suspicion that the guest may be in possession of contraband.

2. Pat-Down Search

a. Pat-down searches of visitors may be conducted at any time when deemed appropriate by the warden or designee.

b. Pat-down searches of official institutional guests should be conducted only when there is reasonable suspicion that a guest may be in possession of contraband.

3. General Search. General searches of visitors or official institutional guests may be conducted when there is reasonable suspicion and/or probable cause directed toward a specific visitor. However, institutional officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts. Absent reasonable suspicion directed toward the specific individual, these searches are prohibited. (The consent of a visitor to such a search does not make the search permissible, absent reasonable suspicion directed toward the visitor.) The search shall be conducted by one officer and witnessed by one additional officer or staff member of the same sex as the visitor or official institutional guest and in a location out of the view of others. The warden or designee shall give prior written approval for this search.

a. The search shall be documented in the Visitor Shakedown Log by the employees who conducted the search. Additionally, the circumstances giving rise to the search and the search results shall be documented on an Unusual Occurrence Report (UOR.)

4. Strip Search. Strip searches of visitors or official institutional guests may be conducted when there is reasonable suspicion and/or probable cause directed toward the specific visitor. However, institutional officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts. Absent reasonable suspicion directed toward the specific individual, these searches are prohibited. (The consent of a visitor to such a search does not make the search permissible, absent reasonable suspicion directed toward the visitor.) The search shall be conducted by one officer and witnessed by one additional officer or staff member of the same sex as the visitor or official institutional guest and in a location out of the view of others. The warden or designee shall give prior written approval for this search.

a. A strip search shall be documented and reported as described in Paragraph E.3 of this policy.

5. Visual Body Cavity Search. A visual body cavity search of visitors or official institutional guests may be conducted when there is reasonable suspicion and/or probable cause directed toward the specific visitor. However, institutional officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts. Absent reasonable suspicion directed toward the specific individual, these searches are prohibited. (The consent of a visitor to such a search does not make the search permissible, absent reasonable suspicion directed toward the visitor.) The search shall be conducted in the presence of at least two officers of the same sex as the visitor or official institutional guest and in a location out of the

view of others. The warden or designee shall give prior written approval for this search.

a. A visual body cavity search shall be documented and reported as described in Paragraph E.3 of this policy.

6. Body Cavity Search. When a visual body cavity search creates reasonable suspicion and/or probable cause directed toward the specific individual, a body cavity search of the visitor or official institutional guest may be conducted. However, institutional officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts. Absent reasonable suspicion directed toward an individual, these searches are prohibited. (The consent of a visitor to such a search does not make the search permissible, absent reasonable suspicion directed toward the visitor.)

a. Trained health care personnel only shall conduct a body cavity search and perform any necessary extraction. The visitor or official institutional guest must be searched in a sanitary manner and in a sanitary location in accordance with standard medical practice. The warden or designee shall give prior written approval for this search.

b. A body cavity search shall be documented and reported as described in Paragraph E.3 of this policy.

F. Searches by Drug-Sniffing Dogs. Searches of a visitor’s or official institutional guest's property by trained drug-sniffing dogs may be conducted at any time.

G. When Contraband Is Not Found during a Search. The visitor or official institutional guest may proceed if the visitor or official institutional guest to whom reasonable suspicion and/or probable cause is directed consents to the search and no contraband is found.

H. When a Visitor or Official Institutional Guest Refuses to be Searched or Contraband Is Found during a Search. Should the visitor or official institutional guest refuse to be searched or contraband is found during a search, pursuant to C.Cr.P. Art. 215.2, the warden or designee may notify law enforcement officials and may detain the visitor or official institutional guest for the length of time necessary for law enforcement to arrive and arrest the visitor or official institutional guest or for the procurement of a search warrant. The detention shall not constitute an arrest.

I. Disposition of Contraband. Pursuant to R.S. 14:402(F), any contraband which is seized may be destroyed, donated to a charitable organization or put to lawful use within the institution, unless it is needed as evidence in a criminal prosecution. However, any money seized which is legal tender shall be placed in a fund at the institution to be used solely for the purchase of contraband detection and escape chase team equipment. A record of the disposition of all contraband shall be maintained for the greater of either three years or the completion of any criminal proceedings arising from the incident.

J. Suspension of Visiting Privileges. If contraband is found on any visitor or official institutional guest or if any visitor or official institutional guest refuses to be searched or refuses to allow his property to be searched as provided in Section 7. or violates any other institutional rules, that particular visit may be halted, the visitor or official institutional guest told to leave the institution and action taken as appropriate to suspend future visits to the institution.

1. If the offense is such that the warden desires to remove the visitor from the offender's visitor list (either indefinitely or for a fixed period of time) the established procedures shall be followed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:402.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Corrections Services, LR 12:443 (July 1986), amended LR 35:488 (March 2009).

§308. Americans with Disabilities Act

A. Purpose. To establish the secretary's commitment to compliance with the Americans with Disabilities Act and related legislation as it pertains to services for offenders and to establish formal procedures regarding reasonable accommodations for those offenders.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Director of Prison Enterprises and offenders who have a disability. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to provide offenders with access to housing, programs and services regardless of their disability to the extent possible within the context of the department's fundamental mission to preserve the safety of the public, staff and offenders and consistent with other classification variables that may affect custody, housing and program assignments. Equal access to programs, services and activities will be provided to all offenders based upon their classification.

1. Access to housing, programs and services includes the initiation and provision of reasonable accommodations including, but not limited to facility modifications, assistive equipment and devices and interpreter services. However, such accommodation should not constitute a danger to the offender or others and should not create undue hardship on the department or its employees.

2. Staff who are aware of or have reason to believe that an offender has a disability for which he may need accommodation are required to advise the unit ADA coordinator, who will evaluate the circumstances to determine if auxiliary aids and services and reasonable accommodations are required.

D. Definitions

Americans with Disabilities Act (ADA)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to programs, services and activities of the department.

Auxiliary Aids and Services—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs or activities of the department.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major live activity must be long term.

Offender—anyone committed to the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Qualified Interpreter—an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

a. An employee who signs "pretty well" or has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter pursuant to this regulation. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. A departmental employee should not be allowed to interpret if his presence poses a conflict of interest or raises confidentiality and privacy concerns. On occasion, an offender may possess the skill level necessary to provide interpreting services; however, the impartially concerns remain, and in many, if not most, situations, offender interpreters should not be used due to confidentiality, privacy and security reasons.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

E. Procedures

1. Initiation of Requests for Accommodation

a. A qualified individual with a known disability of a long term nature should be accommodated where reasonably possible. A request for accommodation may be filed orally or in writing.

b. An offender with a disability may be able to function in the unit without any accommodation other than that which may already have been provided. If not, the offender may request accommodation.

c. The ADA does not require that a request for accommodation be provided in any particular manner; therefore, the department is charged with having knowledge, or deemed with having knowledge, of the request regardless of the form of the request.

d. The department has in place a formal grievance mechanism through which an offender may seek formal review of a complaint relative to any request for reasonable accommodation.

e. An offender may submit a written request for accommodation through the ARP process or staff shall direct or assist the offender to write his request if the request is made verbally.

f. The ADA block on the ARP form shall be checked by the ARP screening officer and directed to the unit ADA coordinator.

2. Accommodation Review Process

a. Upon receipt of a request for accommodation, the unit ADA coordinator shall seek to determine the following:

i. if the medical condition is of a temporary or long-term nature;

ii. if additional medical information is needed. At this point of the process, the unit ADA coordinator may request that the unit medical director determine the following:

(a). what specific symptoms and functional limitations are creating barriers;

(b). if the limitations are predictable, subject to change, stable or progressive;

(c) how the limitations impact the offender's ability to fully participate in the activities and services provided;

iii. whether the condition complained of impairs a major life activity.

b. Once the initial information is gathered, a dialogue between the requestor and the unit ADA coordinator regarding resolution of the problem shall begin.

NOTE: It may take only a change in duty status to resolve the problem.

c. An exception to the need to make an accommodation includes, but is not limited to, the following:

i. not a qualified disability;

ii. threat to one's self or others. Considerations include:

(a). duration of the risk involved;

(b). nature and severity of the potential harm;

(c). likelihood the potential harm will occur;

(d). imminence of the potential harm;

(e). availability of any reasonable accommodation that might reduce or eliminate the risk;

iii. undue hardship. The decision to use this exception can only be made by the headquarters ADA coordinator after consultation with appropriate personnel. A written description of the problem with the requested accommodation and the difficulty anticipated by the unit should be sent to the headquarters ADA coordinator. Considerations include the following:

(a). scope of the accommodation;

(b). cost of the accommodation;

(c). budget of the department;

(d). longevity of the accommodation;

iv. alteration would fundamentally change the nature of the service, program or activity.

3. Decision

a. Consideration should be given on a case-by-case basis.

b. Once the decision to accommodate or not is made, the requestor must be informed in writing of the decision of whether or not an accommodation will be made, the reason for the decision and the accommodation to be made, if applicable, including any specific details concerning the accommodation. This decision shall be conveyed through the ARP First Step Process. The requestor shall also be informed of the right to appeal the decision through the ARP process.

i. For each decision, a copy of the packet of information containing the decision, all information used to reach a decision and all attempts to resolve the request shall be forwarded to the headquarters ADA coordinator. The unit ADA coordinator shall ensure that all requests for accommodation are properly and timely entered into the department's ADA database.

4. Appeal

a. The offender has the right to appeal to the second step in accordance with the ARP process.

b. The ARP response shall be issued in conjunction with the headquarters ADA coordinator and shall contain the relevant issues raised in Subparagraphs E.2.a, b and c.

5. Recordkeeping

a. The Headquarters ADA coordinator shall maintain records of all requests for accommodation made throughout the department.

b. To ensure uniform and consistent compliance with the provisions of this regulation, the headquarters ADA coordinator shall maintain and track statistics concerning all requests for accommodation from offenders and the nature and outcome of the accommodations requested.

c. If a pattern becomes apparent following review of the statistics, the headquarters ADA coordinator shall seek to remedy and/or correct any problems noted and report same to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 35:2189 (October 2009).

§312. Effective Communication with the Hearing Impaired

A. Purpose. To establish procedures to provide auxiliary aids and services whenever necessary to ensure effective communication with qualified individuals with disabilities.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Director of Prison Enterprises, offenders, employees and visitors who are hearing-impaired. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to ensure that communication with offenders, employees and visitors with disabilities is to the same extent as communicating with others. The department shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by the department where the auxiliary aids or services does not constitute an undue administrative and financial burden or fundamentally alter the service, program, or activity. Any male offender whose hearing cannot be restored to a "within normal limits" medical level with an auxiliary aid will be housed at either the Louisiana State Penitentiary (LSP) or Rayburn Correctional Center (RCC). Any female offender whose hearing cannot be restored to a "within normal limits" medical level with an auxiliary aid will be housed at the Louisiana Correctional Institute for Women (LCIW.)

D. Definitions

Americans with Disabilities Act (ADA)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to services, programs, and activities of the department.

Auxiliary Aids and Services (AAS)—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written

materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Departmental Personnel—for the purpose of this regulation, this shall include, but not be limited to, nurses, physicians, social workers, therapists, admitting personnel, security staff, probation and parole officers and any other administrative staff who have or are likely to have direct contact with offenders and/or visitors.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs and activities of the department.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major life activity must be long term.

Offender—anyone committed to the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Qualified Interpreter—an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

NOTE: An employee who signs "pretty well" or has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter pursuant to this regulation. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. A departmental employee should not be allowed to interpret if his presence poses a conflict of interest or raises confidentiality and privacy concerns. On occasion, an offender may possess the skill level necessary to provide interpreting services; however, the impartially concerns remain, and in many-if not most-situations, offender interpreters should not be used due to confidentiality, privacy and security reasons.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc. that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

TTY/TDD—a device that is used with a telephone or computer that has telephone text capability to communicate (by typing and reading communication) with persons who are deaf or hearing-impaired.

Visitor—for the purpose of this regulation, includes any non-departmental employee who is authorized to be on institutional grounds. i.e., volunteers, contractors, official guests, etc.

E. Procedures

1. Establishment of Auxiliary Aids and Services (AAS) Program. The department shall design and institute a program to provide auxiliary aids and services, schedule, announce and promote all training required, and draft, provide and maintain all reports as required by this regulation.

2. Designation of an official or office responsible for AAS.

a. Each unit ADA coordinator will be responsible for the AAS Program and shall maintain all necessary information about access to and the operation of the program.

b. LSP, RCC and LCIW unit ADA coordinators shall maintain a combination voice, TDD/TTY telephone line or dedicated TDD/TTY telephone line and shall publicize the purpose and telephone number broadly within the unit and to the public.

c. Each unit ADA coordinator shall provide appropriate assistance regarding immediate access to, and proper use of, the appropriate auxiliary aids and services available. It is the responsibility of the unit ADA coordinators to know where the appropriate auxiliary aids are stored, how to obtain services and how to operate them and shall facilitate maintenance, repair, replacement and distribution.

d. Each unit ADA coordinator shall maintain a recording system for inquiries regarding the provision of auxiliary aids and services and the response.

3. Provision of Appropriate Auxiliary Aids and Services

a. The department shall provide to offenders, employees and visitors who are deaf or hearing-impaired an appropriate auxiliary aid or service that may be necessary for effective communication as soon as practicable after determining that the aid or service is necessary.

b. The determination of which appropriate auxiliary aids and services are necessary and the timing, duration and frequency with which they will be provided shall be made by unit personnel, who are otherwise primarily responsible for coordinating and/or providing offender services, in consultation with the person with a disability. When an auxiliary aid or service is required to ensure effective communication, the unit shall provide an opportunity for an individual with a disability to request the auxiliary aid or service of the requestor's choice and shall give consideration

to the choice expressed, but shall have the final decision regarding the accommodation to be provided.

c. The initial offender communication assessment shall be made at the time of the intake interview at a reception and diagnostic center or other appropriate classification center within 48 hours of arrival. Properly trained staff shall perform and document a communication assessment to determine the offender's level of effective communication. This assessment shall be conducted by an outside provider or departmental staff, barring any unusual or emergency condition within 10 weeks from the initial assessment. The written assessment shall be made a part of the offender's master prison record.

i. During the initial communication assessment, each offender shall be given a Request for Accommodation Form. This form shall also be made available to the current offender population. Offenders are free to reject or to fail to request auxiliary aids and services, but failure to use the designated form does not relieve the reception center/institution of its duty to assess the offender, nor to inform the offender of the availability of appropriate auxiliary aids and services. Refusal or failure by an offender to complete or return the Request for Accommodation shall not constitute a violation of the ADA or of the Resolution Agreement by the department.

ii. If the initial assessment reveals that an offender's hearing is below normal limits as defined by the Occupational Safety and Health Administration, a male offender shall be transferred to LSP for continuation and completion of the classification process.

d. Each unit shall conduct a minimum of a yearly assessment of each offender with hearing or speech disability regarding the provision of appropriate auxiliary aids and services. If an intervening problem or adjustment is required, the offender shall request a medical call-out. Each unit shall maintain appropriate documentation that reflects the ongoing assessments. The information shall be filed in the offender's medical record.

4. Nothing in this regulation shall require that an electronic device or piece of equipment used as an appropriate auxiliary aid be used when or where its use may be inconsistent with other departmental regulations or unit policies or when use may pose security concerns. (For example, closed-captioned televisions are provided consistently for offenders with hearing disabilities with the same duration and frequency as televisions are provided to the other offenders classified in the same status. No offender will be provided a television if his status would not otherwise permit access.)

5. The department shall maintain an effective complaint resolution mechanism regarding the provision of auxiliary aids and services. Records shall be kept of all complaints filed and actions taken in response. All complaints shall be handled through each unit ADA coordinator and the grievance systems currently in effect. The warden designated to oversee the operation of the ADA Program at each institution or division shall conduct a meaningful review of this regulation on a semi-annual basis.

6. If an offender who is deaf or hearing-impaired does not request appropriate auxiliary aids or services, but departmental and/or unit personnel have reason to believe that the offender would benefit from appropriate auxiliary aids or services, the offender may be asked if the use of auxiliary aids would be beneficial and initiate the testing procedure without violating ADA.

F. Qualified Interpreters

1. The department shall provide qualified sign language or oral interpreters when necessary for effective communication with, or effective participation in, departmental programs and activities by employees, offenders and visitors who are deaf or hearing-impaired. In addition, the department shall offer qualified sign language interpreters to offenders who are deaf or hearing-impaired and whose primary means of communication is sign language and qualified oral interpreters to offenders who rely primarily on lip reading, as necessary, for effective communication.

a. The following are examples of circumstances when it may be necessary to provide interpreters:

i. initial intake and classification processing;

ii. regularly scheduled health care appointments and programs, such as medical, dental, visual, mental health and drug and alcohol recovery services;

iii. emergency health care where having an interpreter would not present an undue burden (e.g., interpreter can arrive at the scene quickly);

iv. treatment and other formal programming;

v. educational classes and activities;

vi. parole board hearings;

vii. disciplinary board hearings;

viii. criminal investigations (to the extent controlled by the department);

ix. classification review interviews;

x. grievance interviews;

xi. religious services; and

xii. formal internal investigations.

2. The department shall establish a contract with individual sign language interpreters or with interpretive agencies for hearing impaired offenders, employees or visitors who require this service, or shall provide other effective means to ensure that qualified interpreters or oral interpreters are provided within three hours of an unscheduled request and timely for scheduled requests. Additionally, as a back-up measure, the headquarters ADA coordinator shall maintain a list of all qualified sign language and oral interpreters (and their contact information) residing or working within a 50-mile radius of any unit

housing deaf or hearing-impaired offenders. The headquarters ADA coordinator shall provide this information to the unit ADA coordinators at LSP, RCC and LCIW.

NOTE: The department shall ensure by contract or other arrangements that all services, programs or activities provided or operated by contractors are in compliance with ADA. Contracts with those entities that fail or refuse to comply with ADA shall be subjected to formal termination proceedings.

3. Between the time an interpreter is requested and when an interpreter arrives, unit personnel shall continue to try to communicate with the person who is hearing-impaired to the same extent as they would communicate with a person without a hearing impairment, using all available methods of communication. However, in an emergency, seeking the services of an interpreter shall not mean that medical treatment will be delayed until the interpreter arrives. In addition, upon arrival of the interpreter, unit personnel shall review and confirm with the offender, employee or visitor all information received prior to the interpreter's arrival.

4. Offenders requesting auxiliary aids and/or services, after the initial assessment and which would require a medical evaluation, shall be charged the standard medical co-pay.

EXCEPTION: The offender may be assessed the total costs of replacement of an auxiliary aid if it is determined that replacement is a direct result of the offender's negligence/damage to property.

G. Hearing Aids and Batteries

1. Each unit shall purchase appropriate types of hearing aid batteries and keep them in stock in the medical supply room during the length of time an offender who wears a hearing aid is housed at that unit. Replacement hearing aid batteries shall be provided to offenders who request them on the first business day following receipt of the request. If the request is made on a weekend or holiday or a night after regular business hours, the replacement battery will be provided on the first standard business day following the request.

2. Each unit shall send offender hearing aids to a hearing aid repair company as soon as possible, but no later than 24 hours (excluding weekends and holidays) following a request for repair of the offender's hearing aid. The unit shall inform the offender in writing, as soon as possible, when his hearing aid was sent for repair and when it is expected to be returned by the repair company. The unit shall maintain written documentation of all hearing aid repairs, including detailed information regarding the vendor used, the date of the repair and the specific repairs performed. This information shall be submitted by each unit to the medical department at the Louisiana State Penitentiary quarterly for statistical compilation purposes.

H. Telephones

1. The department shall provide telecommunication devices for the deaf (TDDs/TTYs) for offenders who are deaf or hearing-impaired in a manner that ensures effective access to telephone services. In addition, the following is required so that those offenders who do hear will have access to TDDs/TTYs to communicate with family members or friends who are deaf or hearing-impaired.

a. Each unit shall make at least one TDD/TTY device available in each of the visiting areas where non-contact visits are conducted and the communication exchanged is accomplished over a telephone device. The unit can either permanently install the required TDD/TTY or make available a sufficient number of portable TDDs/TTYs for these visits.

b. Each unit shall provide a TDD/TTY to all deaf or hearing-impaired offenders residing in housing areas to the extent that pay telephones are available to other offenders. In those situations where the unit provides portable TDDs/TTYs, the housing officers shall provide them upon the offender's request, absent emergency circumstances such as lockdown.

c. The department shall take the necessary steps to provide offenders, with toll-free access to "800" numbers for telephone relay services and TDD/TTY operators. These numbers will be posted near all offender telephones, with notice that they are toll-free numbers. The telephone calls to the TDD/TTY operator will be provided free of charge, but any charges incurred to the receiving party will be handled as a standard offender telephone call. Thus, the offender or the receiving party shall be responsible for any long distance charges accrued.

d. Due to the fact that telephone calls placed via a TDD/TTY take longer than telephone calls placed using standard voice telephone equipment, the unit shall allow offenders needing TDD/TTY assistance to have 30 minutes per telephone call, barring any unusual circumstances.

2. Each unit shall ensure that at least one and no less than 25 percent of all offender telephones are equipped with volume control mechanisms and appropriate signs are displayed indicating the phone is volume controlled.

3. Each unit shall ensure that no less than 25 percent of all of its offender telephones are hearing aid compatible in the general population.

4. Each unit shall maintain records of all offenders who have been medically evaluated for any type of hearing impairment, the results of such assessment, date of any reassessment, any transfer or discharge of offenders assessed with a hearing impairment, requests for accommodations including the date requested and the determination and the provision of auxiliary aids or services and the date(s) provided. This information shall be submitted by each unit to the medical department of the Louisiana State Penitentiary quarterly for statistical compilation purposes.

I. Visual and Tactile Alarms

1. Where there are audible emergency alarms in visiting areas, each unit shall add visual alarms when an individual who is deaf or hearing-impaired is anticipated to spend significant periods of time in these areas.

2. Each unit shall place visual emergency alarms in rooms where offenders who are deaf may reside alone or

work alone to ensure that they will always be alerted when an emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply.

3. Where each unit has audible alarms in housing areas, the unit shall add visual signal devices, when necessary, to alert offenders who are deaf or hearing-impaired to announcements (e.g., roll call.)

J. Televisions

1. Each unit shall provide and maintain closed-captioned television decoders (or built-in decoder televisions) in television rooms to enable offenders who are deaf or hearing-impaired to enjoy the same opportunity for television viewing as that afforded to other offenders.

K. Training

1. Annual training regarding this regulation shall be provided by the department to all employees through the regularly scheduled ADA Training Program.

2. The training program shall be sufficient in duration and content to instruct a reasonable number of personnel in access to the AAS Program, use of the program, and sensitivity to the needs of the deaf and hearing-impaired offender population. Such training shall include:

a. topics relevant to the health care needs of deaf and hearing-impaired offenders, such as the various degrees of hearing impairment;

b. language and cultural diversity in the deaf community;

c. dispelling myths and misconceptions about persons who are deaf or hearing-impaired;

d. identification of communication requirements of persons who are deaf or hearing-impaired;

e. the unique needs and problems encountered by late-deafened individuals;

f. psychological implications of hearing loss and its relationship to interaction with hearing health care professionals;

g. types of auxiliary aids and services as required pursuant to this regulation;

h. the proper use and role of qualified sign language interpreters;

i. procedures and methods for accessing the AAS Program for providing interpreters;

j. making and receiving calls through TDDs/TTYs and the Louisiana Relay or other relay service providers;

k. third party resources which can provide additional information about people who are deaf or hearing-impaired; and

l. the existence of the department's complaint resolution process.

L. Recordkeeping

1. The Headquarters ADA Coordinator shall maintain records of all requests for accommodation made throughout the department.

2. The headquarters ADA coordinator shall maintain and track statistics concerning all requests for accommodation from offenders, employees and visitors and the nature and outcome of the accommodations requested.

3. If a pattern becomes apparent following review of the statistics, the headquarters ADA coordinator shall seek to remedy and/or correct any problems noted and report same to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 35:2190 (October 2009).

§313. Offender Mail and Publications

A. Purpose. To state the secretary's policy regarding offender mail privileges, including publications, at all adult institutions.

B. Applicability. Deputy secretary, undersecretary, chief of operations, regional wardens, and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its content to all offenders and affected employees.

C. Notice. Staff at each reception and diagnostic center or unit handling initial reception and diagnostic functions shall inform each offender in writing promptly after arrival of the department's rules for handling of offender mail, utilizing the notification of mail handling (Form C-02-009-A). This form shall be filed in the offender's master record.

1. The current offender population in DPS and C facilities is required to complete form C-02-009-A upon the issuance of this revision to department regulation No. C-02-009 "Offender Mail and Publications."

D. Policy. It is the secretary's policy that offenders may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), to prevent the commission of a crime, or to protect the interests of crime victims.

E. Definitions

DPS and C Facility—includes, for the purpose of this regulation, state operated prison facilities, and state privately operated prison facilities.

E-mail—a document created or received on an electronic mail system, including any attachments, such as word processing and other electronic documents, which may be transmitted with the message. *E-mail* is correspondence to or from an offender in an electronic format that is

provided through the department's contractor for offender services.

Farm Mail Correspondence—offender to offender mail when housed at the same institution.

Indigent Offenders—those who do not have sufficient funds in the appropriate account(s) at the time of their request for indigent services and/or supplies to fully cover the cost of the requested services or supplies.

Nudity—pictorial depiction of genitalia or female breasts (with the nipple or areola exposed).

Privileged Correspondence (includes mail to or from)—

a. identifiable courts;

b. identifiable prosecuting attorneys;

c. identifiable probation and parole officers, parole board and pardon board;

d. state and local executive officers;

e. identifiable attorneys;

f. secretary, deputy secretary, undersecretary, assistant secretary, chief of operations and other officials and administrators of grievance systems of the department;

g. local, state or federal law enforcement agencies and officials.

Publication—book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/ newspaper clipping, article printed from the internet, plus other materials addressed to a specific offender such as advertising brochures, flyers and catalogs.

Sexually Explicit Material—any book, pamphlet, magazine, or printed matter however reproduced, which contains any picture, photograph, drawing or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, bestiality and homosexuality. Explicit sexual material also includes that which contains detailed verbal descriptions or narrative accounts of sexually explicit conduct. (A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose.)

F. Offender Correspondence. Offenders may write and receive letters and e-mails subject to the following provisions.

1. Frequency. There shall be no limit placed on the number of letters or e-mails an offender may write or receive at personal expense and no limit placed on the length, language or content except when there is reasonable belief that limitation is necessary to protect public safety or institutional order, including restrictions relative to what may be reasonably stored in space provided and security. Offenders in segregation can write and receive letters on the same basis as offenders in general population.

2. Timely handling. All mail, incoming and outgoing, shall be handled without unjustified delay. Letters should generally not be held more than 48 hours and packages shall not be held more than 72 hours. This does not prohibit the holding of mail for offenders who are temporarily absent from the institution and does not include weekends and holidays or emergency situations. When mail is received for an offender who has been transferred to another institution or released, the institution where the mail is received should attempt to forward the mail to him. The collection and distribution of mail is never to be delegated to an offender. Mail will be given directly to the receiving offender by an employee.

3. Correspondence. An offender may write to anyone except:

a. a victim of any criminal offense for which the offender has been convicted or for which disposition is pending, or an immediate family member of the victim, except in accordance with specific procedures established by department regulations or as established by the warden in conjunction with the Crime Victims Services Bureau;

b. any person under the age of 18 when the person's parent or guardian objects verbally or in writing to such correspondence;

c. any person whom the offender is restrained from writing to by court order;

d. any person who has provided a verbal or written request to not receive correspondence from an offender;

e. any other person, when prohibiting such correspondence is generally necessary to further the substantial interests of security, order or rehabilitation.

4. Costs of Correspondence

a. Each offender shall pay personal mailing expenses, except an indigent offender. An indigent offender shall have access to postage necessary to send two personal letters per week, postage necessary to send out approved legal mail on a reasonable basis and basic supplies necessary to prepare legal documents. A record of such access shall be kept and the indigent offender's account shall reflect the cost of the postage and supplies as a debt owed in accordance with department regulations. Stationery, envelopes and stamps shall be available for purchase in the canteen.

b. E-mail shall only be available to offenders who have electronic postage capabilities through the department's contractor for offender services.

5. Outgoing General Correspondence and Farm Mail

a. Review, Inspection and Rejection. Outgoing general correspondence and farm mail shall not be sealed by the offender and may be read and inspected by staff. Outgoing e-mail may also be read by staff. The objectives to be accomplished in reading outgoing mail differ from the objectives of inspection. In the case of inspection, the objective is primarily to detect contraband. The reading of mail and e-mail is intended to reveal, for example, escape

plots, plans to commit illegal acts, or plans to violate institutional rules or other security concerns. Outgoing general correspondence and farm mail may be restricted, confiscated, returned to the offender, retained for further investigation, referred for disciplinary proceeding or forwarded to law enforcement officials, if review discloses correspondence or materials which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

v. letters or materials written in code or a foreign language when the offender understands English (unless the warden or designee determines that the recipient is not fluent in English);

vi. mail which attempts to forward unauthorized correspondence to a third party;

vii. threats to the safety and security of staff, other offenders or the public, facility order or discipline or rehabilitation (including racially inflammatory material);

viii. sexually explicit material;

ix. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Notice of Rejection. The offender sender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B). Any further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

c. Limitations on Restrictions. Any restrictions imposed on outgoing general correspondence and farm mail shall be unrelated to the suppression of expression and may not be restricted solely based on unwelcome or unflattering opinions. Communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or offender shall be rejected. This shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.

d. Procedures for Mailing. Outgoing general correspondence and farm mail shall be inserted into the envelope and left unsealed by the offender. All outgoing correspondence shall include:

i. a complete legible name and address of the party the correspondence is being sent to;

ii. the offender's name, DOC number, housing unit, and the name and mailing address of the institution which shall be written or typed on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing general correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution;

iii. outgoing e-mails shall be processed electronically and scanned for contents and phrases.

6. Incoming General Correspondence

a. Review, Inspection, and Rejection. All incoming general correspondence and e-mails must contain the return address of the sender, the name and DOC number of the offender and the name and mailing address of the facility. All incoming general correspondence shall be opened and inspected for contraband, cash, checks, and money orders and is subject to being read. Any stick on label or stamp may be removed if it appears to contain contraband. All incoming general correspondence may be rejected if such review discloses correspondence or material(s) which would reasonably jeopardize legitimate penological interests, including, but not limited to, material(s) which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. plans for criminal activity;

v. violations of this regulation or unit rules;

vi. letters or materials written in code;

vii. threats to the safety and security of staff, other offenders, or the public, facility order, or discipline, or rehabilitation, (including racially inflammatory material);

viii. sexually explicit material;

ix. greeting cards and post cards;

x. decorative stationary or stationary with stickers;

xi. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Incoming general correspondence containing any of the foregoing may be restricted, confiscated, returned to the sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

c. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence or e-mail rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B). Any

further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

7. Monetary Remittances

a. Incoming. Funds may only be sent to the facility and processed for hobbycraft purchases properly supported by a hobbycraft agreement in accordance with established policy and procedures.

b. For hobbycraft purchases, money from permissible sources may be accepted in the following forms:

i. postal, bank or commercially issued money orders;

ii. bank cashier checks;

iii. cash;

iv. personal checks.

c. All other offender funds shall be processed through the department's contractor for offender services in accordance with established policy and procedures.

d. Upon discovery of cash, multiple party checks, personal checks not for hobbycraft purchases or any other funds received in the mail for an offender, the offender shall be sent a monetary remittances notice of rejection (Form C-09-009-C) within three working days describing the contents of the mail, the date of its receipt and advising that he has seven working days to provide return postage. If return postage is not provided within seven working days, the postage will be provided by the unit. The offender's banking account will be charged if funds are available. If funds are not available, a debt owed will be established pursuant to department regulations.

8. Identification of Privileged Correspondence. It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, “identifiable” means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the offender’s intent in addressing the envelope as privileged mail.

9. All outgoing privileged correspondence shall include:

a. a complete legible name and address of the party the correspondence is being sent to;

b. the offender’s name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution;

c. outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Paragraph F.11 of this Section.

10. Incoming Privileged Correspondence

a. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the offender and the name and mailing address of the facility. All incoming privileged correspondence shall be opened in the presence of the offender to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. When the material is inspected and it is found to be bound or secured in any manner that would prevent the thorough inspection of the document, the offender shall have the option of allowing staff to take the document apart for adequate inspection or returning the material to the sender to require that the material be returned in a loose manner to allow for proper inspection. Additionally, offenders receiving legal material in the form of a compact disc shall have the option of paying for copies to be made by the facility or returning the disc to the sender in order to require that the material be converted to paper copies. Payment for paper copies of legal material from a compact disc shall be in accordance with established policy and procedures.

b. Incoming privileged mail may be opened and inspected outside the offender’s presence in the circumstances outlined in Paragraph F.11 of this Section.

i. Inspection and Rejection. When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and forwarded to the business office who will verify the legitimacy of the transaction in accordance with established policy and procedures.

ii. If material is found that does not appear to be entitled to the privilege or if any of the circumstances outlined in Paragraph F.11 of this Section. exist, the mail may be restricted, confiscated, returned to sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

iii. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the privileged correspondence notice of rejection (Form C-02-009-D) describing the reason for the rejection and advising that he has seven working days to determine the disposition of the correspondence. Rejections are appealable through the administrative remedy procedure.

iv. Accidental Opening. If privileged correspondence is opened accidentally, outside the presence of the offender, the envelope shall be immediately stapled or taped closed and the envelope marked “accidentally opened” along with the date and employee’s initials. An unusual occurrence report shall be completed.

11. Mail Precautions

a. The wardens and deputy wardens are authorized to open and inspect incoming and outgoing privileged mail outside the offender's presence in the following circumstances:

i. letters that are unusual in appearance or appear different from mail normally received or sent by the individual or public entity;

ii. letters that are of a size or shape not customarily received or sent by the individual or public entity;

iii. letters that have a city and/or state postmark that is different from the return address;

iv. letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue;

v. when reasonable suspicion of illicit activity has resulted in a formal investigation and such inspection has been authorized by the secretary or designee.

12. Offender Organizations. Offender organizations must pay the postage costs for all of their outgoing mail. All outgoing mail must be approved by the offender organization sponsor.

G. Procedures for Publications

1. Publications (see definition in Subsection E) may be read and inspected to discover contraband and unacceptable depictions and literature. Unless otherwise provided by the rules of the institution, all printed matter must be received directly from the publisher. Multiple copies of publications for any one individual offender are not allowed. Samples inserted in publications will be removed prior to delivery.

2. Newspaper and magazine clippings (xerox copies allowed) as well as articles printed from the internet are considered publications for the purpose of review pursuant to this regulation. However, they are not required to originate from the publisher. A limit of five clippings/articles may be received within a piece of regular correspondence and the quantity received may be further limited by what can be reasonably reviewed for security reasons in a timely manner. Multiple copies of the same clippings/articles for any one individual offender are not allowed. Inclusion of clippings/articles in regular correspondence may delay the delivery.

3. Refusal of Publications. Printed material shall only be refused if it interferes with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), or if the refusal is necessary to prevent the commission of a crime or to protect the interests of crime victims. This would include but not be limited to the following described categories:

a. security issues:

i. maps, road atlas, etc. that depict a geographic region that could reasonably be construed to be a threat to security;

ii. writings that advocate, assist or are evidence of criminal activity or facility misconduct;

iii. instructions regarding the ingredients or manufacturing of intoxicating beverages or drugs;

iv. information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of weapons, explosives, incendiaries, escape devices or other contraband;

v. instructs in the use of martial arts;

vi. racially inflammatory material or material that could cause a threat to the offender population, staff, and security of the facility;

vii. writings which advocate violence or which create a danger within the context of a correctional facility;

b. sexually explicit material:

i. it is well established in corrections that sexually explicit material causes operational concerns. It poses a threat to the security, good order and discipline of the institution and can facilitate criminal activity. Examples of the types of behavior that result from sexually explicit material include non-consensual sex, sexual molestation of other offenders or staff, masturbation or exposing themselves in front of staff and inappropriate touching or writing to staff or other forms of sexual harassment of staff and/or offenders;

ii. sexually explicit material can portray women (or men) in dehumanizing, demeaning and submissive roles, which, within an institutional setting, can lead to disrespect and the sexual harassment of female (or male) correctional staff. Lack of respect and control in dealing with offenders can endanger the lives and safety of staff and offenders;

iii. the viewing of sexually explicit material undermines the rehabilitation of offenders as it can encourage deviant, criminal sexual behavior. Additionally, once sexually explicit material enters an institution, it is impossible to control who may view it. When viewed by an incarcerated sex offender, it can undermine or interrupt rehabilitation efforts;

iv. publications that depict nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one time issues will not be allowed;

c. when screening publications for acceptability, the following categories shall be utilized:

i. category 1—presumption of non-acceptability;

ii. category 2—those that need to be reviewed on a case-by-case basis prior to allowing them to be delivered to the recipient and subject to review by the regional warden;

iii. category 3—presumption of acceptability;

d. publications can be added, deleted or moved from one category to another at the discretion of the secretary at any time;

e. when an institution receives a Category 2 publication which has not already been ruled on by the regional wardens, the mailroom shall send the offender a notice of pending review of publication (Form C-02-009-E) and forward the publication to the regional warden who shall determine acceptability. When an institution suspends delivery of an issue of a Category 3 publication, the regional warden is notified. The mailroom will send the offender a notice of pending review of publication (Form C-02-009-E.) The regional wardens shall determine if the publication should be moved to Category 2. When magazines are received that are not currently listed, the regional warden shall be notified;

f. procedures when publication is refused. The offender shall be notified within three working days of the refusal and the reason therefore on the publications notice of rejection (Form C-02-009-F) describing the reason for the rejection and advising that he has seven working days to determine the publication's disposition. Rejections are appealable through the administrative remedy procedure. The institution should retain possession of the disputed item(s) until the exhaustion of administrative and judicial review.

H. Procedures for Photographs, Digital or Other Images

1. Offenders shall not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.

2. Lingerie will not normally be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses alone may be sufficient cause of rejection regardless of the type of clothing worn.

3. Each institution shall develop a procedure that serves to reasonably restrict an offender's possession of multiple copies of the same photograph or digital or other image.

4. Hard backed and laminated photographs or digital or other images that are subject to alteration or modification may be rejected.

5. The term "photograph" includes other images such as those created by a digital imaging device or e-mails.

6. The offender shall be notified within three working days, in writing, of the photograph rejection and the reason therefore on the photographs notice of rejection (Form C-02-009-G) describing the reason for the rejection and advising that he has seven working days to determine the photograph's disposition. Rejections are appealable through the administrative remedy procedure.

I. Procedures for Death Row Offenders Correspondence

1. Pursuant to the provisions of Act No. 799 of the 2012 Regular Session, the following procedures provide for the review and inspection of incoming and outgoing correspondence of death row offenders to ensure no contractual arrangements are being contemplated or in effect that would allow the offender to profit from his crimes of notoriety.

a. All incoming and outgoing general correspondence, including packages, shall be inspected.

b. Incoming and outgoing privileged mail shall be inspected outside the offender's presence when there is reasonable suspicion that contraband is being sent to the offender or from the offender, or the offender is contemplating a contractual arrangement that would result in his receiving any type of profits or proceeds relative to his criminal acts. The warden or deputy warden shall authorize such inspection.

c. In the event it is determined that the offender is contemplating or has established a contractual arrangement, the information shall be immediately reported by the warden to the secretary who shall notify the attorney general's office pursuant to established procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A), Guajardo v. Esteile, 580 F.2d 748 (5th Cir.1978).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:4 (January 1979), amended LR 10:803 (October 1984), LR 11:360 (April 1985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 33:851 (May 2007), LR 38:830 (March 2012), LR 39:2281 (August 2013), LR 41:2665 (December 2015), LR 43:1187 (June 2017).

§314. Telephone Use and Policy on Monitoring of Calls—Juvenile

Editor's Note: §314, Telephone Use and Policy on Monitoring of Calls—Juvenile, has been moved to §705.

§315. Telephone Use and Policy on Monitoring of Calls

A. Purpose. To state the secretary's policy regarding the use of telephones by offenders and the monitoring of offender telephone calls at all adult institutions.

B. Applicability—Deputy Secretary, Chief of Operations, Regional Wardens and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for implementing and notifying all affected persons of its contents.

C. Policy. It is the secretary's policy that uniform telephone procedures, including the ability to monitor and/or record offender telephone calls to preserve the security and orderly management of the institution and to protect public safety, shall be adhered to at all institutions. Each institution shall offer offenders (including the hearing and/or speech impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any offender. Offenders with hearing and/or speech disabilities and offenders who wish to communicate with parties who have such disabilities shall be given access to appropriate auxiliary aids and services. It is further the secretary's policy to encourage offenders to maintain telephone communications while incarcerated in order to maintain family connections that will promote unification upon release.

D. Procedures

1. General

a. Each offender shall be assigned a personal identification number (PIN) which must be used when placing outgoing telephone calls; the PIN shall be the offender's DOC number.

b. Each offender will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal and legal calls. Each offender's outgoing telephone calls shall be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be entered by the contractor or by appropriately trained institutional staff. No offender shall place the telephone number of the family of another offender on his master list “except for verified members of his own family."

c. For new offenders, PIN and master list numbers shall be entered into the telephone system upon intake at the reception and diagnostic centers.

d. All offender telephone calls made through use of the offender telephone system shall be recorded and are subject to monitoring, this includes calls made to attorneys using the offender telephone system. (See Clause D.6.a.iii for additional information.)

e. A visible sign by each offender telephone shall place offenders on notice that all calls shall be recorded and are subject to monitoring.

f. A recorded message shall notify all parties that all calls shall be recorded and are subject to monitoring and that the call originated from a correctional facility.

g. Use of the offender telephone system shall constitute consent by all parties to the recording and/or monitoring of the call.

h. Upon the request of a telephone subscriber, the institution shall block a telephone number and prevent the subscriber from receiving calls from an offender housed in the facility. To accomplish a block of a particular number for all state facilities, the institution should contact the contractor to request that a universal block be put into place.

i. Offenders are allowed to make collect calls to cell phones. These calls must be set up as direct remit accounts with the department's phone service provider. This shall be done after approval is received from the department to add the cell number. Prepaid cell phones are not allowed to set up the direct bill accounts. Cell phones must have a provider from a major wireless company i.e., AT and T, Sprint, Verizon, T-Mobile, etc.

j. Disciplinary sanctions may include certain restrictions on phone privileges; however, all offenders shall be allowed two collect calls per month.

k. Any offender placed in segregation shall be allowed one phone call (either at the offender’s expense or via a collect call) within 24 hours of placement into a segregation housing unit.

2. Dormitory Housing (Minimum or Medium Custody)

a. Personal or Family Calls (routine). Collect telephone access should be available on a relatively non-restricted basis. The specific hours in the various living areas at the individual institutions shall be established by the warden of each institution. The warden shall communicate the telephone schedule to the offender population. A time limit should be established.

b. Personal or Family Calls (emergency). Requests for access outside of normally scheduled hours may be made through the dormitory officer, shift supervisor or other appropriate staff who decides if the justification the offender presents warrants the request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a schedule for legal calls. Offenders are generally able to place legal calls during the lunch period “non-working hours,” or after the afternoon count (when "normal office hours" are in effect for attorneys.) The warden shall establish an alternate procedure if this is not adequate.

3. Cellblock Housing (Maximum Custody)

a. Personal or Family Calls (Routine). Collect telephone access is generally located in the cellblock lobby. (In those situations where the telephone is on the tier, the offender may be allowed access during the shower or exercise period.) Lobby placement may restrict offender access. Therefore, posted policy may limit routine personal calls for offenders assigned to cellblocks. Access may vary by offender classification status. A time limit should be established.

b. Personal or Family Calls (Emergency). In all subclasses of maximum custody, the offender is required to request consideration for this type call from the warden's designee (shift supervisor, unit major, or program staff) who decides if the justification the offender presents warrants the

request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a procedure for placing legal calls on a reasonable basis during "normal office hours." Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by offenders on a weekly basis. All legal calls are to be logged with the attorney's full name, bar number, telephone number called, date, time and whether completed.

4. Incoming Calls

a. Personal or Family calls (Routine). Messages are not accepted or relayed on a routine basis for any offender.

b. Legal Calls. Offenders may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the offender may call from the dormitory during lunch or after work. If maximum custody, the offender may be allowed to call during "normal office hours" at a time which does not interfere with the orderly operation of the unit.

5. Emergency Messages/Important Telephone Calls Based upon Faith-Based Programs and Services

a. Emergency messages concerning a serious illness, injury, death or other family crisis, etc. shall be delivered to an offender by the chaplain or other person designated by the warden. Exceptions to this paragraph shall only be granted by the warden or designee.

b. Notification to an offender's emergency contact (or other appropriate person as the situation warrants) of an offender's serious illness, injury or death shall be made in a timely manner by the chaplain or other person designated by the warden.

c. Chaplains are allowed discretion to make telephone calls for offenders for the purposes of dealing with emergency matters.

6. Monitoring

a. Offenders shall be put on notice of the following:

i. telephone calls in housing areas shall be recorded and are subject to monitoring and that "use" constitutes "consent";

ii. it is the offender's responsibility to advise all other parties that conversations are subject to being monitored and/or recorded;

iii. telephone calls to the offender's designated attorney(s) will not be routinely monitored. Any telephone calls placed on offender telephones to attorneys shall be recorded but not monitored unless the warden determines a security need exists. Prior to examination of the content of the conversation with the attorney, the party requesting examination must put in writing the factors supporting the good cause and submit to the warden for approval. Only after approval has been received, shall the conversation be examined. Only investigators approved by the chief of operations shall be allowed to monitor the calls.

b. The telephone system will normally terminate a call at the end of the authorized period (normally 15 minutes); however, the warden or designee may authorize calls of a longer duration as circumstances warrant. Persons using the TDD system shall be allowed one-hour telephone calls.

c. Offenders shall not be allowed access to home telephone numbers nor be allowed to call any staff member of the department (including volunteers, contract workers, etc.) by any means whether through call forwarding, texting, web based or similar communication platforms or systems.

d. Only authorized (i.e., those who have been assigned a login/password) personnel approved by the warden or designee may monitor offender telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public shall be communicated to the warden and other law enforcement agencies.

e. Offenders being processed into the system through the reception and diagnostic centers shall be required to give "consent" in writing, acknowledging that they are aware that their telephone calls shall be recorded and are subject to monitoring. A copy of this "consent" shall be placed in the offender's master record.

f. Each institution's orientation manual shall include the information contained in this regulation as a means to notify the offender population of its contents and verbal notification shall be given during the orientation program. A sign shall be posted at each offender telephone which states the following information:

ATTENTION

This telephone has been electronically programmed to monitor and/or record telephone calls. By using this telephone, you consent to the monitoring and/or recording of your conversation. Telephone calls to your designated attorney(s) will not be routinely monitored.

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7. Remote Call Forwarding

a. Remote Call Forwarding (RCF) is a mechanism by which offenders may employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RCF in essence is an automated 3-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but

merely a number within the telephone switching equipment local to the facility where the offender is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded to unauthorized telephones. This forwarding is done through the normal 3-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or unauthorized activities since the end call location is not readily being identified, verified or its actual location known. This affords untold opportunity for offenders to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The offender population shall be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity shall result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system-wide block of the number shall be initiated pursuant to Subparagraph D.1.i. of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2849 (December 2003), LR 35:87 (January 2009), LR 37:599 (February 2011), LR 46:1395 (October 2020).

§316. Offender Visitation

A. Purpose—to state the secretary's policy regarding offender visitation and to set forth the process through which offenders may receive visits from persons outside the department in order to maintain contact and relationships in the community. The visiting process shall be conducted at each facility with as much uniformity and consistency as possible while considering the physical limitations and security needs of each facility.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its content to all offenders, affected employees and visitors.

C. Policy. The department understands the importance of visitation in the maintenance of an offender's family ties; visitation is an integral component of institutional management. The department recognizes that the majority of offenders will be released into the community and that the offender's eventual reintegration will be more effective if a visitation program permits the maintenance of social relationships. Visiting can improve public safety and encourage offender accountability. Authorized visitation is permitted by the department to facilitate an offender's institutional adjustment in accordance with the department's goals and mission. The visiting process shall be conducted in an atmosphere that is conducive for the safe, secure and orderly management and operation of the institution. Thus, the visiting process will not overly tax the institution's resources or its ability to maintain adequate control and supervision. In this matter, as in all others affecting institutional operations, safety and security are primary considerations. Any restrictions placed on visiting privileges pursuant to this regulation are rationally related to legitimate penological interests.

D. Definitions

*Attorney Visit—v*isit by an attorney or authorized representative, such as a paralegal, legal assistant, law clerk and investigator whose credentials have been verified.

Contact Visit—a visit in which the offender and visitor(s) are not physically separated.

Contraband—

a. for the purpose of this regulation, includes possession of any weapon, firearm, ammunition or any other item detrimental to the security of the facility, cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers, or global satellite system equipment), illegal drug or alcohol, a positive drug screen, failure to provide a urine sample within three hours of being ordered to do so, a positive breathalyzer test or refusal to submit to a drug or alcohol test;

b. in addition, any offender who attempts to destroy or hide contraband or in any way interferes in a correctional officer's attempt to seize contraband (i.e., flushing drugs down the toilet, pushing an officer to pass contraband to another offender, throwing the contraband over a fence or out of a window, etc.) will be deemed to be in possession of contraband for the purpose of this regulation. (In such cases, the correctional officer must explain the evasive conduct and the presumed contraband in precise and specific detail in the unusual occurrence report (UOR)).

Court Ordered Visit—provides for visitation rights of an incarcerated parent with a minor child.

Disrespect—hostile, sexual, abusive, threatening language or gestures, verbal or written, towards or about another person by a visitor.

Disturbance—conduct or activity which unnecessarily interferes with visitation operations, and/or which advocates, encourages, promotes or otherwise creates or poses a threat to the safety, security, health and good order of the institution, and/or the safety and security of offenders, staff or visitors. A visitor commits a disturbance if the visitor advocates, creates, engages in, maintains or promotes an

annoying condition or disorder characterized by unruly, noisy or violent conduct.

Employee—any person employed full-time, part-time or on temporary appointment by the department.

Excessive Contact—prolonged or frequent physical contact between a visitor and an offender that exceeds the brief embrace and kiss upon meeting and leaving and hand-holding. Excessive is not casual contact, but rather a pattern of contact beyond rule limits.

Immediate Family Member—includes the offender's father, mother, siblings, legal spouse, children, grandparents, grandchildren, aunts, uncles, and legal guardians including those with a "step," "half" or adoptive relationship and those persons with the same relationship of the offender's legal spouse and any others indicated on the offender's master record as having raised the offender.

Intake Status—the 30-day period of time following delivery of an offender to the custody of the department. During this time, staff conducts intake processing of the offender including, but not limited to, medical and mental health assessments, custody classification and identification of programming needs and assignments.

Minor Child—anyone under the legal age of majority (18 years).

Non-Contact Visit—a type of visitation whereby an offender and an approved visitor on the offender's visiting list are not permitted to be in physical contact during visitation and are generally separated by a physical barrier. Non-contact visit may also include video visitation (see video visitation definition below).

Picnic Visit—a type of visitation in an area of the institution set aside for picnicking.

Regular Visit—visitation whereby an offender and an approved visitor on the offender's visiting list are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with limited physical contact, consisting of a brief embrace and kiss upon meeting and leaving, hand-holding and holding of children.

Sex Crime Involving a Minor Child—any conviction of a sexual crime committed, attempted or conspired in which a minor child was involved, victimized or was the intended victim.

Special Visits—

a. a visit that is permitted at an hour and/or place at which visits are not normally permitted;

b. an extra visit by an offender and a person who is on the offender's approved visiting list that is permitted beyond the limits of the number of visits established by this regulation and institutional policy and procedures;

c. a visit with a person who is not on the offender's approved visiting list, such as out-of-state family members or friends;

d. a visit that is authorized for hospitalized or terminally ill offenders.

Suspension of Visiting Privileges—the taking away of visiting privileges for a determinate period of time due to either the visitor's conduct (which may include denial of the visitor at all department facilities) and/or due to the offender's conduct (which may include denial of all visits to that offender, excluding approved clergy, attorney visits and special visits).

Video Visitation—a method of visitation which allows offenders to visit through electronic media.

E. Treatment of Visitors

1. There shall be no discrimination in visiting. All visitors and offenders shall be provided equal opportunities in visiting in accordance with the offender's security classification and housing assignment.

2. Visitors shall be treated with courtesy at all times and shall not be subjected to unnecessary delay or inconvenience in accomplishing a visit.

3. All visitors with disabilities shall have readily accessible facilities and shall be reasonably accommodated as appropriate and to the extent possible within the context of the department's fundamental mission to preserve the safety of the public, staff and offenders. Advance notice of the accommodation requested shall be necessary to ensure its availability at the time of the visit.

F. Designated Visiting Areas

1. Visiting Room

a. Each facility, except reception centers (for offenders in intake status see Subparagraph H.1.b), shall designate at least one location that shall be used for offender visitation. This area(s) shall be in a location(s) that ensures the safety and security of the facility and the persons involved.

2. Visiting Children's Area

a. Wardens shall take into consideration the impact that visits with parents or grandparents in a correctional setting may have on young children, especially pre-school age children. When possible and taking into consideration the physical environment and space capabilities, the visiting area(s) shall make special accommodations to entertain and occupy the minds of these children. These accommodations may include a separate room adjoining the main visiting area which is bright, inviting and comfortable or a similar space within the main visiting room. Appropriate age books, games and toys may be available in these areas. At all times, children must be supervised by the offender who is being visited or the adult visitor who brought the children. The use of this type of area shall be accomplished without the need for additional staff to supervise the area.

3. Contact or Non-Contact Visiting Areas

a. Unit-specific operational procedures shall designate the location(s) for offender visitation and whether the areas shall permit "contact" or "non-contact" visits.

G. Application for Visitation

1. Application Process

a. In order for family members and friends to visit offenders, they must complete an application for visiting privileges. Offenders shall be responsible for sending applications to family members and friends they want to visit. It is the offender's responsibility to provide the correct name, address, date of birth, race and sex of all prospective visitors. Each warden shall designate a staff person to receive and process these applications.

b. All prospective visitors must complete the application and mail it to the facility the visitor wishes to visit. Parents/legal guardians shall be required to complete the application for minor children (under the age of 18) and shall sign the application on behalf of the minor child. Faxes of the application are not acceptable. It is important that the application be completed fully and all questions answered honestly. Failure to provide all requested information may result in a delay in the processing of the application or a denial of visiting privileges.

2. Criminal History Screening

a. A criminal history background check shall be conducted on each adult applying to visit an offender. In addition, approved adult visitors shall be re-screened for criminal history every two years in accordance with the provisions of this section. Screening may be conducted through one of the following methods:

i. criminal history background questionnaire to local law enforcement;

ii. CAJUN 2 inquiry;

iii. National Crime Information Center (NCIC); or

iv. Louisiana computerized criminal history (LACCH).

b. The warden retains the option of choosing the method of obtaining the criminal history that best meets the needs of the institution.

c. When an active criminal warrant is found, the application shall be reviewed and local law enforcement shall be notified of the information provided. The information on the applicant's criminal history is treated as confidential and shall not be released to the offender.

3. Notification of Approval/Denial

a. Once a decision is made either approving or denying the application, the offender shall be notified. The offender is responsible for advising applicants that their applications have been approved or denied. The applicant's approved application must be on file prior to visiting.

H. Eligibility for Visitation Privileges

1. Offenders

a. All offenders, (except those offenders in intake status see Subparagraph H.1.b) or as specifically provided herein, are eligible to apply for visits while confined in a departmental facility.

b. Offenders in Intake Status

i. Visitation will not be allowed while an offender is in intake status. If the intake process exceeds 30 days, the offender may request a special visit with immediate family members in accordance with the reception center's visiting procedures. Once an offender is removed from intake status, visitation with immediate family members may be authorized by the receiving facility at the request of an offender.

c. Offenders With No Established Visiting Record

i. Offenders entering an institution with no established visiting record should be granted tentative approval to visit immediate family members upon the request of the offender. Verification of relationship may be required. Exceptions must be approved by the warden or designee and be based upon legitimate security considerations.

d. Offenders Transferred to Another Facility

i. Offenders transferring to another institution should be authorized to visit with their approved visitors at the receiving institution unless it is demonstrated that the requirements/restrictions of this regulation were not previously adhered to in the approval process or unless the warden or designee at the receiving institution identifies the need to apply restrictions based upon current security considerations. (An offender shall be allowed to request a change in his visiting list when he first arrives at the receiving institution and at four-month intervals thereafter.)

2. Prospective Visitors

a. All persons, except as specifically prohibited in accordance with this regulation, are eligible to be considered for approval to visit an offender confined in a departmental facility upon application and request by the offender.

b. Visitation by Individuals with Criminal Conviction/Pending Criminal Charges

i. A person is ineligible to visit if the individual has been convicted of, and/or has criminal charges pending against him for the following crimes/criminal activities:

(a). introduction and/or supplying, attempting or conspiring to introduce or supply contraband;

(b). possession, control or delivery of an explosive device or substance, including attempt or conspiracy to do the same; or

(c). assisting an offender in an escape or unlawful departure from a correctional facility, including an attempt or conspiracy.

c. Visitation by Victims

i. Visits from the offender's direct victim(s) are prohibited except in accordance with established procedures. At the warden's discretion, this policy may be waived on a case-by-case basis.

d. Visitation by Ex-Offenders/Parolees/Probationers

i. A person who has been convicted of a felony, who has not been finally discharged from an institution or from probation or parole supervision for more than two years without an intervening criminal record shall be denied approval to be placed on an offender's visiting list. In addition, any person who in the previous five years had three or more felony charges (regardless of disposition) shall be considered ineligible to visit or, if already an approved visitor, shall have visiting privileges revoked.

e. Visitation by Staff/Ex-Employees

i. Visitation by employees of the department is reserved for immediate family members only. Requests to visit an incarcerated family member shall be submitted to the requesting employee's warden or designee for consideration. A departmental employee or an ex-employee may be denied approval to visit if such denial is deemed by the warden or designee to be in the best interest of the institution.

f. Exceptions

i. Exceptions to the provisions of this Section, including the approval of former offenders as visitors, may be specifically authorized by the warden or designee.

I. Visits with Minors

1. Restriction on Visits with Minors

a. Offenders who have a current or prior conviction for a sex crime involving a minor child family member, or who have a documented history of sex abuse with a minor child family member, are ineligible to visit with any minor child, including their own biological or step-child (see Subparagraph I.1.c and Paragraph 2 for possible exceptions).

b. Offenders who have a current or prior conviction for a sex crime involving a minor child who is not a family member are ineligible to visit with any minor child. However, at the warden's discretion, such offenders may be authorized to visit with their own biological child. The legal guardian shall submit a written request and shall accompany the minor child during the visit. If approved by the warden, the visit may be contact or non-contact at the warden's discretion. The legal guardian may be permitted to name another individual (other than the legal guardian) who is on the offender's visiting list to accompany the minor child for a visit. The legal guardian shall provide a written, notarized statement authorizing a specific individual to accompany the minor child. If approved by the warden, the visit may be contact or non-contact at the warden's discretion (see Subparagraph I.1.c and Paragraph 2 for possible exceptions).

c. Visits for offenders who have successfully completed or are participating satisfactorily in sex offender treatment may be considered by the warden. (Treatment staff who teach the sex offender class shall be involved in the decision-making process for this type of visit.) The legal guardian shall submit a written request and shall accompany the minor child during the visit. The legal guardian may be permitted to name another individual (other than the legal guardian) who is on the offender's visiting list to accompany the minor child for a visit. The legal guardian shall provide a written, notarized statement authorizing a specific individual to accompany the minor child. If approved by the warden, the visit may be contact or non-contact at the warden's discretion.

d. Minor children may be prohibited from participating in non-contact visits at the discretion of the warden.

e. Each visit with a minor child shall be documented in the offender's visiting record.

2. Court-Ordered Visitation

a. Pursuant to the provisions of Act No. 383 of the 2014 Regular Session, a court may authorize visitation with an incarcerated parent. As part of such visitation order, the court shall include restrictions, conditions and safeguards as are necessary to protect the mental and physical health of the child and minimize the risk of harm to the child. In considering the supervised visitation of a minor child with an incarcerated parent, the court shall consider the best interests of the child.

b. In cases of court ordered visitation, the department cannot deny the visit. However, such visitation shall be in conformance with all other rules and regulations that pertain to visiting.

c. For the purpose of this Section, "court" means any district court, juvenile court or family court having jurisdiction over the parents and/or child at issue.

J. Establishing and Maintaining Visiting Lists

1. Approved Visitors

a. Offenders may be permitted a maximum of 10 approved visitors on their respective visiting lists. The initial request for visitors shall be used by offenders to request visitors.

b. At the discretion of the warden or designee, an offender participating in a special recognition program may be allowed to have up to a maximum of 15 approved visitors placed on his visiting list.

c. The name of each approved visitor shall appear on the offender's visiting list; however, legal advisors, one approved religious advisor and minor children shall not be counted toward the maximum number of approved visitors, although the names of the legal advisors and one approved religious advisor shall still appear on the list. The names of the minor children need not appear on the list.

d. Except as noted in Paragraph I.1 relative to offenders who have a current or prior conviction for a sex crime, minor children may visit on any of the regular visiting days when accompanied by an adult visitor on the offender's approved visiting list. Both visitors must be visiting the

same offender at the same time. Exceptions to being accompanied by an adult may be specifically authorized by the warden or designee, including, but not limited to, the following:

i. minor spouse;

ii. emancipated minors (judgment of emancipation required as proof); or

iii. minors visiting as part of approved institutional programs such as school groups, church groups, parenting groups, etc.

2. Changing the Visiting List

a. Each offender shall be allowed to request changes (additions, deletions, substitutions) to his approved visiting list every four months.

b. A request for changes to approved visiting list shall be made available to offenders to request changes to their approved visiting list.

K. Visiting Rules

1. Visiting Privileges

a. Visitation is a privilege and not a right. Violation of rules may result in termination of the visit, loss of the offender's visiting privileges, banning of the visitor from entering the institution or its grounds and/or criminal charges as circumstances warrant.

2. Unit-Specific Visiting Procedures

a. This regulation and the department's standard guidelines for visitors are available on the department's website at www.doc.louisiana.gov. Information specific to each facility is also posted on the department's website (i.e., driving directions, visiting days/hours, special visits, etc.).

b. Each warden shall be responsible for ensuring written information regarding unit specific visiting procedures is made available to offenders within 24 hours following the offender's arrival at the institution. At a minimum, the information shall include, but is not limited to, the following:

i. address and phone number of the institution;

ii. directions to the institution;

iii. information regarding local transportation;

iv. days and hours of visitation;

v. approved dress code;

vi. authorized items;

vii. rules for children and special visits.

3. Visitor Identification Requirements

a. All visitors age 18 years and older shall be required to produce valid picture identification before entering the visiting area each time they visit. The only forms of identification accepted by the department are:

i. a valid driver's license from the state of residence;

ii. a valid state photo identification card from the state of residence;

iii. a valid military photo identification card (active duty only);

iv. a valid passport.

4. Refusal/Requests for Removal

a. Offender Refusal to Visit

i. An offender may refuse to see a visitor; however, the offender shall be required to sign a statement to that effect and the statement shall be filed in the offender's master record. Should the offender refuse to sign a statement, documentation of the refusal shall be placed in the offender's master record.

b. Requests for Removal

i. A person may be removed from the offender's approved visiting list at his own request or at the request of the offender. If a visitor requests such removal, the visitor must wait six months before applying to visit the same or another offender. Exceptions may be made for immediate family members.

5. Visitors may only be on one offender's visiting list.

a. A visitor can be on only one offender's visiting list per institution unless that visitor is a family member of more than one offender. The burden of proof and documentation shall be the responsibility of the offender and his family. Visitors may request that they be removed from one offender's visitor's list and placed on another offender's list in accordance with this regulation.

6. Number, Duration and Conditions of Visits

a. Approved visitors should be allowed to visit the offender at least two times per month.

b. While a two-hour visit is optimum, each warden or designee retains the discretion to determine the duration of visits, as well as the days and hours on which they may occur. Available space and staff shall determine visiting lengths.

c. Each warden or designee retains the discretion to determine the number of visitors who may visit an offender at one time. Family visiting and contact visits are to be permitted to the extent possible.

d. All visitors are to be informed in writing of the rules governing visiting (see "Guidelines for Visitors"). Visiting guidelines shall be conspicuously posted in the visiting areas and are made available to prospective visitors on the department's website at www.doc.louisiana.gov.

e. Visitors are allowed to bring only enough cash money for vending machines and/or concessions into the visiting area. Financial transactions for offenders shall be in the form of cash and/or credit or debit card payments made at the unit's visitor center kiosk machines provided by the

department's contractor for offender services for use by the offender's approved visitors. All other money from permissible sources may be accepted and processed in accordance with established procedures.

NOTE: Contractor fees shall apply to this transaction.

f. Any visit may be terminated if the offender or visitor violates the rules governing visiting.

g. Where available, picnic visits are authorized as approved by the warden or designee. The warden or designee shall authorize foods that will be allowed for picnics.

7. Special Visits

a. Special visits may be granted, with the prior approval of the warden or designee, on a case-by-case basis. Unit operational procedures shall specify the parameters for such approval, with consideration given to sources of transportation, accessibility to the facility by visitors, the distance a visitor must travel and any special circumstances.

8. Dress Code for Visitors

a. Visitors shall be made aware that visiting areas are designed to cultivate a family atmosphere for family and friends of all ages. Visitors shall dress and act accordingly. Visitors shall wear clothing that poses no threat to the safety, security, good order and administrative manageability of the facility. See "Guidelines for Visitors" for specific dress standards.

L. Video Visitation

1. Video visitation is considered a special visit and shall be requested and approved in accordance with Paragraph K.7 and shall be in conformance with all other rules and regulations that pertain to visiting.

2. When transportation is provided during emergencies and extreme circumstances, offenders may be allowed to visit via video connection capabilities.

3. The warden or designee shall ensure that all laptops, laptop connection cards or wireless internet connection cards are maintained in a secure location that is not accessible to offenders and other unauthorized or untrained persons when not in use.

4. The warden or designee may approve the set-up and use of video visitation and shall ensure that a staff member or approved volunteer is assigned to monitor the visit at an appropriate, conducive visitation area.

5. The warden or designee shall be responsible for ensuring that staff and/or volunteers are present at the remote location. Staff and/or volunteers at the remote location shall document that they and the approved visitor(s) are the only individuals present for the video visitation.

6. Any other person present is required to have written permission from the warden or designee to participate in the video visitation process.

7. Violations occurring during video visitation are subject to disciplinary action, suspension of visiting privileges and/or possible civil or criminal prosecution, depending on the nature of the offense.

8. This form of visiting involves open internet capability requiring on-site supervision at both locations when in use and does not involve or allow connection to the department's network.

M. Visitation Records

1. Each facility shall maintain a record for each offender documenting all of the offender's visits. All visiting records/information obtained on an offender by institutional staff shall be transferred with the offender when the offender is reassigned to another institution within the department. This includes transfers to transitional work programs. The offender's current visiting information shall be utilized by the transitional work program to allow for visitation.

N. Visitor Searches

1. Without warning, visitors are subject to a search of their vehicles, possessions and persons. This is necessary to preclude the introduction of weapons, ammunition, explosives, cell phones, alcohol, escape devices, drugs, drug paraphernalia or other prohibited items or contraband into the prison environment. All searches of visitors shall be conducted in accordance with established procedures.

2. Signs shall be posted in the area(s) where visitors are initially processed and in the visiting rooms/areas that advises visitors that drug detection dogs (K-9's) may be in use at the facility and visitors shall be subject to search by these dogs. The sign shall state:

> NOTICE: Drug detection dogs (K-9's) may be in use today in the visiting room. These dogs are non-aggressive. All visitors will be searched prior to entering the visiting room and/or during the visit. If you do not wish to be searched, you may choose not to visit today.

O. Supervision of Visiting Areas

1. Facilities shall provide direct visual supervision of the entire visitation area at all times. Staff shall position themselves throughout the visitation area to maintain a direct line of sight on interactions between offenders and visitors. While mirrors and cameras can augment direct supervision and compensate for blind spots, staff shall position themselves with a direct line of sight on interactions between offenders and visitors.

2. Staff shall immediately intervene on inappropriate behavior, which may include behavior outside the bounds of permitted intimacy or involve any violation of visiting regulations that may prove uncomfortable, disruptive, or offensive to other offenders and visitors.

3. Notices shall be posted informing visitors of the potential for monitoring anywhere in the visiting area. Staff of the same gender as the visitor shall monitor the restrooms during visits if there is reasonable suspicion that a visitor or offender may engage or be engaging in some form of prohibited behavior.

P. Visitation at Special Offender Organization Functions/Events

1. The warden may authorize offender organizations to hold special functions or events when those programs can be adequately supervised by staff. When such a special function is approved by the warden, visitors to the event shall be subject to the normal security processing as would occur during normal hours of visitation. Special guests (speakers/presenters) invited to the special function shall be processed at the direction of the warden.

Q. Emergency Situations

1. When the warden or designee determines that an emergency situation exists at the facility, any or all visits shall be suspended. Any visits in progress shall be terminated and the visitors escorted from the facility. Any person may be denied permission to visit during the time of a disturbance at the institution. All visiting shall be suspended during an emergency.

R. Limitation or Suspension of Visiting Privileges

1. Non-Contact Visits

a. Offenders who are housed in administrative segregation or disciplinary units shall be placed on non-contact visitation status if physical plant space is available.

b. Any offender who pleads guilty or has been found guilty of a schedule B disciplinary rule violation for one or more of the following reasons shall be subject to non-contact visits for a minimum of six months:

i. possession of any drug or drug paraphernalia;

ii. producing a positive or adulterated urine sample;

iii. refusal or substantial delay to provide a urine sample;

iv. introduction of contraband into the institution;

v. positive breathalyzer test;

vi. repeated (defined as more than two in a two year time period) violations of disciplinary rule no. 21; or

vii. any major rule violation that occurs in the visitation area.

c. Such restriction must be formally reviewed by an appropriate board at a minimum of every six months.

d. Restriction of contact visiting is not a disciplinary penalty.

2. Suspension of an Offender's Visiting Privileges (No Visiting)

a. Any offender who pleads guilty or has been found guilty of a contraband charge (as defined in Subsection D of this regulation) for the first time shall have all visiting privileges suspended for a maximum of six months, excluding approved clergy, attorney visits and special visits.

b. Any offender who pleads guilty or has been found guilty of a contraband charge within the past five years (as defined in Subsection D of this regulation) for a subsequent offense shall have all visiting privileges suspended for a maximum of one year, excluding approved clergy, attorney visits and special visits.

c. Suspended visiting privileges cannot consist of more than two simultaneous suspensions (i.e., the original suspension and any subsequent suspension).

d. At the end of the suspension, the offender shall submit to the warden or designee a written request to have visitation reinstated and shall also submit a new request for changes to approved visiting list.

e. A review of the circumstances of the applicable contraband UOR(s) and the offender's current conduct record shall be conducted by an appropriate board at a minimum of every six months.

f. Restriction of no visiting is not a disciplinary penalty.

3. Suspension of a Visitor's Visiting Privileges

a. Any person may be refused approval to visit an offender and removed from an approved visiting list if the visitor does not comply with the rules of the institution. (Such removal may be temporary or permanent, depending upon the severity of the violation.)

b. Any person causing or participating in a disturbance or one that is disrespectful may be refused approval to visit an offender. If an offense is such that it is the warden or designee's desire to remove the visitor from the visitor list (either permanently or for a fixed period of time), the following procedures shall be followed.

i. The warden or designee shall notify the visitor in writing that he has been removed from all applicable visiting lists, the reason why and that the removal will be reviewed after a specified amount of time. The visitor shall also be notified in writing that he may appeal the warden's decision to the secretary by sending a letter within 15 days of the date of the notice.

ii. If the visitor exercises this appeal right, the secretary or designee shall review the appeal and investigate, as appropriate, within 30 days of notice. If necessary, a hearing shall be scheduled and the visitor shall be notified of the time, date and location of the hearing.

iii. The warden or designee may submit a report to the secretary setting forth any information that he feels may assist in making the decision. If a hearing is held, the secretary or designee may determine that the warden or designee should attend this hearing; in this case, the warden shall be so advised. Otherwise, the hearing shall consist of a meeting between the visitor and the secretary or designee and shall be preserved by minutes.

iv. The secretary shall render a written decision granting or denying the appeal and shall notify the visitor

and the warden of the decision without undue delay. Brief reasons for the decision shall be given.

c. Reinstatement of visiting privileges for visitors who are removed for a fixed period of time may only be considered upon written request from the offender following the procedures detailed in Paragraph J.2 of this Section and only after the fixed period of time for the removal has elapsed. Should reinstatement be denied, the offender shall be notified in writing of the denial and that reconsideration will only be given at the next opportunity for changes to the offender's visiting list.

S. Guidelines for Visitors. Visitation with offenders committed to the Louisiana Department of Public Safety and Corrections (DPS and C) is a privilege. Visitation may be restricted, denied or suspended if an offender and/or visitor does not follow the department's visitation rules. Prospective visitors may refer to www.doc.louisiana.gov for the department's regulation governing offender visitation. The regulation may also be obtained by requesting a copy from the facility. Items considered to be contraband, including any type of weapon, firearm, ammunition or any other item detrimental to the security of the facility are never allowed to be brought onto the grounds of a correctional facility. Some prohibited items and personal possessions (wallet, purse, cash, etc.) must be left in the visitor's locked vehicle for the duration of the visit. The following are rules that a visitor must follow in order to be allowed to visit with an offender.

1. Visiting List. In order to visit an offender, the visitor must be on the offender's approved visiting list. The offender has been given information on how to put someone on their visiting list. If you are uncertain as to whether you are on the offender's approved visiting list, please contact the offender you wish to visit. Do not call the facility for this information; it will not be provided over the phone.

2. Searches. All visitors, including minors, are subject to searches of their property, automobile and person. This is necessary to preclude the introduction of contraband into the prison environment. These searches shall be conducted by trained staff in a professional manner that minimizes indignity to the visitor while still accomplishing the objective of the search. Additionally, visitors shall be subject to additional searches using metal detectors and ion scanning equipment. Specially trained search dogs (K-9's) may be used as a part of the search process both prior to a visitor entering the visiting area and in the actual visiting room during visits. Any person refusing to be searched at any time shall not be permitted to enter the facility and a visit may be terminated if a visitor refuses to be searched, or if contraband or other prohibited property or items are found on the visitor or in the visitor's property. If a visitor does not wish to be searched either by hand or by using other means, the visitor should not attempt to enter a DPS and C facility.

3. Registration. Visitors must register with staff prior to entering the visiting area.

4. Identification. All visitors who are 18 years old or older shall be required to show a picture identification each time they visit. The forms of identification accepted by the DPS and C are:

a. valid driver's license from the state of residence;

b. valid state photo identification card from the state of residence;

c. valid military photo identification card (active duty only);

d. valid passport.

5. Children. Visitors under the age of 18 years of age must be accompanied by their parent or legal guardian at all times while on facility grounds. Children shall not be left alone at any time while on facility grounds. Parents or legal guardians shall be responsible for the behavior of their children and a visit may be terminated if the children become disruptive.

6. Dress Standards. Visitors shall wear clothing that poses no threat to the security or maintenance of order at the facility. The following standards are to be met.

a. Clothing that is similar in appearance to the clothing worn by the prison's offender population is prohibited.

b. Clothing that is similar in appearance to the clothing worn by correctional officers, i.e. camouflage, blue BDU's, etc. is prohibited.

c. Sheer or transparent clothing is not permitted.

d. Swim suits are not permitted.

e. Skirts, shorts, skorts, culottes and dresses must be no shorter than three inches above the kneecap and not have deep or revealing slits.

f. Strapless, tube and halter tops, tank tops and strapless dresses are not permitted.

g. Tops that expose the midriff are not permitted.

h. Tight fitting pants, such as stirrup, spandex, lycra or spandex-like athletic pants, aerobic/exercise tights or leotards shall not be worn.

i. Undergarments must be worn at all times and cannot be exposed.

j. Clothing with revealing holes or tears higher than one inch above the kneecap is not permitted.

k. Clothing or accessories with obscene or profane writing, images or pictures is not permitted.

l. Gang or club-related clothing or insignia indicative of gang affiliation is not permitted.

m. Shoes must be worn at all times, except for infants who are carried. House slippers or shower shoes are not allowed.

n. Hats or other head coverings are not permitted, except as required by religious beliefs.

7. Items not Permitted. Visitors shall not be permitted to possess or carry the following items into the visiting area:

a. any weapon, firearm, ammunition or any other item detrimental to the security of the facility;

b. cameras, video and audio recording equipment and electronic devices, including but not limited to cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers or global satellite system equipment) etc.;

c. controlled substances or illegal drugs;

d. alcohol;

e. tobacco and tobacco related items.

8. Medication. Only prescribed medication that is life-saving or life-sustaining (such as nitroglycerine pills, inhalers, oxygen, etc.) shall be permitted. Medication shall be limited in quantity to no more than that required for the duration of the visit. Visitors must advise the staff at the visiting desk that they are in possession of such medication.

9. Infants. If the visitor has an infant child, the following items shall be permitted: four diapers; two jars vacuum sealed baby food; two plastic bottles milk or juice; one change of clothing; one baby blanket (maximum width and length not to exceed 48 inches) and one clear plastic bag of baby wipes. These items (except the baby blanket) must be stored in a single clear plastic container (i.e., gallon size zip-lock bag.) All items are subject to search.

10. Money. See www.doc.louisiana.gov for facility-specific limitations on the amount a visitor is permitted for vending machines and/or concessions. Visitors shall not give any money to an offender. Financial transactions for offenders shall be in the form of cash and/or credit or debit card payments made at the unit's visitor center kiosk machines provided by the department's contractor for offender services for use by the offender's approved visitors. All other money from permissible sources may be accepted and processed in accordance with established procedures.

11. Contact between Offenders and Visitors. Offenders who have "contact" visits may embrace (hug) and exchange a brief kiss (briefly to indicate fondness, not a lingering kiss) with their visitor at beginning and end of the visit. During the visit, the only contact permitted is holding hands. Excessive displays of affection or sexual misconduct between offenders and visitors is strictly prohibited. Small children may be permitted to sit on the lap of the visitor or offender. Any improper contact between an offender and visitor shall be grounds for stopping the visit immediately. Some offenders are restricted to "non-contact" visits. In these cases, there shall be no physical contact (touching) between the offender and the visitors. Restroom breaks may be authorized; however, visitors will be subject to the entire search process.

12. Restrictions on Visits with Minors. Offenders who have a current or prior conviction for a sex crime involving a minor child family member, or who have a documented history of sex abuse with a minor child family member, are ineligible to visit with any minor child, including their own biological or step-child. Offenders who have a current or prior conviction for a sex crime involving a minor child who is not a family member are ineligible to visit with any minor child. The offenders affected by these restrictions have been informed of possible exceptions that may only be approved by the warden. See www.doc.louisiana.gov for additional information on restriction of visits with minors.

13. Court Ordered Visitation. Pursuant to the provisions of Act No. 383 of the 2014 Regular Session, a court may authorize visitation with an incarcerated parent. In cases of court ordered visitation, the department cannot deny the visit. However, such visitation shall be in conformance with all other rules and regulations that pertain to visiting.

14. Generally Prohibited. The giving or receiving of any item(s) to/from an offender without the prior approval of staff is prohibited. Violators are subject to arrest and criminal prosecution and suspension of visiting privileges either permanently or for a fixed period of time. The only exception is that the visitor may purchase soft drinks, snacks or concessions in the visiting area and share them with the offender. The offender is not permitted to take anything out of the visiting area when the visit is finished, other than with approval as noted above.

15. Visiting Hours. See www.doc.louisiana.gov for visiting hours at a specific facility.

16. Public Transportation. Some DPS and C facilities have public transportation available to the facility. Information is provided at the facility to the offender population if public transportation is available. There may be a cost for use of this transportation and the DPS and C does not endorse or claim any liability for the use of the transportation provider. The visitor may contact the offender they wish to visit to obtain specific information regarding any types of transportation that may be available to the facility where the offender is housed.

17. Directions. Driving directions may be found under the name of the facility the visitor wishes to visit at www.doc.louisiana.gov.

18. Termination of Visits. The warden of the facility or staff designated by the warden may terminate a visit at any time if they believe that ending the visit is in the best interest of the safety and security of the facility or the persons involved.

19. Other Specific Information Provided by the Offender or Facility. Other permissible items, special visit procedures and availability of picnic visits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:2 (January 1979), amended LR 11:1096 (November 1985), repromulgated LR

29:2851 (December 2003), amended by the Department of Public Safety and Corrections, Corrections Services, LR 32:406 (March 2006), LR 35:1248 (July 2009), LR 37:2177 (July 2011), LR 38:835 (March 2012), LR 41:1764 (September 2015).

§317. Attorney Visits

A. Purpose—to provide uniform procedures for the approval and conduct of visits by attorneys to offenders.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all offenders, affected employees and attorneys seeking to visit.

C. Policy. It is the secretary's policy that attorney visits shall be conducted in accordance with the procedures of this regulation.

D. General

1. Offenders may refuse to see any attorney; such refusal shall be in writing and filed in the offender's master record.

2. A log shall be maintained of all visits by attorneys, paralegals, legal assistants, law clerks and investigators.

3. Visits may be visually observed, but conversations between offenders and counsel shall not, under any circumstance, be monitored.

4. Visits between death row offenders and attorneys, paralegals, legal assistants, law clerks and investigators may be non-contact at the warden's discretion.

5. Attorneys, paralegals, legal assistants, law clerks and investigators are subject to searches according to established procedures, as are all other visitors.

E. Procedures

1. Approval of Attorneys. An attorney's credentials shall be verified through the State Bar Association prior to being approved to visit or initiate privileged communication with offenders.

2. Approval of authorized representatives: Paralegals, legal assistants, law clerks and investigators may be permitted to enter the institution to conduct interviews with offender clients of their supervising attorney, either with the attorney or alone. Such permission is at the discretion of the warden, who may approve or disapprove these requests. Prior to a paralegal, legal assistant, law clerk or investigator being approved to enter the grounds of the institution, the following criteria shall be met by the employing attorney:

a. The paralegal, legal assistant, law clerk or investigator must not be on the visiting list of any offender confined in a state institution (except for immediate family members).

b. A paralegal must have completed a paralegal or legal assistant study program at an accredited four-year college or junior college, or have completed a paralegal or legal assistant study program approved by the American Bar Association. (Certification by the National Association of Legal Assistants, Inc. as a Certified Legal Assistant (CLA) may be substituted for the aforementioned programs.)

c. The employing or supervising attorney shall submit a paralegal, legal assistant, law clerk or investigator affidavit to the warden of the institution to be visited certifying the following prior to the approval for a paralegal, legal assistant, law clerk or investigator to enter institutional grounds:

i. the individual's name, social security number and birth date;

ii. the length of time the individual has been employed or supervised by the attorney;

iii. paralegals and investigators must attach a copy of their certification or license to the affidavit, if applicable.

iv. representatives of attorneys who seek authorization to visit a client on behalf of their supervising attorney, but do not possess a certificate and/or license shall not be authorized or approved except by special permission from the warden.

d. Paralegals, legal assistants, law clerks and investigators shall complete the department's "Orientation for Legal Representatives" training prior to being allowed to visit an offender. This training may be conducted using the automated presentation on the department's website or upon arrival at the institution for an approved visit. The person taking the training on-line shall be required to submit the printable certificate of training with their affidavit. The visit may be prohibited if the required training is not completed.

e. This information shall then be verified and the attorney notified of the disposition of the request. Thereafter, for a period not to exceed one year from the date of approval, as long as the paralegal, legal assistant, law clerk or investigator continues in the employ or under the supervision of the same attorney, visits may be approved.

3. Scheduling. Visits by attorneys and their authorized representatives shall be scheduled through the institution at least 24 hours in advance.

4. Time of Visits. Visits by attorneys and their authorized representatives must normally take place Monday through Friday, excluding holidays, between the hours of 8:00 a.m. and 4:00 p.m.

5. Exceptions

a. The warden may approve special visits not in conformity with Paragraphs E.1, 2, 3 and 4 when unusual circumstances warrant.

b. Any improper acts or unethical behavior with an offender during a visit may result in an attorney or their authorized representatives being denied future requests to visit an offender.

F. Limitations of Visits

1. Number of Offenders. Generally, no more than ten offenders may be seen at any one time, and no more than

twenty on any one day. Further limitations may be imposed by the warden if valid reasons exist.

2. Number of Attorneys. Generally, no more than two persons (attorneys, paralegals, legal assistants, law clerks or investigators or any combination thereof) may see an offender on any one day; however, the number visiting at one time may be limited based on available space and security constraints. Exceptions may be approved for good cause by the warden.

G. Exception. Nothing contained in this regulation shall apply to attorneys representing the state, the department or the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1313 (June 2000), amended LR 31:1098 (May 2005), LR 36:2572 (November 2010).

§319. Restoration of Good Time

A. Purpose—this department regulation states the secretary's policy regarding the restoration of previously forfeited good time for disciplinary violations for offenders who have demonstrated satisfactory progress in faithfully observing the disciplinary rules and procedures for adult offenders.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, the sheriff or administrator of local jail facilities and the director of the office of information services. Each unit head is responsible for ensuring that appropriate unit written policies and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to strengthen the department's commitment to an offender's successful reentry efforts by implementing positive rewards for offenders who have demonstrated improved institutional behavior.

D. Definitions

ARDC Supervisor/Manager—a member of the records section staff, whether employed at a state correctional facility or in the office of adult services at headquarters.

Major Rule Violation—an offense identified as a schedule B offense in 341 of this Part.

Minor Rule Violation—an offense identified as a schedule A offense in in 341 of this Part.

Unit Head—the head of an operational unit, specifically, the warden or sheriff or administrator of a local jail facility or transitional work program.

E. General Procedures

1. Any offender who has received a forfeiture of good time as a result of disciplinary action shall be eligible to be considered for restoration of previously forfeited good time when the following requirements are met:

a. The offender has not been found guilty of a major rule violation for a period of at least 24 consecutive months since the last date of forfeiture; and

b. The offender has not been found guilty of a minor rule violation for a period of at least six consecutive months since the last date of forfeiture; and

c. The forfeited good time was not result of a violation of Rule #8, Escape or Attempted to Escape, (see §341.I of this Part) or from any rule violation imposed as a result of battery of an employee, visitor, guest, or their families.

2. Restoration of previously forfeited good time may be in part or in full, but shall not exceed 540 days during an offender's instant term of incarceration nor the total amount of good time forfeited during an offender's instant term of incarceration.

3. Revocation from Supervision: The amount of good time that may be restored to offenders previously released on parole or good time parole supervision and then subsequently returned to custody as a parole violator, shall be limited to the amount of good time earned during the instant term of incarceration and shall not exceed 540 days. Time spent in custody prior to release on parole or good time parole supervision shall not apply toward the 24 consecutive month period required for the review of major rule violations or to the six consecutive month period required for the review of minor rule violations.

4. In addition to the ordinary evaluation procedures, the consideration of the restoration of good time previously forfeited due a Rule #1 and/or Rule #21 violation(s) (see §341.I of this Part) shall include a thorough evaluation of the underlying circumstances which lead to the Rule #1 and/or Rule #21 violation(s) (see §341.I of this Part).

5. At any time during the offender's instant incarceration, the Department may void or adjust the amount of good time restored during the offender's instant incarceration if the restoration calculation was either inaccurate or inconsistent with the provision in the regulation.

6. Under no circumstances shall an offender's restoration of previously forfeited good time, restored under the provisions of this regulation, cause an offender to be considered overdue for release at the time of approval of the restoration of good time.

7. If an offender's application for restoration of good time is denied or approved in part, the offender may reapply for reconsideration six months from the date of the original application, unless the offender has already received the maximum amount of good time restoration allowable under the provisions of this regulation.

8. Decisions regarding applications for restoration of good time are final and cannot be appealed through the department's administrative remedy procedure.

F. Review and Outcome Process

1. State Correctional Facilities

a. Offenders housed in state correctional facilities who meet the eligibility requirements for consideration in Subsection E of this Section may complete an application for restoration of good time and submit the application to the facility's records office.

b. The ARDC supervisor/manager or designee shall review the offender's application and disciplinary record to verify the offender's eligibility for restoration of forfeited good time. (If the offender is ineligible for restoration of forfeited good time, the ARDC supervisor/manager shall indicate the reason for ineligibility on the application form and return a copy to the offender. The original application shall be filed in the offender's master record.) If the offender is eligible for restoration of forfeited good time, ARDC supervisor/manager shall indicate the number of days eligible for restoration on the application for restoration of good time. Upon completion, the ARDC supervisor/manager shall forward the offender's application to the warden or designee for consideration.

c. The warden or designee (warden's designee shall be an assistant warden or higher) shall review the offender's application and verification of eligibility. The warden or designee may deny, approve in full, or approve in part the offender's application for restoration of good time. When reviewing the application, the warden or designee shall consider the offender's participation or failure to participate in rehabilitative programs, if such programs are available and warranted. If approved, the ARDC supervisor/manager or designee shall restore the amount of good time approved by the warden subject to the requirements set forth in Paragraph E.3. of this Section. A copy of the approved application, as well as a copy of the revised master prison record shall be sent to the offender. The originals shall be filed in the offender's master record.

d. If the application is denied, the ARDC supervisor/manager or designee shall provide a written reason on the application for restoration of good time and provide a copy to the offender (including the justification(s) for denial). The original application shall be filed in the offender's master record.

2. Local Jail Facilities

a. The office of adult services shall ensure that an application for restoration of good time provided by the basic jail guidelines team leaders to the sheriff or administrator of each local jail facility within their region on an annual basis.

b. Offenders housed in local jail facilities who meet the eligibility requirements stated in Subsection E of this Section. who wish to apply for restoration of previously forfeited good time, shall complete an application for restoration of good time and submit it to the sheriff or administrator of the jail where the offender is housed, who shall forward all completed applications to the chief of operations at headquarters. The sheriff or administrator of the jail shall verify that the offender meets the requirements to apply and, if so, shall forward the completed application to the chief of operations at headquarters.

c. The chief of operations shall designate OAS staff to review the offender's application and disciplinary record to verify the offender's eligibility for restoration of forfeited good time. (If the offender is ineligible for restoration of forfeited good time, the reviewing staff member shall indicate the reason(s) for ineligibility on the application form and return a copy to the sheriff or administrator of the local jail facility; and the sheriff or administrator shall notify the offender. The original application shall be filed in the offender's master record). If the offender is eligible for restoration of good time, the number of days to be restored shall include consideration of the offender's participation or failure to participate in rehabilitative programs (if available at the local jail facility). If the offender is eligible for restoration of forfeited good time, the reviewing staff member shall indicate the number of days eligible for restoration on the application for restoration of good time. Upon completion, the reviewing staff member shall forward the offender's application to the chief of operations or designee for consideration.

d. The chief of operations or designee shall review the offender's application and verification of eligibility. The chief of operations or designee may deny, approve in full, or approve in part the offender's application for restoration of good time. When reviewing the application, the chief of operations or designee shall consider the offender's participation or failure to participate in rehabilitative programs, if such programs are available and warranted. If approved, the ARDC supervisor/manager or designee shall restore the amount of good time approved by the warden; and a copy of the approved application, as well as the revised master prison record, shall be sent to the offender. The originals shall be filed in the offender's master record.

e. If approved, an OAS ARDC supervisor/manager or designee shall restore the amount of good time approved by the chief of operations subject to the requirements set forth in Paragraph E.3. of this Section. A copy of the approved application, as well as a copy of the revised master prison record, shall be returned to the sheriff or administrator of the local jail facility; and the sheriff or administrator shall notify the offender. The originals shall be filed in the offender's master record.

f. If the application is denied, an OAS ARDC supervisor/manager or designee shall provide a written reason(s) on the application for restoration of good time and return the application (including the justification(s) for denial) to the sheriff or administrator of the local jail facility; and the sheriff or administrator shall notify the offender. The original application shall be filed in the offender's master record.

3. The amount of good time forfeited and restored shall be displayed on the offender management system master prison record screen. In addition to the current offender management system procedures in place regarding the

maintenance of the amount of good time forfeited per offender, the office of data and information systems shall track the total amount of good time restored department-wide pursuant to this regulation on an annual basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 36:533 (March 2010), amended LR 40:2268 (November 2014), LR 47:891 (July 2021).

§321. Ameliorative Penalty Consideration

A. Purpose—pursuant to Act No. 340 of the 2014 Regular Session, to provide a consistent and reliable decision-making process for assessing the risk of certain offenders to commit another crime if released from incarceration. This process shall also be designed to enhance the motivation of offenders to participate in the types of programming that are available to prepare them to return to the community successfully without further offense and victimization.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, sheriffs or administrators of local jail facilities, chairman of the Board of Pardons and parole and director of the office of information services. The deputy secretary and the chairman of the Board of Pardons and parole are responsible for the overall implementation, compliance and review of this regulation. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that the department shall accept the application of any offender who applies for ameliorative penalty consideration pursuant to Act No. 340 of the 2014 Regular Session. The offender's application shall be reviewed for eligibility pursuant to R.S. 15:308 and those offenders found eligible for ameliorative penalty consideration shall be referred to the Committee on Parole for further consideration retroactive to August 1, 2014.

D. Definitions

ARDC Supervisor/Manager—a member of the records staff, whether employed at a state correctional facility or in the office of adult services at headquarters.

Unit Head—the head of an operational unit, specifically the warden or sheriff or administrator of a local jail facility or transitional work program.

E. Eligibility Requirements

1. Refer to the list of crimes eligible for ameliorative penalty consideration for the list of crimes that are eligible for ameliorative penalty parole consideration for those offenders who were convicted or sentenced prior to June 15, 2001.

2. Pursuant to this regulation, an offender's application is not eligible for consideration if there are any outstanding felony detainers or open warrants against the offender.

F. Application Procedures

1. State Correctional Facilities

a. Offenders housed in state correctional facilities who meet the eligibility requirements stated in Subsection E. shall complete an application for ameliorative penalty consideration and submit the application to the institution's records office.

b. Within 60 days of receipt of the application, the ARDC/supervisor manager or designee shall review the offender's application to verify the offender's eligibility for ameliorative penalty consideration. If the offender is ineligible for consideration the ARDC/supervisor manager or designee shall indicate the reason for ineligibility on the application and return a copy to the offender and the Committee on Parole. The original application shall be filed in the offender's master record.

c. If the offender is eligible for ameliorative penalty consideration, the ARDC supervisor/manager or designee shall forward the application and following documents to the Committee on Parole:

i. post sentence and pre-parole reports (if available);

ii. Louisiana risk need assessment II (LARNA II);

iii. institutional progress report;

iv. conduct record; and

v. medical mental health and psychological assessment(s) and summary.

2. Local Jail Facilities

a. The office of adult services shall ensure that an application for ameliorative penalty consideration is provided by the basic jail guidelines team leaders to the sheriff or administrator of each local jail facility within their region.

b. Offenders who are housed in local jail facilities who meet the eligibility requirements stated in Section E. shall complete an application for ameliorative penalty consideration and submit it to the sheriff or administrator, who shall forward the completed application to the chief of operations at headquarters.

c. The chief of operations shall designate OAS staff to review the offender's application. Within 60 days of receipt of the application, OAS staff shall review the application to verify the offender's eligibility for ameliorative penalty consideration. If the offender is ineligible for ameliorative penalty consideration, the reviewing staff member shall indicate the reason for ineligibility on the application form and the ARDC supervisor/manager or designee shall return a copy to the sheriff or administrator of the local jail facility (who shall notify the offender) and forward a copy to the Committee on Parole. The original application shall be filed in the offender's master record.

d. If the offender is eligible for ameliorative penalty consideration, OAS staff shall forward the application and following documents to the Committee on Parole:

i. post sentence and pre-parole reports (if available); and

ii. Louisiana risk need assessment II (LARNA II).

G. Records Maintenance. The department's undersecretary, through the Office of Technology Services, shall implement a program to track the number of applications received, denied, approved for Committee on Parole consideration and the number of offenders granted or denied ameliorative penalty consideration.

H. List of Crimes Eligible for Ameliorative Penalty Consideration (convicted or sentenced prior to June 15, 2001).

Citation	Description
14:56.2(D)	Criminal damage of a pipeline facility
14:62.1(B) and (C)	Simple burglary of a pharmacy
14:69.1(B)(2)	Illegal possession of stolen firearms
14:70.1(B)	Medicaid fraud
14:82(D)	Prostitution
14:91.7(C)	Unauthorized possession or consumption of alcoholic beverages on public school property
14:92.2(B)	Improper supervision of a minor by parent or legal custodian
14:92.3(C)	Retaliation by a minor against a parent, legal custodian, witness or complainant
14:106(G)(2)(a) and (3)	Obscenity
14:106.1(C)(2)	Promotion or wholesale promotion of obscene devices
14:119.1(D)	Bribery of parents of school children
14:122.1(D)	Intimidation and interference in the operation of schools
14:123(C)(1) and (2)	Perjury
14:352	Bribery of withdrawn candidates prohibited
14:402.1(B)	Taking of contraband to state owned hospitals
15:529.1(A)(1)(b)(ii), (c)(ii)	Sentences for second and subsequent offenses: certificate of warden or clerk of court in the state of Louisiana as evidence
15:1303(B)	Interception and disclosure of wire, electronic or oral communications
15:1304(B)	Manufacture, distribution, or possession of wire, electronic, or oral communication intercepting devices prohibited
27:262(C), (D) and (E)	Skimming of gaming proceeds
27:309(C) (Now 27:440)	Video draw poker crimes and penalties
27:375(C)	Unauthorized slot machines, etc.
40:966(B),(C)(1),(D),(E), (F),(G)	Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana, possession of synthetic cannabinoids
40:967(B)(1), (2), (3) and (4)(a) and (b) (F) (1), (2) and (3)	Prohibited acts-Schedule II
40:979(A)	Attempt and conspiracy
40:981	Distribution to persons under age eighteen
40:981.1	Distribution to a student
40:981.2(B) and (C)	Soliciting minors to produce, manufacture, distribute or dispense controlled dangerous substances
40:981.3(A)(1) and (E)	Violation of uniform controlled dangerous substances law; drug free zone
C.Cr.P. Art. 893(A)	Suspension and deferral of sentence and probation in felony cases

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services LR 40:2599 (December 2014).

§323. Special Agents

A. Purpose—to state the procedures governing special agent appointments and the duties of special agents.

B. Applicability—deputy secretary, assistant secretary, chief of operations, regional wardens, wardens, director of probation and parole, director of prison enterprises and those employees authorized as special agents. Each unit head shall ensure that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that special agents may be appointed at the secretary's discretion and these special agents shall be appointed from employees who have attained the rank of sergeant or probation and parole officer I and these special agents may carry weapons exposed or concealed while in the performance of their duties in the same manner as law enforcement officers.

D. Definition

Employee—any person employed full-time, part-time, or on temporary appointment by the department.

E. Procedures

1. Criteria

a. Special agents shall be appointed from employees who have attained the rank of sergeant or probation and parole officer I, pursuant to R.S. 15:825.2.

2. Authority to Appoint

a. The secretary shall be authorized at his discretion to appoint special agents, pursuant to R.S. 15:825.2.

3. Applications

a. Employees at State Prisons, Headquarters, and Prison Enterprises

i. The warden, undersecretary, or director of prison enterprises wishing to have an employee (at a state prison, headquarters, or prison enterprises, respectively) appointed as a special agent shall submit an application to the chief of operations. The application shall include the following:

(a). the applicant's name and social security number;

(b). a current rap sheet for the applicant;

(c). a domestic violence questionnaire (form A-02-023-A) completed by the applicant;

(d). a precise statement regarding the applicant's need to carry a weapon and the circumstances in which the applicant will be authorized to carry a weapon; and

(e). certification by the warden, undersecretary, or director of prison enterprises certifying the applicant has been trained to use the weapon he will carry and has achieved the necessary qualifying score on the firing range.

b. Employees at Probation and Parole

i. Probation and parole district managers wishing to have an employee (at a probation and parole district office) appointed as a special agent or probation and parole employees at headquarters wishing to be appointed as a special agent shall submit an application to the director of probation and parole. The application shall include the following:

(a). The applicant's name and social security number;

(b). A current rap sheet for the applicant;

(c). A domestic violence questionnaire (form A-02-023-A) completed by the applicant; and

(d). certification by the district manager (for employees at a probation and parole district office) or the director of probation and parole (for an employee at HQ P and P) that the applicant has successfully completed all training as required by probation and parole's firearm training policy.

c. Employees at Private Prisons

i. Wardens of private prisons wishing to have an employee appointed as a special agent shall submit an application to the chief of operations. The application shall include:

(a). the applicant's name and social security number;

(b). a current rap sheet for the applicant;

(c). a domestic violence questionnaire (form A-02-023-A) completed by the applicant;

(d). a precise statement regarding the applicant's need to carry a weapon and the circumstances in which the applicant will be authorized to carry a weapon; and

(e). certification by the warden certifying the applicant has been trained to use the weapon he will carry and has achieved the necessary qualifying score on the firing range.

d. The chief of operations or the director of probation and parole shall review every application received and either:

i. recommend the applicant be appointed as a special agent and submit to the secretary for review, or

ii. decline to recommend the applicant to be appointed as a special agent and send notification of declination to the individual who submitted the application.

e. The appointment of a special agent shall be at the discretion of the secretary.

4. Appointment as a Special Agent

a. Upon approval of an application and appointment of an applicant as a special agent, the secretary shall issue:

i. for employees at state prisons, headquarters, and prison enterprises, a commission card which serves as authority to carry a firearm and/or perform duties in accordance with R.S. 15:825.2; or

ii. for employees at probation and parole, a memorandum to the director of probation and parole certifying the employee is commissioned as a "special agent" as well as a commission card; or

iii. for employees at private prisons, a memorandum to the warden certifying the employee is commissioned as a "special agent" as well as a commission card.

iv. employees issued a commission card shall be required to carry the card at all times during the performance of his duties. The undersecretary, director of prison enterprises, or warden shall ensure that commission cards for employees appointed as special agents are kept current.

5. Duties of Special Agents

a. The duties of a special agent are to provide assistance to other law enforcement agencies to improve public safety. These duties include, but are not limited to:

i. execution of warrants;

ii. emergency aid and other assistance as requested;

iii. patrol duties; and

iv. detention and transportation of arrestees.

6. Carrying of Weapons

a. Special agents may carry weapons exposed or concealed while in the performance of their duties in the same manner as law enforcement officers, pursuant to R.S. 15:825.2.

7. Equipping Special Agents

a. The unit head or designee shall be responsible for properly equipping special agents with adequate equipment for law enforcement duties as appropriate to the assignment, (i.e. bullet proof vests, service weapons, flash lights, etc.).

8. Employee Termination of a Special Agent

a. Upon an employee's termination, the commission card shall be surrendered to appropriate unit personnel.

9. Training

a. Special agents must be in compliance with the provisions of department regulation no. C-01-008 "Firearms Training" or division of probation and parole firearms training policy as applicable.

b. Special agents who participate in community policing activities must successfully complete training appropriate to their assignments as defined by institutional or division of probation and parole policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 4:487 (December 1978), amended by the Department of Public Safety and Corrections, Corrections Services, LR 37:2184 (July 2011), LR 45:580 (April 2019).

§325. Administrative Remedy Procedure

A. Purpose—to constitute the department's "administrative remedy procedure" for offenders as a regulation.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, and sheriffs or administrators of local jail facilities. Each unit head is responsible for ensuring that all unit written policies and procedures are in place to comply with the provisions of this regulation. Furthermore, the provisions of this regulation as amended are applicable retroactively, and thus apply to any policy, condition, action, or request for administrative remedy filed prior to the date.

C. Policy. It is the secretary's policy that all offenders and employees have reasonable access to and comply with the department's "administrative remedy procedure" through which an offender may seek formal review of a complaint. Offenders housed in local jail facilities shall also be afforded reasonable access to a grievance remedy procedure. Revisions shall be accomplished through this regulation under the signature of the secretary.

D. Administrative Remedy Procedure—Purpose

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institutions a formal grievance mechanism for use by all offenders committed to the custody of the department. The process bears the name Administrative Remedy Procedure (ARP). Offenders are required to use and complete all steps in the procedure properly, including obeying all rules of the procedural process, before they can proceed with a suit in federal and state courts. No action shall be brought in a federal or state court with respect to prison conditions by any offender confined in any jail or correctional facility until all available administrative remedies are properly exhausted.

2. Corrections Services has established the administrative remedy procedure through which an offender may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory or any other form of relief authorized by law and by way of illustration, includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes, including grievances such as discrimination based on disability, offender requests for accommodations under the Americans with Disabilities Act and for complaints of sexual abuse under the Prison Rape Elimination Act.

3. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

E. Definitions

ARP Screening Officer—a staff member, designated by the warden, whose responsibility is to coordinate and facilitate the administrative remedy procedure process.

Days—calendar days.

Emergency Grievance (or Request for Emergency Administrative Remedy)—a matter in which disposition within the regular time limits would subject the offender to a substantial risk of personal injury or cause other serious and irreparable harm to the offender.

Exhaustion—proper exhaustion only occurs when an offender files a timely and procedurally proper request for remedy, which after it is accepted, is addressed on the merits at both the first and second step. A request for administrative remedy which is rejected is not considered properly exhausted, as such request has not been addressed on its merits at either of the two steps.

Grievance (or Request for Administrative Remedy)—a written complaint by an offender on the offender's own behalf regarding anything relating to prison conditions, including but not limited to a policy applicable within an institution, a condition within an institution, an action involving an offender of an institution, ~~or~~ an incident occurring within an institution, or discrimination based on disability.

NOTE: The pronouns "he" and "his" as used herein are for convenience only and are not intended to discriminate against female employees or offenders.

F. General Policy

1. Offenders may request administrative remedies to situations arising from policies, conditions or events within the institution that affect them personally, including discrimination based on disability.

2. All offenders, regardless of their classification, impairment or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers (including hearing and visual impairments).

3. There are procedures already in place within all DPS and C institutions which are specifically and expressly incorporated into and made a part of this administrative remedy procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims.

a. General Procedures

i. Notification of Procedures

(a). Offenders must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers.

(b). The procedures shall be posted in writing in areas readily accessible to all offenders.

(c). All offenders may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

ii. Nothing in this procedure should serve to prevent or discourage an offender from communicating with the warden or anyone else in the department. All forms of communication to the warden will be handled, investigated and responded to as the warden deems appropriate.

iii. The requirements set forth in this document for acceptance into the administrative remedy procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review.

iv. The following matters shall not be appealable through this administrative remedy procedure:

(a). court decisions and pending criminal matters over which the department has no control or jurisdiction;

(b). Board of Pardons and Parole decisions (under Louisiana law, these decisions are discretionary and may not be challenged);

(c). sex offender assessment panel recommendations;

(d). lockdown review board decisions (offenders are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. However, a request for administrative remedy on lockdown review board hearings can be made in the following instances):

(i). that no reasons were given for the decision of the board;

(ii). that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20 day grace period attached hereto, due to administrative scheduling problems of the board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held;

(e). warden's decision regarding restoration of good time.

v. A request for accommodation under the Americans with Disabilities Act made using the administrative remedy procedure process and the resolution of the offender's request shall be deemed to be exhaustion of the administrative procedure. The initiation of the process and deadlines and time limits stated in the administrative remedy procedure remain applicable.

vi. If an offender registers a complaint against a staff member, that employee shall not be involved in the decision making process on the request for remedy. However, this shall not prevent the employee from participating at the step one level, since this employee may be the best source from which to begin collecting information on an alleged incident.

vii. At each stage of decision and review, offenders will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

viii. Prior to filing a grievance in federal or state court, unless specifically excepted by law, the offender must properly exhaust all available administrative remedies. Only after the request for administrative remedy is accepted can proper exhaustion occur. Exhaustion can only occur when a second step response on the merits has been issued.

ix. If an offender submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the second step or until time limits to proceed from the first step to the second step have lapsed. The warden may determine whether a letter of instruction to the offender is in order.

x. In cases where a number of offenders have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the offender who filed the initial request. Copies of the decision sent to other offenders who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests shall be logged separately.

xi. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution shall complete the processing through the first step response (form B-05-005-ARP-2). The warden of the receiving institution shall assist in communication with the offender.

xii. If an offender is discharged before the review of an issue is completed that affects the offender after discharge, or if he files a request after discharge on an issue that affects him after discharge, the institution shall complete the processing and shall notify the offender at his last known address. All other requests shall be considered moot when the offender discharges and the process shall not be completed.

xiii. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

(a). Reprisals of any nature are prohibited. Offenders are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

(b). The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not

use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined accordingly.

b. Maintenance of Records

i. Administrative remedy procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

ii. All reports, investigations, etc., other than the offender's original letter and responses, are prepared in anticipation of litigation and to become part of the attorney's work product for the attorney handling any anticipated future litigation of this matter; therefore these documents are confidential and not subject to discovery or the Public Records Act outlined in R.S. 44:1, et seq.

iii. Records shall be maintained as follows.

(a). An electronic log shall document the nature of each request, all relevant dates and disposition at each step.

(i). Each institution shall submit reports on administrative remedy procedure activity.

(ii). Cross references and notations shall be made on other appropriate databases such as ADA and PREA as may be warranted.

(b). Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at headquarters.

(c). Records shall be kept four years following final disposition of the request.

c. Annual Review. The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the administrative remedy procedure from offenders and staff. A report with the results of such review shall be provided to the chief of operations/office of adult services no later than January 31 of each year.

G. Initiating a Formal Grievance

1. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal process. Informal resolution is accomplished through communication with appropriate staff members. If an offender is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process. In order to ensure their right to use the formal procedure, a request to the warden shall be made in writing within a 90 day period after an incident has occurred. This requirement may be waived when circumstances warrant. The warden or designee shall use reasonable judgment in such matters. There is no time limit imposed for grievances alleging sexual abuse.

a. Initiating a Formal Grievance

i. The offender commences the process by completing a request for administrative remedy (form B-05-005-ARP-1) or writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought. For purposes of this process, a letter is:

(a). any form of written communication which contains the phrase: "This is a request for administrative remedy" or "ARP;" or

(b). request for administrative remedy (form B-05-005-ARP-1) at those institutions that wish to furnish forms for commencement of this process.

ii. The institution is not required to be responsible for furnishing the offender with copies of his letter of complaint. It is the offender's responsibility for obtaining or duplicating a copy of his letter of complaint through established institutional procedures and for retaining the copy for his own records. The form or original letter will become a part of the administrative record and will not be returned to the offender.

iii. Original letters or requests to the warden should be as brief as possible. Offenders should present as many facts as possible to answer all questions (who, what, when, where and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the offender with a request for clarity or summarization on one additional page. The response deadline for a request for clarity or summarization begins on the date the resubmission is received by the ARP screening officer.

iv. No request for administrative remedy shall be denied acceptance into the administrative remedy procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase, "This is a request for administrative remedy or ARP."

b. Withdrawing a Formal Grievance. After filing a formal request for administrative remedy, the offender may request in writing that the warden or secretary cancel the administrative remedy request at any time and for any reason. A withdrawn request cannot constitute a properly exhausted administrative remedy.

H. Emergency or Sensitive Issues

1. In instances where the offender's request is of an emergency or sensitive issue as defined below, the following procedures will apply.

a. If an offender feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request to determine the appropriate corrective action to be taken. All emergency requests shall be documented on an unusual occurrence report (form C-05-001-W-1) by the appropriate staff member.

i. Abuse of the emergency review process by an offender shall be treated as a frivolous or malicious request and the offender shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are

not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

b. If the offender believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the secretary through the chief of operations/office of adult services (second step response-form B-05-005-ARP-3). The offender must explain, in writing, his reason for not filing the complaint at the institution.

i. If the chief of operations/office of adult services agrees that the complaint is sensitive, he shall accept and respond to the complaint at the second step. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint to the warden's office. The offender shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the first step if his complaint is acceptable for processing in the administrative remedy procedure).

c. If an emergency complaint alleges that the offender is subject to a substantial risk of imminent sexual abuse, the grievance shall be sent immediately to the unit's PREA compliance manager who shall then immediately notify the unit's PREA investigator. The unit PREA compliance manager shall provide an initial response with 48 hours of receipt of the grievance outlining any corrective actions warranted and shall issue a first step response within five days. If the offender has been secured and is no longer in danger or imminent harm, the grievance procedure shall proceed as outlined within the deadlines and time limits stated in the administrative remedy procedure.

I. Grievance Screening

1. The ARP screening officer shall screen all requests prior to assignment to the first step. The screening process should not unreasonably restrain the offender's opportunity to seek a remedy.

a. The ARP screening officer shall provide notice to the offender that his request is either:

i. being accepted and will be processed, or

ii. being rejected and will not be processed until the noted deficiency is corrected.

b. Accepted Requests

i. If the request is accepted, the warden, or designee, will assign a staff member to conduct further fact-finding and/or information gathering prior to rendering his response.

ii. Once an offender's request is accepted into the procedure, he must use the manila envelope that is furnished to him with the first step response (form B-05-005-ARP-2) to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP screening officer.

c. Rejected Requests

i. If a request is rejected, it must be for one of the following reasons:

(a). This matter is not appealable through this process, such as:

(i). court decisions;

(ii). Board of Pardons and Committee on Parole decisions;

(iii). sex offender assessment panel recommendations;

(iv). lockdown review board (refer to Subsection F, General Policy).

(b). There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

(i). disciplinary matters;

(ii). lost property claims.

(c). It is a duplicate request.

(d). The complaint concerns an action not yet taken or a decision which has not yet been made.

(e). The offender has requested a remedy for another offender (unless the request is a third party report of an allegation of sexual abuse).

(f). The request was not written by the offender and a waiver was not approved. The only exception is if the offender has alleged sexual abuse. In this instance, the offender:

(i). may seek help from a third party to file the initial grievance;

(ii). must attach written authorization for the named third party to submit the grievance on the offender's behalf; and

(iii). must personally pursue any remaining subsequent steps in the process, including participation in any resulting investigation.

(g). The offender has requested a remedy for more than one incident (a multiple complaint) unless the request is a report of an allegation of sexual abuse.

(h). Established rules and procedures were not followed.

(i). There has been a time lapse of more than 90 days between the event and the initial request, unless waived by the warden. Some exceptions may apply such as time computation issues, ADA issues, PREA issues, and on-going medical issues.

(j). The offender does not request some type of remedy unless the request pertains to an allegation of sexual abuse, in which case stopping the abuse is the implied request for remedy.

(k). The offender's request is unclear or the volume of attached material is too great.

(l). The offender requests a religious exemption via this administrative remedy procedure prior to exhausting the religious exemption process.

ii. The offender shall be provided written notification of the grounds upon which the rejection is based.

iii. A rejected request is not appealable to the second step. If a request is rejected for any of the reasons listed above, the offender must correct the noted deficiencies and resubmit the request to the ARP screening officer.

iv. The offender has not properly exhausted administrative remedies if his request is rejected for any of the reasons listed above.

J. Grievance Processing

1. The following process and time limits shall be adhered to in processing any ARP request.

a. First Step (time limit 40 days/5 days for PREA)

i. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate step response and returning it to the offender.

ii. The warden shall respond to the offender within 40 days/5 days for PREA from the date the request is received at the first step utilizing the first step response (form B-05-005-ARP-2).

iii. If the offender is not satisfied with the decision rendered at the first step, he should pursue his grievance to the secretary, through the chief of operations/office of adult services via the second step.

iv. For offenders wishing to continue to the second step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. It is not necessary to rewrite the original letter of request as it will be available to all reviewers at each step of the process.

b. Second Step (time limit 45 days)

i. An offender who is dissatisfied with the first step response (form B-05-005-ARP-2) may appeal to the secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP screening officer within five days of receipt of the decision.

ii. A final decision will be made by the secretary or designee and the offender shall be sent a response within 45 days from the date the request is received at the second step utilizing the second step response (form B-05-005-ARP-3).

iii. A copy of the secretary's decision shall be sent to the warden.

iv. If an offender is not satisfied with the second step response (form B-05-005-ARP-3), he may file suit in district court. The offender must furnish the administrative remedy procedure number on the court documents.

c. Deadlines and Time Limits. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

i. An offender may request an extension in writing of up to five days in which to file at any stage of the process.

(a). This request shall be made to the ARP screening officer for an extension to initiate a request; to the warden for the first step response (form B-05-005-ARP-2) and to the secretary through the chief of operations/office of adult services for the second step response (form B-05-005-ARP-3).

(b). The offender must certify valid reasons for the delay, which must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each step, along with the substantive issue of the complaint.

ii. The warden may request permission for an extension of time not more than five days from the chief of operations/office of adult services for the step one review/response.

(a). The offender must be notified in writing of such an extension.

(b). Cumulative extensions of time shall not exceed 25 days unless the grievance concerns sexual abuse, in which case an extension of time up to 70 days may be made.

(c). If the extension is approved, written communication shall be sent to the offender of the extension and a date by which the decision shall be rendered. Reasons for the extension of time for unusual circumstances shall be maintained in the administrative record.

K. Monetary Damages

1. Based upon credible facts within a grievance or complaint filed by an offender, the Department of Public Safety and Corrections may determine that such an offender is entitled to monetary damages where such damages are deemed by the department as appropriate to render a fair and just remedy.

a. Upon a determination that monetary damages should be awarded, the only remaining question is quantum or the dollar amount of the monetary damages to be awarded.

b. The determination of quantum shall be made after a formal review by the case contractor for the Office of Risk Management within the Division of Administration. The determination reached by the case contractor shall be submitted to the Office of Risk Management and the Department of Public Safety and Corrections for a final decision.

c. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

L. Lost Property Claims

1. The purpose of this section is to establish a uniform procedure for handling lost property claims filed by offenders in the custody of the Department of Public Safety and Corrections. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this procedure and for advising offenders and affected employees of its contents.

a. When an offender suffers a loss of personal property, he may submit a lost personal property claim (form B-05-005-A) to the warden or designee. The claim shall include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item and any proof of ownership or value of the property available to the offender. All claims for lost personal property must be submitted to the warden or designee within 10 days of discovery of the loss.

i. Under no circumstances will an offender be compensated for an unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to or gambling with other offenders.

b. The warden or designee shall assign an employee to investigate the claim. The investigative officer shall investigate the claim fully and will submit his report and recommendations to the warden or designee.

c. If a loss of an offender's personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed in accordance with the following procedures.

i. Monetary:

(a). the warden or designee shall recommend a reasonable value for the lost personal property as described on the lost personal property claim (form B-05-005-A). The state assumes no liability for any lost personal clothing;

(b). a lost personal property claim response (form B-05-005-B) and agreement (form B-05-005-C) shall be completed and submitted to the offender for his signature; and

(c). the claim shall be submitted to the chief of operations/office of adult services for review and final approval.

ii. Non-monetary:

(a). the offender is entitled only to state issue where state issued items are available;

(b). the warden or designee shall review the claim and determine whether or not the institution is responsible;

(c). a lost personal property claim response (form B-05-005-B) shall be completed and submitted to the offender for his signature;

(d). an agreement (form B-05-005-C) shall be completed and submitted to the offender for his signature when state issue replacement has been offered.

d. If the warden or designee determines that the institution and/or its employees are not responsible for the offender's loss of property, the claim shall be denied, and a lost personal property claim response (form B-05-005-B) shall be submitted to the offender indicating the reason. If the offender is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on the lost personal property claim response (form B-05-005-B) and submitting it to the ARP screening officer within five days of receipt. The screening officer shall provide the offender with an acknowledgment of receipt and date forwarded to the chief of operations/office of adult services. A copy of the offender's original lost personal property claim (form B-05-005-A) and lost personal property claim response (form B-05-005-B) and other relevant documentation shall be attached.

M. DPS and C Offenders Housed in Non-DPS and C Facilities

1. Offenders shall have reasonable access to a grievance remedy procedure that includes at least two levels of review if necessary.

a. A DPS and C offender housed in a non-DPS and C facility with a complaint that relates to time computation, requests for transfer, or transitional work program requests should submit his grievance request directly to DPS&C Headquarters Internal Affairs. A representative from Headquarters Internal Affairs shall respond to the offender within 90 days. If the offender is not satisfied with the response, he may file suit with the 19th Judicial District Court.

b. A DPS and C offender housed in a non-DPS and C facility with a complaint that relates to conditions of confinement, personal injuries, medical complaints, the classification process, challenges to rules, regulations, or policies, or any other complaint not outlined above in section a. should submit his grievance request to the jail administrator of the facility in which he is housed. If the offender is not satisfied with the response, he may file suit with the district court of the parish in which the facility is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002), amended LR 28:1993 (September 2002), amended by the Department of Public Safety and Corrections, Corrections Services LR 37:3275 (November 2011), LR 39:2779 (October 2013), LR 45:672 (May 2019).

§329. Offender Marriage Requests

A. Purpose. To establish the secretary's policy concerning offender marriage requests.

B. Applicability. Deputy Secretary, Chief of Operations, Assistant Secretary, Regional Wardens, and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that offender marriage requests be handled pursuant to the procedures of this regulation.

D. Procedures

1. An offender's request to be married should be submitted to the warden for review.

2. The warden, chaplain, or other person designated by the warden, shall conduct a minimum of one counseling session with the offender and the fiancé regarding marriage requirements. Documentation of the session(s) shall be maintained by the person who conducted the session(s).

3. The offender must appropriately certify that both parties meet all legal qualifications for marriage. The burden of proof rests with the offender to gather this information.

4. Should the chaplain choose not to perform the marriage, he should so inform both parties. Only approved and licensed authorities (clergy, judges and justices of the peace) will be permitted to perform the ceremony.

5. If both parties are incarcerated in correctional institutions, the marriage may be postponed until one of them has been released.

6. The offender making the request must pay for all costs associated with the marriage.

7. Absent unusual circumstances related to legitimate penological objectives, the warden or designee should approve the marriage request and set an appropriate time and place for the ceremony. Furloughs will not be granted for a marriage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juvenile Services, LR 11:1093 (November 1985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 31:1099 (May 2005), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2407 (November 2008).

§331. Offender Incentive Pay and Other Wage Compensation

A. Purpose—this department regulation governs payment of incentive pay and other wage compensation to offenders.

B. Applicability—deputy secretary, undersecretary, chief of operations, director of prison enterprises, regional wardens and wardens. Each warden and the director of prison enterprises shall ensure appropriate facility written policies and procedures are in place to comply with the provisions of this department regulation.

C. Policy. Compensation shall be paid, in accordance with the provisions of this department regulation and the applicable and governing laws, to offenders who have performed satisfactory work in the job assignment in which they have been classified, except those offenders who opt to receive good time in lieu of incentive pay pursuant to R.S. 15:571.3.

D. Eligibility

1. An offender sentenced or resentenced or who is returning to the physical custody of the department on or after September 20, 2008 who is not eligible to earn good time at any rate shall serve three years from the date of reception prior to becoming eligible to earn incentive pay.

a. Grandfather Clause: Offenders Received at a Reception and Diagnostic Center Prior to September 20, 2008

i. The provisions of Paragraph D.1 above shall apply to offenders received at a reception and diagnostic center on or after September 20, 2008. Offenders received at a reception and diagnostic center prior to September 20, 2008 shall be subject to the waiting period previously in effect for this regulation. Offenders who are currently receiving incentive pay shall not be affected and shall continue to be eligible to receive incentive pay as they did on the effective date of this regulation, but shall be subject to the provisions of Subparagraph E.2.a as it applies to job changes.

b. Exception. Offenders participating in a certified apprenticeship program

i. Offenders in the physical custody of the department who are participating in a certified apprenticeship program shall not be required to serve three years from the date of reception prior to becoming eligible to earn incentive pay. These offenders shall be eligible to earn incentive pay while participating in the certified apprenticeship program.

2. An offender sentenced or re-sentenced or who is returning to the physical custody of the department on or after September 20, 2008, who is eligible to earn good time at any rate shall not be eligible to earn incentive pay.

a. Grandfather Clause: Offenders Earning Good Time Pursuant to Act 1099 of the 1995 Regular Session

i. Offenders currently earning good time at a rate of three days for every 17 days served pursuant to Act 1099 of the 1995 Regular Session who are also earning incentive pay shall be allowed to continue to earn incentive pay at authorized rates.

E. Procedures

1. Pay Rules

a. 80 hours in a Two-Week Period

i. No offender shall earn incentive pay for more than 80 hours in a two-week period, unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution.

ii. Exception: Governor's Mansion

(a). Offenders assigned to job duties at the governor's mansion shall not be limited to 80 hours in a two week period.

b. Actual Hours Worked

i. Offenders who are eligible to earn incentive pay shall be paid only for actual hours worked in their job assignment. Offenders shall not be paid for time spent away from their job assignment due to circumstances such as holidays, callouts, duty status, weather, illness, etc.

c. Extra Duty Assignments

i. Incentive pay shall not be paid for extra duty assignments that are imposed as sanctions through the offender disciplinary process.

d. Forfeiture Due to Disciplinary Sanction

i. Any offender whose incentive pay is forfeited as a disciplinary sanction shall return to the "introductory pay level" of $0.02 per hour for a six-month period if his eligibility to earn incentive pay is reinstated. At the end of the six-month period, the offender's pay shall be automatically adjusted to the lowest pay rate for the assigned job.

e. Professional Offender Job Classifications

i. Offenders who were previously incarcerated and working in a professional offender job classification who return to the physical custody of the department shall not be ensured placement in the previously worked professional offender job classification. Placing an offender in a previously worked professional offender job classification shall be at the discretion of the warden or designee.

ii. Once eligible to earn incentive pay, if a returning offender is placed in a previously worked professional offender job classification, the offender shall be paid at the lowest pay rate and shall earn any increases in pay rate by working his way up the pay scale as if he had not previously worked in the professional offender job classification.

iii. For the purpose of this regulation, a *professional offender job classification* is defined as a peer minister/tutor, mentor/tutor, American Sign Language interpreter, or counsel substitute.

f. Private Sector/Prison Industry Enhancement (PS/PIE) Programs or Work Release Programs

i. For the purpose of this regulation, wages earned from a private sector/ prison industry enhancement (PS/PIE) program or a work release program shall not be considered "incentive pay." Therefore, offenders employed in any of these programs are eligible to earn good time. The director of prison enterprises shall establish record-keeping procedures relating to wages earned by offenders employed in a PS/PIE program which shall include all mandatory deductions from offender wages, other deductions such as child support or garnishment, and the distribution of net offender wages to offender banking.

2. Pay Rates

a. Once eligible to earn incentive pay, each offender shall initially be paid an "introductory pay level" of $0.02 per hour for a period of six months. After six months, the offender shall be paid at the lowest pay rate that is commensurate with the job assignment he is placed in by the institution. In the event of a change in an offender's job assignment or custody status, the offender's rate of compensation shall automatically be adjusted to the lowest pay rate of the assigned job. If a change in job assignment is not for disciplinary reasons, the warden may approve the offender to be paid at the same rate as the previous job assignment and the rate of compensation shall not be automatically adjusted to the lowest pay rate of the new job assignment.

i. Grandfather Clause: Offenders Earning Incentive Pay Prior to Effective Date of this Regulation

(a). Offenders earning incentive pay at any rate, prior to the effective date of this regulation, shall continue to earn at these rates. If the offender is reassigned to a new job or vacates the job for any reason and it has been determined the rate of pay for the job that he is leaving should be lower, the next offender to fill that position shall receive the adjusted lower rate.

b. An offender may receive an increase in his/her hourly pay rate of no greater than $0.04 per hour on an annual basis unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution, except as provided below in Subparagraphs E.2.f. - l of this Section.

c. A series of pay ranges and a standardized list of job titles shall be established by the director of prison enterprises and approved by the secretary or designee. The institutions shall be assigned limits on the total amount of incentive pay paid in certain pay ranges. These limits shall be derived on a percentage basis determined by the total hours worked by offenders who are eligible to earn incentive pay at each institution and shall be approved by the director of prison enterprises and the secretary or designee. Prison enterprises shall issue reports detailing each institution's status with regard to their limits on a quarterly basis. Offender banking shall monitor the assigned limits to ensure that the institutions remain within their limits and report discrepancies to the chief of operations, the appropriate regional warden, the director of prison enterprises and the warden of the institution.

i. The regional wardens shall work closely with the director of prison enterprises to ensure that any institution that exceeds the established limits is brought back into compliance in an expeditious manner.

ii. Exception: Offenders in PE Job Titles

(a). Offenders who work in prison enterprises job titles shall not affect an institution's pay range percentage limits.

d. All offenders classified in limited duty status and who are eligible to earn incentive pay shall earn at a rate of no more than $0.04 per hour. This excludes offenders classified as regular duty with restrictions or those with a temporary limited duty status.

e. All offenders classified in working cellblocks and maximum custody field lines who are eligible to earn incentive pay shall earn at the rate of $0.02 per hour.

f. All offenders assigned as students to educational or career and technical education programs who are eligible to earn incentive pay shall be paid at the rate of $0.04 per hour.

i. Exception: Offenders in NOBTS

(a). Offenders enrolled in the New Orleans Baptist Theological Seminary program and its positive impact on the department, offenders enrolled in this program shall earn incentive pay at the following rates.

Freshmen:	$0.14 per hour
Sophomores:	$0.16 per hour
Juniors:	$0.18 per hour
Seniors:	$0.20 per hour.

ii. Upon completion of any educational or career and technical education program, the offender may, upon request and at the discretion of the warden and based upon availability, return to the same job at the same rate of pay he held prior to enrollment in the program.

g. Offenders assigned to prison enterprises industrial, agricultural service or other prison enterprises jobs may be compensated at a rate up to $0.40 per hour, pursuant to 2009 La. Acts No. 85 § 1 (R.S. 15:873). The pay range for prison enterprises jobs shall be established by the director of prison enterprises and approved by the secretary or designee.

h. Tutors shall earn incentive pay at the following rates.

Registered Academic Tutor	$0.25 per hour	Registered CTE Tutor	$0.25 per hour
Certified Academic Tutor	$0.65 per hour	Certified CTE Tutor	$0.65 per hour
Certified College Tutor	$0.75 per hour	Lead Certified CTE Tutor	$0.75 per hour

i. Registered Tutors my earn $0.25 per hour during the first 12 months after registration and may receive an annual increase of $0.05 per hour, up to a maximum of $0.50 per hour. Certified Tutors may earn $0.65 per hour during the first 12 months after certification and may receive an annual increase of $0.05 per hour, up to a maximum of $1.00 per hour.

i. Offenders who have completed the department's American Sign Language course shall earn incentive pay at the following rates.

BEI III or BEI Basic	$0.70 per hour
BEI IV or BEI Advanced OR RID NIC	$0.80 per hour
BEI V or BEI Master	$0.90 per hour May be increased to a maximum of $1.00 per hour, at the discretion of the secretary or designee.

j. Offenders working as mentors shall earn incentive pay at the following rates.

Mentor:	$0.50 per hour
Certified Mentor:	$0.65 per hour
Lead Certified Mentor:	$0.75 per hour

i. Mentors may earn $0.50 per hour during the first 12 months in this position and may receive an annual increase of $0.05 per hour, up to a maximum of $0.65 per hour. Certified Mentors may earn $0.65 per hour during the first 12 months in this position and may receive an annual increase of $0.05 per hour, up to a maximum of $0.75 per hour. Lead certified mentors may earn $0.75 per hour during the first 12 months in this position and may receive an annual increase of $0.05 per hour, up to a maximum of $1.00.

k. Offenders who are assigned to work as counsel substitutes shall be paid in accordance with their education and years of legal experience. Incentive pay shall be earned at the following rates.

Legal Worker 1	$0.25 per hour Must be enrolled in paralegal classes OR have less than five years legal work experience.
Legal Worker 2	$0.50 per hour Must have attained paralegal certificate or paralegal degree and have less than three years legal work experience OR have five years legal work experience and no paralegal certificate or paralegal degree.
Legal Worker 3	$0.80 per hour Must have attained paralegal certificate or paralegal degree and have a minimum of three years legal work experience OR have ten years legal work experience and no paralegal certificate or paralegal degree.
Counsel Substitutes	May receive an annual increase of $0.05 per hour, up to a maximum of $1.00 per hour, at the discretion of the secretary or designee.

l. Offenders working as facilitators shall earn incentive pay at the following rates:

Facilitator	$0.20 per hour

a. Facilitators may earn $0.20 per hour during the first 12 months in this position and may receive an annual increase of $0.05 per hour, up to a maximum of $0.40 per hour.

F. Sources of Funding

1. Pursuant to R.S. 15:873, offender compensation may be paid from the following sources:

a. offenders assigned to any state agency that operates from self-generated revenues shall be paid from those self-generated revenues; or

b. The division of prison enterprises.

2. Pursuant to R.S. 15:873, offenders who are employed in a certified PS/PIE program shall be paid by one of the following, in accordance with the PS/PIE program's operational model and the terms of the employment agreement:

a. the private business that employs the offender; or

b. the Division of Prison Enterprises.

3. Offenders who are participating in a transitional work program shall be paid by the private business that employs them, in accordance with the terms of the employment agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1927 (September 2008), amended LR 36:531 (March 2010), LR 38:1253 (May 2012), LR 40:2600 (December 2014), LR 41:1307 (July 2015), LR 45:69 (January 2019), LR 48:1292 (May 2022).

§337. Sex Offender Treatment Plans and Programs

A. Purpose—to state the department's procedures for providing sex offender treatment plans and programs as set forth pursuant to the laws of this state.

B. Applicability—deputy secretary, chief of operations, department's medical/mental health director, director, Regional Directors and District Managers of probation and parole, chairman of the committee on parole, regional wardens, wardens and sheriffs or administrators of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that certain convicted sex offenders (as specifically defined in Subsections E, F, G and H) shall participate in appropriate sex offender treatment plans pursuant to the provisions of this regulation and the statutory requirements as stated herein.

D. Definitions

Mental Health Evaluation (for the purpose of this regulation)—an examination by a qualified mental health professional with experience in treating sex offenders.

Qualified Mental Health Professional (for the purpose of this regulation)—an individual who provides sex offender treatment to offenders in keeping with their respective levels of education, experience, training and credentials.

Unit Head—the head of an operational unit, specifically, the undersecretary, warden, director of probation and parole, chairman of the committee of parole, sheriffs and administrators of local jail facilities and transitional work programs.

E. Sex offender treatment plan pursuant to R.S. 15:538(C):

1.a. no sex offender whose offense involved a minor child who is 12 years old or younger or who is convicted two or more times of a violation of:

i. R.S. 14:42—aggravated rape or first degree rape;

ii. R.S. 14:42.1—forcible rape or second degree rape;

iii. R.S. 14:43—simple rape or third degree rape;

iv. R.S. 14:43.1—sexual battery;

v. R.S. 14:43.2—second degree sexual battery;

vi. R.S. 14:43.3—oral sexual battery;

vii. R.S. 14:43.4—Repealed.

viii. R.S. 14:78—incest committed prior to 6-12-14;

ix. R.S. 14:89(A)(2) —crime against nature committed on or after 6-12-14;

x. R.S. 14:78.1—aggravated incest committed prior to 6-12-14;

xi. R.S. 14:89.1—aggravated crime against nature;

b. shall be eligible for probation, parole, suspension of sentence, or diminution of sentence if imposed as a condition by the sentencing court pursuant to R.S. 15:537(A), unless, as a condition thereof, the offender undergoes a treatment plan based upon a mental health evaluation;

2. it shall be the responsibility of ARDC specialists during the pre-class verification process to identify those offenders whose sentence places them under the provisions of R.S. 15:538(C). It is preferable that state offenders in this category be transferred from a local jail facility to a departmental reception and diagnostic center. The Office of Adult Services' Transfer Section shall be responsible for the transport of these offenders to the department's custody. The basic jail guidelines regional team leaders shall assist local jail facilities with any questions or concerns regarding the provisions of R.S. 15:538(C):

a. if an offender assigned to an institution should receive a new sentence for an identified sex offense, it will be the responsibility of the warden to determine if they are subject to the conditions of R.S. 15:538(C);

3. each institution and the division of probation and parole shall make arrangements with qualified mental health professionals for the purpose of conducting mental health evaluations and to develop and implement treatment plans;

4. the treatment plan shall be based upon a mental health evaluation and shall effectively deter recidivist sexual offenses by the offender, thereby reducing the risk of reincarceration of the offender and increasing the safety of

the public, and under which the offender may reenter society;

5. the treatment plan may include:

a. the utilization of medroxyprogesterone acetate treatment (MPA) or its chemical equivalent as a preferred method of treatment;

b. a component of defined behavioral intervention if the evaluating qualified mental health professional determines that is appropriate for the offender;

6. the provisions of R.S. 15:538(C) shall only apply if parole, probation, suspension of sentence, or diminution of sentence is permitted by law and the offender is otherwise eligible;

7. if on probation or subject to a sentence that has been suspended, the offender shall begin MPA or its chemical equivalent treatment as ordered by the court or a qualified mental health professional and medical staff;

8. if MPA or its chemical equivalent is part of an incarcerated offender's treatment plan, the offender shall begin such treatment at least six weeks prior to release;

9. once a treatment plan is initiated, based upon a mental health evaluation, it shall continue unless it is determined by a physician or qualified mental health professional that it is no longer necessary. The attending physician or qualified mental health professional may seek a second opinion;

10. if an offender voluntarily undergoes a permanent, surgical alternative to hormonal chemical treatment for sex offenders, he shall not be subject to the provisions of this regulation;

11. before beginning MPA or its chemical equivalent therapy, the offender shall be informed about the uses and side effects of MPA therapy, and shall acknowledge in writing using the consent/refusal for medroxyprogresterone treatment (Form B-06-002-A) that he has received this information;

12. the offender shall be responsible for the costs of the evaluation, the treatment plan and the treatment:

a. if the offender is not indigent, these services will be rendered by an outside mental health provider based upon a fee schedule established by the Department of Public Safety and Corrections. If the offender is on probation or under parole supervision, services will be rendered at the provider's place of business. If the offender is housed in an institution, services will be rendered by the provider at the state or local jail facility. In either event, the department reserves the right to determine the eligibility of the provider to furnish services;

b. indigent offenders who are on probation or under parole supervision will be responsible for seeking services through the Department of Health and Hospitals, Office of Mental Health (with assistance, as needed, from their probation and parole officer). The provision of such services is strictly subject to the availability of resources and programs within the Department of Health and Hospitals. If the offender is housed in a state institution, services will be provided by Department of Public Safety and Corrections' mental health staff. A set-up fee will be charged to the offender based upon the fee scale for non-indigent offenders and the offender's account shall reflect the cost of the service as a debt owed;

c. indigent offenders housed in local jail facilities requiring these services should be transferred, if possible, to the department's reception and diagnostic center. In unusual circumstances when this is not possible, services for these offenders shall be coordinated by the administrator of the local jail facility with the Department of Health and Hospitals, Office of Mental Health (with assistance, as needed, from the department's medical/mental health director or the basic jail guidelines regional team leader). The provision of such services is strictly subject to the availability of resources and programs within the Department of Health and Hospitals;

13. chemical treatment shall be administered through a licensed medical practitioner. Any physician or qualified mental health professional who acts in good faith in compliance with this regulation in the administration of treatment shall be immune from civil or criminal liability for his actions in connection with the treatment. The offender may decline to participate in the evaluation or treatment plan by signing the consent/refusal for medroxyprogresterone treatment (Form B-06-002-A) indicating that he acknowledges his decision renders him ineligible for probation, parole, suspension of sentence or diminution of sentence if conditioned by the court. However, the provisions of R.S. 15:828, R.S. 14:43.6 or C.Cr.P. Art. 895(J) may still be applicable (See Subsections F, G and H of this regulation for additional information.);

14. failure to continue or complete treatment shall be grounds for revocation of probation, parole, or suspension of sentence, or, if so conditioned by the parole board, revocation of release on diminution of sentence:

a. good time earned may be forfeited pursuant to R.S. 15:571.4. Should an offender in an institutional setting fail to continue or complete his sex offender treatment plan, an incident report shall be initiated and good time forfeited, if appropriate, pursuant to established policy and procedures;

15. wardens and the director of probation and parole shall ensure strict adherence to the procedures of this regulation.

F. Sex Offender Treatment Program Pursuant to R.S. 15:828

1. *Sex offenders* for the purpose of R.S. 15:828 and this Section are defined as persons committed to the custody of the Department of Public Safety and Corrections for a crime enumerated in R.S. 15:541. An individual convicted of the attempt or conspiracy to commit any of the defined sex offenses shall be considered a sex offender for the purposes of R.S. 15:828 and this Section.

a. Subject to the availability of resources and appropriate individual classification criteria, sex offenders as defined in Paragraph F.1 of this regulation and who are housed in a state correctional facility should be provided counseling and therapy by institutional mental health staff in a sex offender treatment program until successfully completed or until expiration of sentence, release on parole in accordance with and when permitted by R.S. 15:574.4, or other release in accordance with law, whichever comes first.

b. A sex offender treatment program means one which includes either or both group and individual therapy and may include arousal reconditioning. Group therapy should be conducted by two therapists, one male and one female. Subject to availability of staff, at least one of the therapists should be licensed as a psychologist, board-certified as a psychiatrist or a clinical social worker. A therapist may also be an associate to a psychologist under the supervision of a licensed psychologist.

c. Reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, shall be made available to the board of parole.

2. If the offender is convicted of a crime enumerated in R.S. 15:538(C), then he shall be treated in accordance with that statute and not R.S. 15:828.

G. Sex offender treatment program pursuant to R.S. 14:43.6:

1.a. notwithstanding any other provision of law to the contrary, the court may order an offender convicted of the following offenses:

i. R.S. 14:41—aggravated rape or first degree rape;

ii. R.S. 14:42.1—forcible rape or second degree rape;

iii. R.S. 14:43.2—second degree sexual battery;

iv. R.S. 14:78.1—aggravated incest committed prior to 6-12-14;

v. R.S. 14:81.2(D)(1)—molestation of a juvenile when the victim is under the age of 13;

vi. R.S. 14:89.1—aggravated crime against nature;

b. to be treated with medroxyprogesterone acetate (MPA) according to a schedule of administration monitored by the Department of Public Safety and Corrections. Upon a second conviction of the above enumerated offenses, the court shall order an offender to be treated with acetate MPA according to a schedule of administration monitored by the Department of Public Safety and Corrections;

2. if the court orders the offender to be treated with MPA, this treatment may not be imposed in lieu of, or reduce, any other penalty prescribed by law. However, in lieu of treatment, the court may order the defendant to undergo physical castration provided the offender files a written motion with the court stating that he intelligently and knowingly gives his voluntary consent to physical castration as an alternative to the treatment;

3. an order of the court sentencing the offender to MPA pursuant to R.S. 14:43.6 shall be contingent upon a determination by a court appointed medical expert that the offender is an appropriate candidate for treatment. This determination shall be made not later than 60 days from the imposition of the sentence. The court order shall specify the duration of the treatment for a specific term of years, or in the discretion of the court, up to the life of the offender;

4. in all cases involving the administration of MPA, the treatment shall begin not later than one week prior to the offender's release from incarceration;

5. the department shall provide the services necessary to administer the MPA treatment and shall not be required to continue the treatment when it is not medically appropriate as determined by the department;

6. if an offender fails to appear as required by the schedule of administration as determined by the department, or the offender refuses to allow the administration of MPA, the offender shall be charged with a violation of R.S. 14:43.6;

7. if an offender ordered to be treated with MPA or ordered to undergo physical castration takes any drug or other substance to reverse the effects of the treatment, he shall be held in contempt of court in accordance with R.S. 14:43.6;

8. if an offender is ordered by the court pursuant to R.S. 14:43.6, then he shall be treated in accordance with that statute and no others.

H. Sex Offender Treatment Program Pursuant to C.Cr.P. Art. 895(J)

1. In addition to other requirements of law and established policy and procedure, in cases where a defendant has been convicted of an offense involving criminal sexual activity, the court shall order as a condition of probation that the defendant successfully complete a sex offender treatment program. As part of the sex offender treatment program, the offender shall participate with a victim impact panel or program providing a forum for victims of criminal sexual activity and sex offenders to share experiences on the impact of the criminal sexual activity in their lives. The director of probation and parole shall establish procedures to implement victim impact panels. All costs for the sex offender treatment program, pursuant to this Paragraph shall be paid by the offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:538(C).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 24:2308 (December 1998), amended LR 26:332 (February 2000), LR 38:1598 (July 2012), LR 42:424 (March 2016).

§339. Public Information Program and Media Access

A. Purpose—to state the general guidelines regarding department policies aimed at maintaining informative relationships with the public, the media and other agencies.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, Director of Probation and Parole, Director of Prison Enterprises and communications director. Each unit head shall develop procedures to facilitate interaction with the public, the media, and other agencies and is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and to inform employees and offenders of its contents.

C. Policy. It is the secretary's policy to maintain a cooperative and responsible relationship with and to inform the public, media and other agencies concerning department operations, accomplishments, challenges and critical incidents. News media inquiries shall be responded to in an accurate and timely manner, consistent with the security, public safety and the privacy interests of the department, its staff and offenders. All legitimate news media organizations shall be allowed reasonable access to the state's correctional facilities unless security considerations dictate otherwise.

D. Definitions

Commercial Production—freelance photographers, writers and film makers who intend to sell their work product (including uncommitted documentaries) for profit to other companies.

Credentials—for purposes of identification, both photo identification, such as a valid driver's license, and identification (ID) card issued by the reporter's place of employment shall be required. In the absence of employee ID cards, the department reserves the right to verify all identification and to refuse admittance when such identification is found to be suspect.

Designated Spokesperson—an individual employee that has been given permission to speak to the media on behalf of the department, institution, or Probation and Parole Office. These persons are granted permission to speak to the media by the unit head.

News Media—any accredited agency that gathers and reports news for a general circulation newspaper, news magazine, national or international news service or radio/television news program. This includes newspapers, publications, television/radio stations and internet news services. Authors or freelance journalists who are researching and/or writing articles about corrections or criminal justice topics must provide credentials to verify their association with a legitimate news/media organization.

News Release—a written statement concerning an issue, event or situation for which the department wishes to make a permanent record-for widespread dissemination.

On Record Correspondence—official and quotable communication or information dissemination on behalf of the Department of Corrections with any media or news outlet.

E. Release of Information

1. The secretary shall have discretion to grant or deny an interview request.

2. Information regarding non-restrictive departmental operations, policies, procedures, etc. shall be released through the communications director.

3. Departmental news releases shall be disseminated through the communications director. Unit specific news releases shall be submitted to the communications director for review and approval prior to dissemination.

4. The unit head or his designee shall inform the communications director of any and all news media requests. The communications director shall advise and assist the unit head or designee in all matters, responses, and information dissemination related to such requests.

5. Any on record correspondence with local, state, national or international media, whether in person, telephone, or writing, must first be approved by the communications director, the secretary or the executive counsel.

6. The reporting of unusual occurrences shall be made in accordance with established policy and procedures. In addition, the secretary, chief of operations and communications director shall be made aware as soon as possible of any incidents involving offenders under the supervision of the Division of Probation and Parole.

7. Unless specifically assigned to do so by the unit head, other departmental employees shall not make statements on behalf of the unit or the department. Staff shall refer all media inquiries to the unit head or designee.

F. Release of Data

1. In conjunction with the secretary and communications director, and in accordance with the requirements of Section E, units will proactively communicate with the news media regarding escapes, incidents of serious violence, riots, or other disturbances which result in fatalities, major injuries, major property damage or any other serious disruption of prison operations.

2. Upon request from a news media representative, information regarding an offender shall be released in accordance with established policy and procedures.

3. Information regarding psychiatric, medical or juvenile criminal histories of offenders cannot be released. Additionally, pursuant to R.S. 46:1844(W)(1)(a), the name, address or identity of crime victims who, at the time of the commission of the offense were minors under 18 years of age, or who were victims of sex offenses, regardless of the date of commission of the offense, cannot be disclosed.

G. General Procedures

1. Unit procedures shall address emergency and non-emergency responses to the news media and include, at a minimum, the following:

a. identification of areas in the unit that are accessible to news media representatives;

b. contact person for routine requests for information;

c. identification of data and information protected by federal or state privacy laws, or federal and state freedom of information laws;

d. special events coverage;

e. news release policy; and

f. designated staff authorized to speak with the news media (which shall be submitted to the communications director each time the staff list is updated).

2. Inquiries from legislative and executive bodies shall be referred to the secretary's office.

H. General Population and Offender Interviews

1. News media wishing to interview an offender shall submit a request to the unit head indicating whom they want to interview and the nature of the story. The request shall be submitted on official letterhead. Such requests must be made within a reasonable time frame, considering the scope of the story and the unit's ability to adequately prepare for the visit. The unit head or designee shall submit all inmate interview requests to the communications director for consideration. The unit head or designee shall facilitate interview requests upon the approval of the communications director.

2. Interviews of offenders shall be considered on a case by case basis at the sole discretion of the communications director.

3. Offenders may be eligible to be interviewed by the media under the following conditions:

a. assigned to general population (not to include initial reception unless a pressing need request is approved by the secretary);

b. required to sign an offender media release form. Because interviews are voluntary, the offender has the right to refuse to be interviewed, photographed or recorded by the media. The written release or decision not to be interviewed shall be filed in the offender's master prison record;

c. receive no compensation or anything of value (monetary or through enhanced status) in exchange for, or as a result of, the interview.

4. In general, interviews with offenders housed in maximum custody areas for behavior problems and/or poor conduct records and offenders convicted of sexual offenses are strongly discouraged.

5. Any request to interview an offender may be denied on the basis of security, public safety, medical or other administrative reason including, but not limited to the following:

a. the news media representative or news organization which is represented does not agree to the conditions established by the department and the warden;

b. the news media representative or news organization has, in the past 12 months, failed to abide by any required conditions;

c. the offender is physically or mentally unable to participate;

d. the interview, in the opinion of the warden, would endanger the health or safety of the interviewer, media crew, facility, offender, or could cause serious unrest or disrupt the operation of the facility;

6. Telephone interviews with an offender are prohibited.

NOTE: Exceptions may be authorized and require the approval of both the communications director and the warden or designee.

I. Rules for Media in Prisons

1. All media representative must have prior approval to visit an institution.

2. Live broadcasts by television or radio (other than KLSP) are prohibited within correctional facilities, unless specifically authorized by the secretary.

3. Interviews shall take place on prison grounds in an area outside of offender living areas.

4. Interviews shall take place in view of a departmental employee for the safety of the media representative. The warden or designee reserves the right to terminate any interview or coverage within the facility should a disturbance or disruption occur.

5. All media visitors shall be provided with an escorting staff member for the duration of the visit.

6. Interviews may be recorded by video, audio, notes or other methods with prior approval of the warden and the offender to be interviewed.

7. Only one media organization may be allowed to interview an offender at any given time. News conferences are not permitted for offenders.

8. A media representative shall give written approval to allow the department the opportunity to respond to any allegations which might be published or broadcast prior to distribution.

9. The warden or designee may suspend all media visits during an institutional crisis or critical incident. The warden or designee shall periodically brief all media on the situation. A media briefing center may be established at a remote location.

10. Failure by a news media representative to comply with the rules of this regulation constitutes grounds for denying the representative and/or the representative's agency permission to conduct the interview or any other interviews for a 12-month period.

J. Death Row and Executions

1. Death Row offenders must have their attorney's written approval prior to an interview, photograph and/or audio or video recording.

2. Media access preceding and following an execution shall be in accordance with established policy and procedures.

K. Procedures for Commercial Productions or Non-News Media

1. Unit access by independent filmmakers, writers for non-news magazines and others may be permitted by special advance arrangement and with the approval of the secretary and unit head.

2. All commercial production staff are required to make a written request to the unit head for access. Written requests shall include, at a minimum, the following information, as applicable:

a. name, job title and employer of person requesting visit (if freelance, the organization represented);

b. topic of story, where it will be used and for what purpose;

c. name of individual(s) to be interviewed;

d. date and time of arrival and anticipated duration;

e. name of all persons accompanying requestor;

f. if applicable, a hold harmless clause: "I recognize a visit to a correctional facility may present certain risks/hazards. I agree to assume all ordinary and/or usual risks to my personal safety inherent in a visit to an institution of this type."

3. Written requests shall be forwarded to the secretary for final review prior to project commencement.

4. All commercial productions are required to read, understand and sign a commercial production location agreement form upon their arrival at the unit. The unit head or designee may require review of the material prior to distribution solely to insure that it comports with the agreement.

L. Exceptions

1. The secretary or designee may make exceptions to specific sections of this regulation. Requests for exceptions, and the reasons therefore, shall be directed to the secretary for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49.950 and American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 4-4019 through 4-4021 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1260 (July 1999), amended LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005),), amended LR 36:1265 (June 2010), LR 45:1783 (December 2019).

§340. Disaster Remediation Program

A. Purpose—to state the secretary's policy regarding a disaster remediation program for eligible offenders to participate in emergency disaster relief efforts and to provide procedures regarding housing for those offenders who participate in such relief efforts.

B. Applicability—deputy secretary, undersecretary, assistant secretary, chief of operations, regional wardens, wardens, Director of Probation and Parole and Director of Prison Enterprises. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy—it is the secretary's policy to establish a disaster remediation program for offenders to repair the damage done following a natural disaster or emergency. The use of offender labor shall augment governmental personnel, private sector firms and community volunteers conducting remediation activities during the period immediately after such disaster. Offender labor shall not replace existing employees, be utilized on a project or job involved in a labor dispute or supplant post disaster remediation activities that may otherwise be performed under contract by private sector firms employed by an affected individual or governmental entity.

D. Definitions

Advance Support Team—advance support teams secure appropriate housing, coordinate the delivery of necessary supplies, and address and/or assess current situations and conditions, as well as assess future needs. The team shall consist of a security supervisor and maintenance staff member. Other staff and/or offenders may be included as deemed necessary by the chief of operations, regional wardens and/or the warden.

Minimum Custody—general population dormitory housing area. Movement outside of a secure perimeter is usually authorized without armed supervision or restraint. Institutional procedure governs the level of staff supervision when outside the secure perimeter, as well as internal movement controls.

Offender Crews—offender crews may be composed of any offenders that are classified as minimum custody at their assigned housing unit, excluding offenders prohibited from participation as provided for in Subsection E. Eligible offenders are subject to placement on the crews regardless of their usual work assignment. Additionally, offenders are required to be on a regular duty status and be medically capable of performing emergency disaster relief work.

E. Statutory Ineligibility for Participation. Offenders shall not be eligible to participate in a disaster remediation program if the offender was convicted of a crime defined or enumerated as a crime of violence in R.S. 14:2(13) or the offender was convicted of a sex offense as defined in R.S. 15:541(24).

F. Pre-Deployment

1. Each warden shall determine the approximate number of offenders available for assignment to an offender crew and develop appropriate offender and staffing rosters. Information concerning the number of crews available from each facility shall be forwarded by the warden or designee each May to the chief of operations for inclusion in the Incident Management Center (IMC) Resource Manual.

2. Offender crews shall not exceed ten offenders for each correctional officer supervising them.

3. In accordance with the Louisiana Homeland Security and Emergency Assistance and Disaster Act, after the governor has declared a disaster or emergency pursuant to executive order or proclamation, a disaster remediation program may be established in the parish where the work will be performed.

4. At the direction of the secretary or designee, the IMC shall contact the appropriate warden with information relative to disaster relief needs of the affected area and/or the necessity of establishing a disaster remediation program.

5. Upon receiving the instructions from the IMC, the warden shall activate the advance support team, other necessary personnel and offender crews.

6. Offender crews that are deployed to a community or area more than two hours travel time from the unit or for an extended period may require housing in that area. The advance support teams shall coordinate with the parish Office of Emergency Preparedness (OEP), local law enforcement and the district probation and parole office for accessing available housing resources.

G. Deployment

1. The rank structure for supervision of a disaster remediation effort shall be determined by the appropriate regional warden and the unit warden shall ensure that logs of offender crew activities are maintained.

2. The unit warden shall be responsible for providing transportation for each offender crew. In addition, each unit shall be responsible for providing their own communications equipment such as 700 radios, cell and/or satellite telephones and an EMT or nurse to provide emergency medical care to the offender crews in the area as may be required.

3. The unit warden shall ensure that supervising staff receives documentation for each offender crew member that includes an identification picture and master prison record. In addition, supervising staff shall receive any medications that the offenders may have been prescribed.

4. Offender crew remediation assignments shall be coordinated by unit personnel on site through the state and/or local OEP. This information shall be forwarded to the unit, the IMC and local law enforcement.

5. The IMC may coordinate with the Division of Probation and Parole for any additional security support needed at a disaster remediation site.

6. If the situation or conditions dictate, a centralized supply location or warehouse may be established to support offender work crews.

H. Good Time Credit. Offenders participating in the disaster remediation program shall be eligible to earn 30 days of good time credit in addition to that otherwise authorized by law for every 30 days of service in this program. Therefore, each unit shall maintain records of the offenders assigned to the work crews and the number of days worked. These records shall be forwarded to the records office at the facility to determine the amount of good time to be awarded to the offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 33:665 (April 2007), amended LR 37:1174 (April 2011).

Subchapter B. Disciplinary Rules and Procedures for Adult Offenders

§341. Disciplinary Rules and Procedures for Adult Offenders

Editor's Note: This Section contains rules formerly printed in LAC 22:I.341, 343, 345, 347, 349, 351, 353, 355, 357, 359, 361, and 363.

A. Purpose—to constitute the department's *Disciplinary Rules and Procedures for Adult Offenders* as a regulation.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, director of probation and parole, director of prison enterprises, sheriffs and administrators of local jail facilities and transitional work programs. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that all offenders and employees have reasonable access to and comply with the department's *Disciplinary Rules and Procedures for Adult Offenders*. They are established to help provide structure and organization for the prisons and a framework within which the offender population can expect the disciplinary system to function.

1. Revisions will be accomplished through this regulation under the signature of the secretary.

D. *Disciplinary Rules and Procedures for Adult Offenders*

1. This book of disciplinary rules and procedures constitutes clear and proper notice of same for each offender sentenced to the Department of Public Safety and Corrections.

2. It is the policy of the Louisiana Department of Public Safety and Corrections to operate a swift and fair disciplinary process that follows constitutional and statutory standards. The *Disciplinary Rules and Procedures for Adult Offenders* establishes a uniform offender disciplinary process that:

a. maintains order and control of institutional safety;

b. ensures offenders are disciplined fairly;

c. ensures constitutional rights are protected;

d. modifies offender behavior in a positive manner; and

e. maintains an official record of an offender's disciplinary history.

3. The *Disciplinary Rules and Procedures for Adult Offenders* provide structure and organization for the prisons and a framework within which the offender population can expect the disciplinary system to function. All offenders sentenced to the custody of the Department of Public Safety and Corrections, regardless of their housing facility, shall be placed on notice as to the requirements of the *Disciplinary Rules and Procedures for Adult Offenders* by being provided with a copy of the rulebook. All offenders shall be required to sign for the receipt of the rulebook and the signed receipt shall be filed in the offender's master record.

4. The secretary of the Department of Public Safety and Corrections has sole authority to change these rules, regulations and procedures. Utilization of these procedures does not constitute the granting of any enforceable right or privilege to any offender.

5. There are certain classifications or other actions which may be taken that affect an offender's custody status, job classification, housing assignment, institutional assignment and/or ability to participate in institutional programs or activities for which an offender may expect change during the course of his incarceration. Such changes may result from classification decision-making, the imposition of disciplinary penalties or to promote legitimate institutional goals and/or security. Such changes may not be disciplinary penalties in and of themselves. These and any similar changes which result from the action of other department regulations and institutional policies are not considered penalties in the context of the disciplinary process.

6. In the event of a genuine emergency, such as a serious disturbance disrupting normal operations or a natural disaster, the secretary or designee may suspend any and all disciplinary rules and procedures for the duration of the emergency. Full hearings must be held within a reasonable time after the end of the emergency for those offenders who were subjected to loss of good time or failure to earn incentive wages.

E. Definitions

Classification—a process for determining the needs and requirements of those for whom confinement has been ordered and for assigning offenders to housing units, work assignments and programs according to their needs and existing resources. *Classification* actions, even if resulting from an incident handled in the disciplinary process, are not disciplinary sanctions.

Confidential Informant—person whose identity is not revealed to the accused offender but who provides an employee(s) with information concerning misbehavior or planned misbehavior.

Custody Levels—see established policy and procedures for information regarding the various *custody levels* and status review procedures.

Extra Duty—work to be performed in addition to an offender's regular job assignment as specified by the proper institutional authority. This work is performed without the benefit of incentive wages.

Incentive Pay—compensation paid to an offender in the physical custody of the department and who is eligible to receive incentive wages and who has performed satisfactory work in the compensation grade in which he has been classified.

Posted Policy—policy memoranda detailing what behavior is required or forbidden of offenders and generally reflecting the individual needs of the facility. *Posted policies* must be distributed and posted in such a manner that offenders are placed on notice as to what behavior is required or forbidden and that sanctions may be imposed should the policy be violated.

Prison Rape Elimination Act of 2003 (PREA)—a federal law enacted to establish a zero-tolerance standard for the incidence of sexual assault within an institutional setting.

Sanction—a disciplinary penalty.

NOTE: The pronouns "he" and "his" as used herein are for convenience only and are not intended to discriminate against female employees or offenders. Additionally *employee*, as used herein, refers not only to an employee of the Department of Public Safety and Corrections, but also to any individual having the authority to exercise supervision over an offender.

F. Disciplinary Procedures

1. This rulebook contains the disciplinary rules and procedures for offenders remanded to the state's custody. All offenders are required to obey the rules and regulations. The following outlines the procedures that shall be followed when an offender violates a rule.

a. General Procedures

i. Reporting Infractions

(a). When an employee witnesses or has knowledge of any act by an offender that is in violation of the rules and/or posted policies, the employee shall first attempt, if appropriate, to resolve the matter informally. If the violation is observed or brought to the attention of a contract employee, volunteer or institutional visitor, the incident shall be reported to an employee by the person observing or with knowledge of the behavior. Informal resolution may include counseling, verbal reprimand, or the giving of an instruction, warning, or order. Informal resolution is not appropriate for any offense that poses a risk to the security of the institution (such as solicitation of staff

to violate a rule or policy, an attempt to establish an inappropriate relationship or possession of contraband).

(i). If the incident cannot or may not be resolved informally, the employee shall complete a disciplinary report formally charging the offender with violating a rule.

(ii). The report shall be written by the employee who has reason to believe that an offender has violated, attempted to violate or conspired to violate one or more disciplinary rules.

[a]. An offender who intentionally attempts to violate a disciplinary rule, even if he is unsuccessful, may receive a disciplinary report for attempting to break that rule.

[b]. When two or more persons working in combination for the specific purpose of violating any disciplinary rule may receive a disciplinary report for conspiring to break that rule.

[c]. The description of an incident may include more than one separate and distinct rule violation. It is appropriate to include more than one rule violation on a single disciplinary report.

(iii).The disciplinary report shall include the following information:

[a].[i]. the accused offender's name, DOC number, housing and job assignment;

[ii]. the reporting officer's name and title;

[iii]. the offense number;

[iv]. the date and approximate time of the offense; and

[v]. a description of the facts of the offense;

[b]. the description of the facts of the offense shall include the name(s) of all the witnesses, the location of the incident and a full statement of the facts underlying the charges;

[c]. a description of any unusual offender behavior, any physical evidence and its disposition, and any immediate action taken, including the use of force.

(b). Upon completion of the disciplinary report, the supervisor shall review the information and forward the report and any supporting documentation to the disciplinary office or designated depository for processing.

(c). If an offender's continued presence in the general population poses a threat to life, property, self, staff or other offenders, or to the security or orderly operation of the institution, or who is the subject of an investigation, may (with the approval of the highest ranking supervisor on duty in the unit where the incident occurred or the shift supervisor) be placed in administrative segregation until his appearance before the disciplinary officer/disciplinary board or classification board.

(d). In instances when an offender is placed in administrative segregation for disciplinary purposes, the supervisor will conduct a review of the documentation to ensure it is complete and correct and, as needed, investigate to confirm the reasonableness of the allegation or circumstances prompting the assignment. This shall be done prior to the conclusion of the supervisor's tour of duty.

(e). Time spent in administrative segregation for the offense for which the offender was placed in administrative segregation must be credited against disciplinary detention or extra duty sentences even when these sanctions are suspended. Credit will not be given fortime spent in administrative segregation based upon a request for protection or while an offender is awaiting transfer to another area.

(f). An appropriate review board should review the status of offenders who are in administrative segregation at least every seven days for the first two months and every 30 days thereafter.

ii. Notice of Disciplinary Report

(a). Offenders shall be served (usually by a correctional officer) with notice of charges at least 24 hours prior to the hearing.

(b). Confirmation that the offender was advised of the charges shall be noted on the original of the disciplinary report by evidence of the offender's signature.

(c). If the offender refuses to sign the disciplinary report, the delivering officer shall note the refusal in the offender signature block and initial the box.

b. Counsel and Counsel Substitutes

i. Counsel is an attorney-at-law of the offender's choice who has been retained by the offender.

ii. Counsel substitutes are persons not admitted to the practice of law, but offenders who aid and assist, without cost or fee, an accused offender in the preparation and presentation of his defense and/or appeal.

iii. Counsel substitutes are only those offenders appointed by the warden or designee to assist other offenders with their legal claims, including but not limited to, assistance with filing of administrative remedy procedure requests, disciplinary board appeals and lost property claims. Counsel substitutes are not required to file disciplinary appeals but should inform the offender who wants to appeal of the proper way to file. They may be removed from their positions if the warden or designee believes it appropriate. Offenders who are not counsel substitutes may not provide services to other offenders without the approval of the warden or designee.

G. Disciplinary Hearings and Sanctions

1. Hearing Procedure

a. Hearings are designed to provide a fair and impartial review conducted by a disciplinary officer or disciplinary board to determine if a rule infraction(s)

occurred, if the charged offender is guilty or not guilty of the charge(s) and, if guilty, the appropriate sanction(s).

b. An investigation report may be submitted to the disciplinary board detailing the facts uncovered in an investigation. If the investigation report is used as evidence in the hearing, a copy of the report must be maintained in the administrative record. In the alternative, the investigator may be called as a witness to present testimony.

2. Disciplinary Officer (Low Court Hearing)

a. A hearing conducted by a ranking security officer (lieutenant or above) or any supervisory level employee from administration or treatment appointed by the warden or designee who conducts hearings of minor violations (Schedule A) and who may impose only designated sanctions.

b. Any disciplinary officer directly involved in the incident or one who is biased for or against the accused cannot hear the case unless the accused waives recusal in writing. (Performance of a routine administrative duty does not necessarily constitute direct involvement or bias.)

c. At these hearings, the accused offender represents himself and is given full opportunity to speak in his own behalf.

d. Counsel substitutes, witnesses or the accusing employee are not permitted in the hearing.

e. Low court hearings are not recorded.

f. Hearings shall be held within seven days of the date of the report, excluding weekends and holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Reasons for all delays should be documented.

3. Disciplinary Board (High Court Hearing)

a. If the offender will be transferred to a state correctional facility from a local jail facility for the purpose of conducting the hearing, the offender must be brought before the disciplinary board of the local jail facility where the violation(s) occurred and informed of the pending transfer and necessitated delay of the hearing. The date the notice was given to the offender shall be documented on the disciplinary report.

b. A properly composed board will consist of two people, a duly authorized and trained chairman and a duly authorized and trained member, each representing a different discipline (security, administration, or treatment). The secretary or designee must approve the chairman and the warden or designee must approve the member.

c. 72 Hour Rule

i. Any offender who is placed in administrative segregation for a rule violation must be given a disciplinary hearing within 72 hours of being placed in administrative segregation. Official holidays, weekends, genuine emergencies and good faith efforts by the administration to provide a timely hearing are the only exceptions. The offender must be heard at the next available court date. When it is not possible to provide a full hearing within 72 hours of placement in administrative segregation, the accused must be brought before the disciplinary board, informed of the reasons for the delay and remanded back to administrative segregation or released to his quarters after a date for a full hearing has been set.

ii. The 72 hour rule does not apply to offenders housed in local jail facilities (including transitional work programs) whose hearings are conducted once they are transferred to a state correctional facility or those who have their disciplinary hearing conducted at a state correctional facility even if they are not transferred there. Offenders in this status have no expectation of a disciplinary hearing within 72 hours, or even seven days.

iii. The 72 hour rule does not apply to those offenders who are placed in administrative segregation for reasons other than for a disciplinary hearing. Examples of these classifications include, but are not limited to:

(a). awaiting transfer to another facility or another housing unit within the facility;

(b). transitional work program or intake, etc.

d. Hearings for those offenders not placed in administrative segregation shall be held within seven days of the date of the report, excluding weekends and holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Reasons for all delays should be documented. Any member directly involved in the incident or one who is biased for or against the accused cannot hear the case unless the accused waives recusal in writing or verbally on the record. (Performance of routine administrative duty does not necessarily constitute direct involvement or bias.)

e. Decisions must be unanimous, with each member participating in the deliberations. If the decision is not unanimous, the case is automatically deferred for referral to a different disciplinary board.

f. If a second decision is not unanimous, then a finding of not guilty is appropriate.

g. The disciplinary board may also hear cases of offenders who have signed written requests for protection and may recommend appropriate action.

4. Conduct of the Hearing—Disciplinary Board (High Court Hearing)

a. Before the hearing can begin, an accused offender must acknowledge that he is familiar with the offender rights during the disciplinary process. (Refer to Subsection J of this Section, Offender Rights and Responsibilities, for additional information.)

b. All rights and procedural requirements must be followed unless waived by the accused.

c. Disciplinary board hearings shall be recorded in their entirety and the recording preserved for five years.

d. An offender who does not choose to be present at the hearing may sign a waiver which shall be read into the record. A counsel substitute shall represent him and enter a not guilty plea. The same applies to a disruptive offender who refuses to cooperate. If the offender refuses to sign a waiver, one shall be prepared and the refusal noted by two witnesses. In either case, the disciplinary chairman shall also sign the waiver.

e. The accused enters his name and DOC number into the record as does his counsel or counsel substitute (if any) and confirms that he understands his rights. If the offender indicates he does not know or understand his rights, they must be explained to him.

f. The chairman reads the disciplinary report to the accused and asks for a plea. Available pleas are "not guilty" or "guilty." Should the accused attempt to enter an unavailable plea or refuse to enter a plea, the chairman will enter a "not guilty" plea for him and proceed with the hearing.

g. Preliminary motions must be raised at the first opportunity or be considered waived and may include:

i. dismissal of the charge(s);

ii. continuance (Offenders are not entitled to a continuance to secure counsel unless they are charged with a violation that is also a crime under state law. Only one continuance will be granted unless new information is produced.);

iii. requests to face accuser and call witnesses, etc.;

iv. a motion due to lack of 24-hour notice, including any challenge to the waiver of the 24-hour notice rule having not been made in writing;

v. request for investigation;

vi. any other appropriate motions.

h. All motions must be made at the same time in the proceedings. Subsequent verbal motions will be denied as having been waived.

i. The board shall deliberate and rule on motions at the time the motion is made, unless expressly deferred to the actual hearing.

j. A summary of motions presented will be documented with written reasons for each ruling made on the disciplinary court motions.

k. After entering his plea and motions, if any, the accused may present his defense.

l. The board may ask questions of the accused, his witnesses and/or his accuser. During the hearing, the accuser should only be present to testify. He shall never be present during deliberations.

m. The disciplinary board shall carefully evaluate all evidence presented or stipulated.

n. In situations where the disciplinary report is based on a single confidential informant, there must be other evidence to corroborate the violation. That evidence may include, but is not limited to, testimony from another confidential informant, the record (investigative report) or other evidence. Whenever information is provided by confidential informants, the informant must be certified as having provided reliable information in the past (and have legitimate knowledge of the present incident(s)). If requested, the accusing employee must be summoned to testify about the reliability and credibility of the confidential informant(s) when the disciplinary report is based solely on information from confidential informants.

i. All confidential information used in the disciplinary process shall be documented on the confidential informant testimony and certification form.

o. The board will review the information presented during the deliberations.

i. During deliberations, everyone except the board and any official observers must leave the room, and the board will decide the case on the basis of the evidence presented at the hearing.

ii. Official observers must not take part in the hearing or the deliberations.

iii. The disciplinary record of the accused may be examined to discover a pattern of similar misbehavior or to determine if a pending suspended sanction exists.

iv. The disciplinary record may be used to determine the appropriate sanction(s) to be imposed.

v. Both members of the board must verbally discuss and render their verdict(s).

vi. The audio recording will continue throughout the deliberations.

p. Following the deliberations, the chairman will announce the verdict.

q. If the verdict is guilty, the chairman will then announce the sanction(s).

r. It must be clearly articulated which sanction applies to each specific rule violation for which the offender was found guilty.

s. The board has full authority to suspend any sanction imposed for a period of up to 90 days.

5. Correcting Disciplinary Reports

a. A reviewing employee may change the rule violation number to fit the description prior to the hearing but should ensure that the accused gets a corrected copy of the report at least 24 hours before the hearing begins. Rule violation number(s) may be added if the offense is clearly described on the report.

b. Before the hearing begins, the board may change the rule number to match the description of the alleged misbehavior, if necessary, and may also change the rule

number at any point prior to the deliberations, but should offer the accused a continuance to prepare the defense. It is the description of the conduct and not the rule number that determines the offense.

c. The continuance may be waived and does not necessarily need to be for 24 hours.

NOTE: This information shall be voiced on the recorder for the record.

6. Sanctions

a. Sanctions must fit the offense and the offender. An offender with a poor conduct record may receive a more severe sanction than an offender with a good conduct record for the same offense. Even so, serious offenses call for serious penalties.

b. An offender who violates more than one rule or the same rule more than once during an incident may receive a permissible sanction for each violation.

c. After a finding of guilt for a new violation, a previously suspended sanction may be imposed as well as a new sanction.

d. State and federal criminal laws apply to offenders. In addition to being sanctioned by prison authorities, offenders may also be prosecuted in state and federal court for criminal conduct.

e. Restitution may be imposed in accordance with established policies and procedures and is not considered a disciplinary sanction and may be assessed in addition to any other permissible penalties.

f. An offender who has established a documented pattern of behavior indicating that he is dangerous to himself or others is a habitual offender. This includes an offender who has been convicted of three major violations or a total of five violations in a six month period. Major violations are Schedule B offenses. A habitual offender may receive Schedule B penalties following a finding of guilt of a Schedule A offense when he has established a documented pattern of hostile or disruptive behavior as defined above.

g. After a finding of guilt, the disciplinary officer may impose one or two of the penalties for each violation.

H. Appeals

1. A request for review of a disciplinary decision must follow these procedures.

a. Appeals to the Disciplinary Board

i. An offender may appeal a case heard by the disciplinary officer (low court) only to the disciplinary board (high court).

ii. As soon as the ruling is issued, the offender who wants to appeal must clearly say so to the disciplinary officer who will then automatically suspend the sanction and schedule the case for the disciplinary board.

iii. The appeal hearing before the disciplinary board is a full hearing the same as any other hearing conducted by the board. The disciplinary board cannot increase the sanction imposed by the disciplinary officer.

iv. The appeal to the disciplinary board will be the final appeal in a case heard by the disciplinary officer. No other appeals are allowed. The appeal from the disciplinary officer to the disciplinary board will constitute the final administrative remedy regarding the disciplinary decision. Decisions rendered by the disciplinary officer and appealed to the disciplinary board may not be appealed to the warden or to the secretary.

b. Appeals to the Warden

i. An offender may appeal a case heard by the disciplinary board (high court). All appeal requests on high court cases shall be to the warden.

ii. The offender may appeal himself or through counsel or counsel substitute. In any case, the appeal must be received within 15 calendar days of the hearing.

iii. The appeal should be clearly written or typed on the appeal from the disciplinary board form. This form is available from the offender's classification officer. If the form is not available, the appeal may be on plain paper but should contain the information called for on the form.

iv. The warden will decide all appeals within 30 calendar days of the date of receipt of the appeal and the offender will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the offender is notified accordingly).

v. Lengthy appeals of disciplinary actions will not be accepted into the appeals process. It is necessary for the offender to only provide basic factual information regarding his case. Lengthy appeals will be returned to the offender for summarization. The offender will have five calendar days from receipt to comply with the instructions and resubmit. It is important to remember that abuse of the system impairs the department’s ability to respond to legitimate problems in a timely fashion.

c. Appeals to the Secretary

i. An offender may appeal the decision of the warden to the secretary and must indicate that he is “not satisfied” in the appropriate box on the appeal decision form. The document should then be submitted to the disciplinary office or designated depository.

ii. The offender must submit the form within five calendar days of the date of the receipt of the warden's decision. No supplement to the appeal will be considered.

iii. It is only necessary that the offender check the box indicating, “I am not satisfied,” date, sign and forward the form to the appropriate person.

iv. An offender who does not file an appeal to the warden in a timely manner shall relinquish his right to appeal to the secretary.

v. The offender will receive an acknowledgment of receipt and date forwarded to the secretary's office.

vi. The institution will provide a copy of the offender's original appeal to be attached to the appeal decision form for submission to the secretary. The form is available from the offender's classification officer.

vii. The secretary shall only consider appeals of sanctions from decisions of the warden that resulted in an imposed or suspended sentence of one or more of the following penalties:

(a). forfeiture of good time;

(b). a custody change from minimum to medium if it involves transfer to another institution;

(c). a custody change to maximum;

(d). failure to earn incentive wages.

viii. In addition, appeals regarding restitution assessments may be submitted to the secretary. The appeal of such assessments must be submitted in accordance with established policy and procedures.

ix. The secretary will decide all appeals within 85 days of the date of receipt of the appeal and the offender will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the offender is notified accordingly). Absent unusual circumstances, the secretary will only consider review of the sanction(s) imposed of an offender who pled guilty.

I. Offender Rules and Violation Descriptions

Rule No.	Rule Name	Description
An offender found guilty of violating one or more of the rules defined below will be sanctioned according to the penalty schedule designated in the rule and the type of hearing provided.		
1	Contraband (Schedule B)	No offender shall have under his immediate control any illicit drugs, any product that could be used to adulterate a urine sample, unauthorized medication, alcoholic beverage, yeast, tattoo machine, tattoo paraphernalia, syringe any type weapon, cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers, global satellite system equipment), or any other item not permitted by department regulation or institutional posted policy to be received or possessed or any other item detrimental to the security of the facility. Money is contraband. Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the facility. Possession and/or use of lighted cigarettes or other smoking materials are deemed to be contraband in non-smoking areas. To smuggle or attempt to smuggle prohibited items into or out of the facility will be in violation of this rule. The area of immediate control is an offender's person, his locker(s) or storage area, his cell, his room, his bed, his laundry bag, his hobby craft and his assigned job equipment (such as, but not limited to, his desk, his tool box, or his locker at the job) or the area under his bed on the floor unless the evidence clearly indicated that it belonged to another offender. Contraband found in a common area cell shared by two or more offenders will be presumed to belong to all of them equally. Any offender who is tested and has a positive reading on a urinalysis or breathalyzer test will be considered in violation of this rule. An offender who refuses to be tested or to cooperate in testing, as well as an offender who alters his urine specimen, will also be found in violation of this rule (including being unable to provide a urine specimen within three hours of being ordered to do so). Any sketch, painting, drawing or other pictorial rendering produced in whole or in part by a death row offender, unless authorized by the warden of the institution is also considered in violation of this rule.
2	Rescinded	
3	Defiance (Schedule B)	No offender shall commit or threaten physically or verbally to commit bodily harm upon another person. This includes throwing any object, water or any other liquid or substance, feces, urine, blood, saliva or any form of human waste or spitting or attempting to spit on another person. No offender shall curse, insult or threaten another person in any manner. This prohibited conduct includes abusive or insulting conversation, correspondence, phone calls or gestures by an offender. Further, no offender shall obstruct, resist, distract or attempt to elude staff in the performance of their duties. Nor shall an offender intimidate or attempt to intimidate staff to manipulate staff's actions. This rule does not prohibit an offender from advising staff of planned legal redress even during a confrontational situation (although an offender's behavior in such a situation shall not be disrespectful or violate any other disciplinary rule).
4	Disobedience (Schedule A)	Offenders must obey the posted policies for the facility in which they are confined. They must obey signs or other notices of restricted activities in certain areas, safety rules or other general instructions. The only valid defense for disobedience or aggravated disobedience is when the immediate result of obedience would be bodily injury. (This defense includes incapacity by virtue of a certified medical reason.)
5	Disobedience, Aggravated (Schedule B)	Offenders must obey direct verbal orders cooperatively and promptly and not debate, argue or ignore orders before obeying. The last order received must be obeyed when orders conflict. Even orders the offender believes improper must be

Rule No.	Rule Name	Description
		obeyed; grievances must be pursued through proper channels. Sanctions imposed by the disciplinary officer or the disciplinary board are to be carried out by the offender. Violations of duty status will apply to this rule as will a violation of an order from the disciplinary board. The only valid defense for disobedience or aggravated disobedience is when the immediate result of obedience would be bodily injury. (This defense includes incapacity by virtue of a certified medical reason.)
6	Disorderly Conduct (Schedule A)	All boisterous behavior is forbidden. This includes, but is not limited to, horseplay, rowdy and/or unruly conduct, etc. Offenders shall not jump ahead or cut into lines at the canteen, recreational activities, dining/kitchen area or during group movements of offenders. Visitors and guests shall be treated courteously and not be subjected to disorderly or intrusive conduct. Offenders shall not communicate verbally into or out of cellblocks or other housing areas.
7	Disrespect (Schedule A)	Employees, visitors, guests or their families shall not be subject to disrespectful conversation, correspondence, phone calls, actions or gestures. Offenders shall address employees, visitors, guests or their families by proper title or rank or by "Mr.," "Mrs.," or "Miss," whichever is appropriate.
8	Escape or Attempt to Escape (Schedule B)	NOTE: All costs associated with an escape may be recovered in accordance with established policy and procedures. A. Attempted Escape: The attempt to commit a simple or aggravated escape as defined herein. B. Simple Escape: The intentional, unauthorized departure of an offender under circumstances in which human life was not endangered, including but not limited to: from the grounds of an institution, a designated area or place within an institution, the custody of a corrections' employee while off the grounds of an institution or the custody of any law enforcement officer; the departure of a transitional work program offender from the designated area where he is legally confined; the failure of an offender participating in a transitional work program to report or return from his planned employment or other activity at the appointed time, or who leaves the job site or any other location where he is approved and expected to be for any reason without permission. This includes leaving without authorization from any penal and correctional facility, community rehabilitation center, transitional work program, hospital, clinic and any and all programs where offenders are legally assigned. C. Aggravated Escape: The intentional, unauthorized departure of an offender under circumstances in which human life was endangered, including but not limited to: from the grounds of an institution, a designated area or place within an institution, the custody of a corrections' employee while off the grounds of an institution or the custody of any law enforcement officer; the departure of a transitional work program offender from the designated area where he is legally confined; the failure of an offender participating in a transitional work program to report or return from his planned employment or other activity at the appointed time, or who leaves the job site or any other location where he is approved and expected to be for any reason without permission. This includes leaving without authorization from any penal and correctional facility, community rehabilitation center, transitional work program, hospital, clinic and any and all programs where offenders are legally assigned. For the purpose of this rule, the commission of a crime while on escape status constitutes aggravated escape.
9	Deleted	Refer to rule no. 30
10	Fighting (Schedule B)	Hostile physical contact or attempted physical contact is not permitted. This includes fist fighting, shoving, wrestling, kicking and other such behavior. Contact does not necessarily have to be made for this rule to be violated. Self-Defense Clarification: Self-defense is a complete defense and can be established to the board by one demonstrating that his actions did not exceed those necessary to protect him from injury.
11	Fighting, Aggravated (Schedule B)	Offenders shall not fight with each other using any object as a weapon (including any liquid or solid substances thrown or otherwise projected on or at another person). When two or more offenders attack another offender without using weapons, the attackers are in violation of this rule, as are all participants in a group or "gang" fight. The use of teeth will also be sufficient to constitute a violation of this rule. No offender shall intentionally inflict serious injury or death upon another offender. Contact does not necessarily have to be made for this rule to be violated. Self-Defense Clarification: (Refer to clarification under rule no. 10.)
12	Gambling (Schedule B)	No offender shall operate or participate in any game of chance involving bets or wagers or goods or other valuables. Possession of one or more gambling tickets or stubs for football or any other sport is a violation. No offender shall operate a book-making scheme. Possession of gambling sheets with a list of names or codes, point spreads, how much owed or how much wagered will be considered a violation.
13	Rescinded	
14	Intoxication (Schedule B)	No offender shall be under the influence of any intoxicating substance while in physical custody. Evidence of intoxication may include, but is not limited to, redness in eyes, slurred speech, odor of alcohol, elation, unsteady gait, boisterous behavior, being amused for no apparent reason,

Rule No.	Rule Name	Description
		hysteria, being in a stupor, daze or trance, etc.
15	Malingering (Schedule B)	A. A qualified medical staff person determines that an offender has made repeated and frequent complaints at sick call having little or no clinical significance; or B. A qualified medical staff person (as defined by the institution's designated health authority) determines that an offender has sought emergency medical treatment, not during scheduled sick call, when there was no ailment or when there was a minor ailment that was or could have been properly handled at sick call.
16	Rescinded	
17	Property Destruction (Schedule B)	No offender shall destroy the property of others or of the state. No offender shall alter his own property when the result of such alteration is to render the article unsuitable according to property guidelines. Flooding an area and the shaking of doors ("racking down") are not permitted. Standing or sitting on face bowls is a violation. Whether or not the offender intended to destroy the property and/or the degree of negligence involved may be utilized in defense of the charge.
18	Radio/Tape, CD or Electronic Media Player Abuse (Schedule A)	Radios/tape players, CD players or electronic media players must be used in accordance with the posted policies of the facility. Violations of posted policies regarding radios/tape players, CD players or electronic media players may be processed under this rule. In addition to any sanction that may be imposed by the disciplinary officer/disciplinary board, the ranking employee on duty may confiscate the radio/tape player, CD player or electronic media player for a period of up to 30 days.
19	Self-Mutilation (Schedule B)	No offender shall deliberately inflict or attempt to inflict injury upon himself or upon a consenting offender or consent to have an injury inflicted upon him. Tattoos, piercing of any parts of the body, and alterations to teeth are specifically included in this rule. Not included are obvious suicide attempts.
20	Deleted	Refer to rule no. 21
21	Sex Offenses, Aggravated (Schedule B)	Nonconsensual and/or consensual sexual acts involving offender-on-offender, offender-on-staff or non-incarcerated person is strictly prohibited. Contact by any offender of any person without the person's consent or of a person who is unable to consent or refuse through coercion is strictly prohibited. (There is no consensual sex in a custodial or supervisory relationship.) The following sexual behaviors are prohibited and the provisions of the Prison Rape Elimination Act shall be followed for all allegations of a violation. A. Nonconsensual Sexual Act (offender-on-offender): Contact between the penis and the vagina and the anus including penetration, however slight; contact between the mouth and the penis, vagina, anus, groin, breast, inner thigh or buttocks; penetration of the anal and/or genital opening of another offender by a hand, finger or other object. No offender shall sexually harass another offender by force or threat of force. B. Abusive Sexual Contact (offender-on-offender): Contact such as, but not limited to, intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, buttocks and/or mouth of any person. No offender shall sexually assault another offender by force or threat of force. C. Sexual Misconduct (offender-on-offender): Contact or attempted contact between the penis and the vagina or the penis and the anus including penetration or attempted penetration, however slight; contact or attempted contact between the mouth and the penis, vagina or anus; penetration or attempted penetration of the anal or genital opening of another offender by a hand, finger or other object; carnal copulation by two or more offenders with each other, or by one or more offenders with an implement or animal(s); two or more offenders who have obviously been interrupted immediately before or after carnal copulation. Use of the genital organs of one of the offenders is sufficient to constitute the offense. Offenders may not participate in any sexual activity with each other. D. Sexual Misconduct (offender-on-staff or non-incarcerated person): Contact or attempted contact between the penis and the vagina or the penis and the anus including penetration or attempted penetration, however slight; contact or attempted contact of the mouth and the penis, vagina or anus; penetration or attempted penetration of the anal or genital opening of another person by a hand, finger or other object; two or more persons who have obviously been interrupted immediately before or after carnal copulation. Offenders may not participate in any sexual activity with staff or non-incarcerated persons. E. Obscenity: No offender shall deliberately expose the genital organs and/or masturbate in view of staff or non-incarcerated persons. F. Other Prohibited Sexual Behavior (offender-on-offender, offender-on-staff or non-incarcerated person): No offender shall: make sexual remarks, gestures or sounds; flirt; exchange personal items, etc. or make sexual threats in conversation by correspondence or telephone. G. Overt display of affection in a manner that may elicit sexual arousal with anyone is prohibited. H. There can be no consensual sex between an employee and an offender. Failure to report any improper advances made by an employee on an offender may result in a violation of this rule.
22	Theft (Schedule B)	No offender shall steal from anyone. Forgery, which is a form of theft, is the unauthorized altering or signing of a document(s) to secure material return and/or special favors or considerations. (The very act of the forgery will constitute proof of the crime. It need not have been successful in its conclusion.)

Rule No.	Rule Name	Description
		Fraud or the deliberate misrepresentation of fact to secure material return and/or special favors or considerations is also a form of theft. An offender who knowingly submits obviously false information to any employee within the Department of Public Safety and Corrections is guilty of this violation. No offender shall have stolen items under his immediate control. No offender shall have institutional property under his immediate control unless he has specific permission; this includes institutional foodstuffs. (Refer to rule no. 1. for the definition of "area of immediate control.")
23	Rescinded	
24	Unauthorized Area (Schedule B)	An offender must be in the area in which he is authorized to be at that particular time and date, or he is in an unauthorized area. No offender shall go into any housing unit other than that to which he is assigned (this includes standing in the doorway) unless he has permission.
25	Deleted	Refer to rule no. 22
26	Unsanitary Practices (Schedule A)	Offenders must not spit or drop litter or cigarette butts anywhere but into a proper receptacle. Offenders must maintain themselves, their clothing and their shoes in as presentable a condition as possible under prevailing circumstances. Each offender is responsible for keeping his bed and bed area reasonably clean, neat and sanitary. Beds will be made according to the approved posted policy at the facility. Offenders must wear shoes/boots and cannot wear shirts that leave the armpits exposed or shorts into the kitchen/dining area. Chewing gum in the kitchen/dining area is prohibited.
27	Work Offenses (Schedule A)	Offenders must perform their assigned tasks with reasonable speed and efficiency. Though offenders have specific job assignments, it may be required that they do work other than what their job assignments require. This work shall also be done cooperatively and with reasonable speed and efficiency. Being present, but not answering at the proper time at work roll call is a violation. (A school assignment is considered to be a work assignment for the purposes of this rule.)

Rule No.	Rule Name	Description
28	Work Offenses, Aggravated (Schedule B)	An offender who flatly refuses to work or to go out to work or who asks to go to administrative segregation rather than work is in violation of this rule, as is an offender who disobeys repeated instructions as to how to perform his work assignment. Hiding out from work or leaving the work area without permission is a violation. Falling far short of fulfilling reasonable work quotas is not permitted. Being absent or late for work roll call without a valid excuse (such as no duty or callout) is a violation, as is not reporting for extra duty assignment. Being late to work or to school assignment is a violation. (A school assignment is considered to be a work assignment for the purposes of this rule.)
29	Disturbance (Schedule B)	No offender shall create or participate in a disturbance. No offender shall incite any other person to create or participate in a disturbance. A disturbance is defined as two or more offenders involving acts of force or violence toward persons or property or acts of resistance to the lawful authority of correctional officers and/or other law enforcement officers under circumstances which present a threat of injury to persons, to property, or to the security and good order of the institution.
30	General Prohibited Behaviors (Schedule B)	The following behaviors, which may impair or threaten the security or stability of the unit or wellbeing of an employee, visitor, guest, offender or their families are prohibited: A. strong-arming or using threats of violence or perceived harm or reprisal to secure gain or favor for oneself or others; B. directly or indirectly threatening to harm oneself (except obvious suicide attempts); C. threatening, planning, conspiring or attempting to commit a violation of the rules of behavior for adult offenders or state and federal laws; aiding or abetting another offender involved in committing a violation of the rules or state and federal laws; D. engaging in or making an attempt to engage in a non-professional relationship with an employee, visitor, guest, their families or other person the offender may come in contact with while incarcerated; E. trafficking in drugs or alcohol, stolen goods or sexual favors; F. organizing or participating in a scam or similar behavior; G. making unsolicited contact or attempted contact with the victims of the offender's criminal activity or any immediate family member of the victim; H. bribing, influencing or coercing anyone to violate institutional policies procedures, rules, or state and federal laws or to attempt to do so; I. giving an employee anything of any value; J. harassing behaviors conducted via telephone, correspondence or during other activities; K. the communication of statements or information known to be malicious, frivolous, false, and/or inflammatory, the

Rule No.	Rule Name	Description
		purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest, offender or their families may be subject to all Schedule B penalties except for forfeiture of good time and/or loss of incentive wages. (This rule shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.); L. using telephones, computers and/or office equipment without approval; M. purchasing or trading for offender legal or other services. Performing legal work for another offender or being in possession of another offender's legal work when not assigned as a counsel substitute or when not approved by the warden. (It is a violation for any offender to give or receive anything of value relative to the provision of paralegal services.) An offender may not perform or be in possession of staff legal work; N. communicating or visiting with outsiders when not approved or communicating or visiting with any person after being given instructions not to communicate or visit with that person; O. participating in a loud or boisterous argument or dispute even when a fight does not ensue; P. participant in, organizing or advocating a work stoppage; Q. making or attempting to make credit purchases; R. abusing the administrative remedy procedure; S. belonging to a gang, advocating membership in a gang, or participating in any gang related activities, including any form of gang or group identification or signaling; T. misrepresenting oneself to an employee, visitor, guest or the public; U. starting, causing, assisting in the creation of any fire, heat or spark of any nature by any means or methods, or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means, other than in the performance of an approved work assignment; V. failing to cooperate with an investigation; W. any behavior not specifically enumerated herein that may impair or threaten the security or stability of the unit or well-being of an employee, visitor, guest, offender or their families may still be the subject of a disciplinary report and all Schedule B penalties except for forfeiture of good time and/or loss of incentive wages; X. establishing and/or maintaining an account, or having an account established and/or maintained on any Internet-based social networking website, as well as accessing an unauthorized internet or intranet website.

J. Offender rights and responsibilities:

1. the right to be given a written copy of the disciplinary report at least 24 hours before the hearing begins which describes the contents of the charges against the offender (unless waived by him in writing);

2. the right to a hearing within 72 hours of placement in administrative segregation;

3. the right to counsel substitute for all alleged violations and the right to outside retained counsel, if the alleged violation is one for which the offender could also be charged in a criminal court, e.g. possession of illegal drugs, rape or aggravated battery, etc.;

4. the right to not be compelled to incriminate himself;

5. the right to present evidence and witnesses on his behalf and to request cross-examination of the accuser provided such request is relevant, not repetitious, not unduly burdensome to the institution and/or not unduly hazardous to staff or offender safety. (The board has the option of stipulating expected testimony from witnesses. In such cases, the record of the hearing shall contain a statement indicating the nature of the stipulated testimony. The board should assign proper weight to such testimony as though the witness had actually appeared.) The accusing employee must be summoned when the report is based solely on information from confidential informants, if such a motion is raised;

6. the right to an unbiased hearing. Any chairman or member directly involved in the incident, who is biased for or against the accused or who is in a therapeutic relationship with the offender that would be jeopardized by the therapist's presence on the disciplinary board, cannot hear the case unless the accused waives recusal in writing or verbally on the record. Performance of a routine administrative duty does not necessarily constitute direct involvement or bias;

7. the right to enter a separate plea to each rule violation for which he is charged;

8. the right to a written summary of the evidence and reasons for the judgment, including reasons for the sanction imposed, when the accused entered a plea of "not guilty" and was found "guilty" by the disciplinary board. (This will usually appear on the finalized report.) The convicted offender shall be given or sent a written summary;

9. the right to appeal the decision consistent with the appropriate appeal procedure.

K. Disciplinary Sanctions

1. After a finding of guilt, the disciplinary officer (low court) or the disciplinary board (high court) may impose one or two of the penalties below for each violation.

2. Suspended Sentences. The disciplinary officer or the disciplinary board may suspend any sanction either imposes for a period of up to 90 days. The period of suspension begins on the date of the issuance of the ruling. When the time period has expired, the report itself remains a part of the record, although the sanction may no longer be imposed.

a. Penalty Schedule—Low Court

Penalty Schedule—Low Court	Description of Time/Clarifications
Reprimand	N/A
Extra duty	Up to 4 days for each violation
Loss of radio/tape, or CD or electronic media player and/or TV	Up to 2 weeks
Loss of recreation and yard activities	Up to 2 weeks (If the offender is housed in disciplinary detention or disciplinary detention/extended lockdown, the offender must be allowed a 24-hour break with access to recreation and/or yard activities after ten consecutive days in disciplinary detention or disciplinary detention/extended lockdown before any subsequent imposition of this penalty).
Telephone	Up to 2 weeks (When given this penalty, will not include loss of telephone privileges in emergencies or for legal calls).
Movies	Up to 2 weeks
Canteen	Up to 2 weeks
Loss of any similar minor privilege	Up to 2 weeks

b. Penalty Schedule—High Court (Schedule A)

Penalty Schedule (High Court)—Schedule A	Description of Time/Clarifications
Reprimand	N/A
Loss of minor privilege	Up to four weeks
Extra duty	Up to four days for each violation
Disciplinary detention	Up to five days for each violation
Forfeiture of good time	Up to a maximum of 15 days for each violation (An offender is presumed to have earned his good time on the date of sentencing and may forfeit such good time at any point thereafter.)
Quarters change	N/A
Job change	N/A
Confinement to dormitory, room or cell	Up to 14 days (This does not exclude participation in work, meals, medical or other essential call-outs.)
Failure to earn incentive wages	Up to three months (Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the introductory pay level for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender's pay will be automatically adjusted to the lowest pay rate for the assigned job.)

c. Penalty Schedule—High Court (Schedule B)

Penalty Schedule (High Court)—Schedule B	Description of Time/Clarifications
Reprimand	N/A
Loss of minor privilege (See penalty schedule—low court)	Up to 12 weeks, unless violation involved abuse of that privilege, then up to 24 weeks
Confinement to dormitory, room or cell	Up to 30 days (This does not exclude participation in work, meals, medical or other essential call-outs.)
Extra duty	Up to eight days for each violation
Disciplinary detention	Up to ten days for each violation

Penalty Schedule (High Court)—Schedule B	Description of Time/Clarifications
Forfeiture of good time (An offender is presumed to have earned his good time on the date of sentencing and may forfeit such good time at any point thereafter.)	Escape (simple or aggravated): Up to a maximum of all good time earned on that portion of the sentence served prior to the escape Attempted escape (simple or aggravated): Up to a maximum of 180 days for each violation Battery of an Officer: Up to 180 days for each violation Physical possession of illegal drugs or a weapon: Up to 180 days for each violation All other Schedule B violations: Up to a maximum of 90 days for each violation
Quarters change	N/A
Job change	N/A
Failure to earn incentive wages	Up to one year Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the introductory pay level for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender's pay will be automatically adjusted to the lowest pay rate for the assigned job.
Loss of hobby craft	Up to 12 months This penalty is at the discretion of the warden or designee, based upon the length of the sanction, this penalty may include loss of the hobby craft box assignment--in such cases, the offender would not be eligible to apply for resumption of this privilege until after the sanction has been served. Loss of hobby craft privileges that result from custody status changes, classification actions, housing or institutional assignment changes, other changes that may routinely occur during the course of incarceration or the imposition of other disciplinary penalties are not to be considered as a “loss of hobby craft” sanction in the context of the disciplinary process.
Custody change from minimum to medium custody status	Imposition of this sanction may include transfer to another institution. Any change of quarters, job change or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this section unless expressly indicated as a sanction.

Penalty Schedule (High Court)—Schedule B	Description of Time/Clarifications
Custody change from minimum or medium custody status to maximum custody status (working cellblock or disciplinary detention/ extended lockdown)	Imposition of this sanction may include transfer to another institution. Any change of quarters, job change or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this section unless expressly indicated as a sanction. When expressly indicated as a sanction, review of the assignment will be in accordance with established policy and procedures.
Loss of visiting privileges	If the violation involves visiting, to be reviewed by the warden or designee every 90 days. (Established policy and procedures govern restrictions relative to non-contact versus contact visiting and is not considered a disciplinary penalty.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:413 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2194 (October 2008), LR 39:3309 (December 2013), LR 40:1010 (May 2014), repromulgated LR 40:1104 (June 2014).

Chapter 4. Division of Probation and Parole

§403. Supervised Release of Sex Offenders upon Expiration of Sentence

A. Purpose—to state the secretary's policy regarding the supervised release of sex offenders upon expiration of sentence pursuant to legislative intent.

B. Applicability—deputy secretary, assistant secretary and the Director of Probation and Parole. The Director of Probation and Parole is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and to convey its contents to appropriate staff and any and all affected sex offenders under supervision pursuant to this regulation.

C. Policy—it is the secretary's policy that a uniform procedure be established and adhered to relative to the supervised release of certain sex offenders who have been released from the custody of the department upon expiration of sentence.

D. Definition

Probation and Parole Officer—for the purpose of this regulation, shall include supervised release officers, Department of Public Safety and Corrections officers and supervising officers as these terms are utilized in R.S. 15.561.1 through 7. Probation and parole officers are employed by the Division of Probation and Parole and have all the powers and duties of probation and parole officers as provided by law.

E. General Procedures

1. A person convicted on or after August 15, 2006, and releasing on or after August 15, 2008, of a sex offense as defined in R.S. 15:541 when the victim is under the age of thirteen years, as stated on the bill of information, shall be placed upon supervised release for life when he is released from the custody of the Department of Public Safety and Corrections upon expiration of his sentence. Not withstanding any other provision of law to the contrary, any person who is placed upon supervised release may petition the sentencing court for a termination of the supervision.

2. Supervised release shall be administered by the Division of Probation and Parole.

3. When a sex offender is placed on supervised release pursuant to the provisions of this regulation, the probation and parole officer shall:

a. inform the sex offender that he will be placed upon supervised release for the duration of his natural life;

b. inform the sex offender of the conditions of supervised release as provided for in R.S. 15:561.5 (see Subsection F of this Section);

c. require the sex offender to read and sign a Notification of Supervised Release Certificate to verify the fact that the sex offender will be placed upon supervised release and that the conditions of the supervised release have been explained to him.

F. Supervised Release Conditions

1. A sex offender placed on supervised release pursuant to the provisions of this regulation shall comply with the following conditions:

a. report immediately to the Division of Probation and Parole district office which is listed on the certificate of supervised release;

b. establish a schedule of a minimum of one meeting per month with the probation and parole officer to provide the officer with his current address, e-mail address or addresses, instant message name or names, date of birth, place of employment and verification of compliance with all registration and notification requirements of a sex offender as required by statute;

c. be subject to periodic visits with the probation and parole officer without prior notice;

d. abide by any curfew set by the probation and parole officer;

e. refrain from using or possessing any controlled dangerous substance or alcoholic beverage and submit, at the sex offender's expense, to screening, evaluation and treatment for controlled dangerous substances or alcohol abuse as directed by the probation and parole officer;

f. refrain from using or possessing any pornographic or sexually explicit materials. "Pornographic or sexually explicit materials" means any paper, magazine, book, newspaper, periodical, pamphlet, composition,

publication, photograph, drawing, phonograph record, album, cassette, wire or tape recording, compact disc, digital versatile disc, digital video disc or any other form of visual technology or other similar tangible work or thing which is devoted to or principally consists of descriptions or depictions of illicit sex or sexual immorality, the graphic depiction of sex, including but not limited to the visual depiction of sexual activity or nudity, ultimate sexual acts, normal or perverted, actual, simulated or animated, whether between human beings, animals or an animal and a human being;

g. report to the probation and parole officer when directed to do so;

h. not associate with persons known to be engaged in criminal activities or with persons known to have been convicted of a felony without written permission of the probation and parole officer;

i. in all respects, conduct himself honorably, work diligently at a lawful occupation and support his dependents, if any, to the best of his ability;

j. promptly and truthfully answer all inquires directed to him by the probation and parole officer;

k. live and remain at liberty and refrain from engaging in any type of criminal conduct;

l. not have in his possession or control any firearms or dangerous weapons;

m. submit himself to available medical, psychiatric or mental health examination and treatment for offenders convicted of sex offenses when deemed appropriate and ordered to do so by the probation and parole officer;

n. defray the cost, or any portion thereof, of the supervised release by making payments to the department in a sum and manner determined by the department, based upon the offender's ability to pay;

o. submit a residence plan for approval by the probation and parole officer;

p. submit himself to continued supervision, either in person or through remote monitoring, of all of the following internet related activities:

i. the sex offender's incoming and outgoing e-mail and other internet-based communications;

ii. the sex offender's history of websites visited and the content accessed; and

iii. the periodic unannounced inspection of the contents of the sex offender's computer or any other computerized device or portable media device and the removal of such information, computer, computer device or portable media device to conduct a more through inspection;

q. comply with such other specific conditions as are appropriate, stated directly and without ambiguity so as to be understandable to a reasonable man.

2. Sex offenders on supervised release pursuant to this regulation shall be subject to the same probation and parole policies and procedures as any other sex offender on probation or parole supervision.

G. Sanctions for Failure to Comply

1. Sex offenders on supervised release who fail to comply with the conditions of their release and supervision as provided for in Subsection F shall be referred to the district attorney for prosecution of the new charge pursuant to R.S. 15:561.7.

2. Upon a first conviction of R.S. 15:561.7, the sex offender shall be fined not more than one thousand dollars and imprisoned with hard labor for not less than 2 years nor more than 10 years without benefit of parole, probation or suspension of sentence.

3. Upon a second or subsequent conviction of R.S. 15:561.7, the sex offender shall be fined three thousand dollars and imprisoned with hard labor for not less than 5 years or more than 20 years without benefit of parole, probation or suspension of sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1424 (July 2008), amended LR 35:253 (February 2009), LR 37:1176 (April 2011).

§405. Emergency Plan for Sex Offenders on Probation and Parole Supervision in the Event of an Emergency/Disaster

A. Purpose. To establish the secretary's policy regarding the temporary and/or permanent displacement of sex offenders under the supervision of the Division of Probation and Parole in times of an emergency/disaster.

B. Applicability: assistant secretary, director, deputy director, regional directors, district administrators, and district supervisors of the Division of Probation and Parole. The Director of the Division of Probation and Parole is responsible for ensuring that appropriate written policy and procedures are in place to comply with the provisions of this regulation and to convey its contents to appropriate staff and to any and all sex offenders currently under supervision.

C. Policy

1. It is the secretary's policy to protect the public safety by establishing a uniform emergency procedure relative to the temporary and/or permanent displacement of sex offenders under the supervision of the Division of Probation and Parole.

D. Procedures

1. Requirements of the Division of Probation and Parole

a. The division shall establish a toll-free telephone number for sex offenders to call in the event of an emergency/disaster which results in their evacuation or temporary displacement.

b. In the event of an emergency/disaster resulting in the opening of shelters and/or other temporary housing in the state, the local probation and parole district office will post notices in any and all shelters within their geographical area. The notice shall include contact information for the local district office, the probation and parole toll-free telephone number and the department's website address.

c. Each district office will post notices in their office providing contact information in the event of an emergency/disaster resulting in the temporary displacement of sex offenders under supervision.

d. In the event a sex offender is evacuated/temporarily displaced from his approved in-state residence to a shelter/facility out of state, the supervising district will immediately notify all appropriate agencies through the interstate compact of the offender's location and take whatever action is appropriate in the case.

2. Requirements of the Sex Offender

a. Each sex offender under supervision will provide their probation and parole officer with at least one alternate address and telephone number in the event of an emergency/disaster that would require the offender to evacuate his approved residence. The sex offender is to evacuate to this alternate address in the event of an emergency/disaster unless he is prevented from doing so for a legitimate, bona fide reason.

b. Each sex offender under supervision must carry at all times a sex offender identification (ID) card provided by the division. The ID card will have the offender's name, DOC number, offense, supervision expiration date, toll-free telephone number and the department's website address.

c. In the event a sex offender is evacuated/temporarily displaced from his approved residence due to an emergency/disaster he is to contact either the local probation and parole district office or the headquarters office via the sex offender toll-free telephone number and advise of his new location. The sex offender is also to contact the local sheriff's office and chief of police and inform those agencies of the following: he is a sex offender; his name; date of birth; social security number; new residence location; and last address of registration prior to the emergency. These contacts are to be made as soon as possible and no later than 24 hours after arriving at the new location. This process is to be repeated every time the offender moves to a new location. This process applies to all sex offenders no matter where they are displaced to, both within the state and out of state.

d. In the event a sex offender is evacuated/temporarily displaced due to an emergency/disaster to an emergency shelter, temporary housing, private residence or hotel the sex offender shall immediately notify the management of the facility or home owner of their sex offender status. The sex offender will adhere to all registration and notification requirements when appropriate.

e. A sex offender shall not be housed in shelters, hotels, Federal Emergency Management Agency (FEMA) trailer parks or any other housing funded by FEMA where the general population of evacuees is staying. The sex offender shall be provided shelter or housing in an alternative location separate and apart from where the general population of evacuees is staying.

f. These requirements shall be included in the sex offender contract signed by the sex offender. Failure of the sex offender to comply with the provisions of this regulation shall be considered a violation of supervision and subject the offender to revocation proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:543.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1423 (July 2008).

§407. Sex Offender Payment for Electronic Monitoring

A. Purpose—to state the secretary's policy regarding a sex offender's ability to pay for electronic monitoring.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens and director of probation and parole. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to provide for close control and/or tracking of sex offender movement and to utilize electronic monitoring to achieve this within resource limits.

D. Definitions

1. *Child Sexual Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of a sex offense as defined in R.S. 15:541(12) and/or (24) and who is likely to engage in additional sex offenses against children because he has a mental abnormality or condition which can be verified or because he has a history of committing crimes, wrongs or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children.

2. *Sex Offender*—an offender committed to the custody of the Department of Public Safety and Corrections for a crime enumerated in R.S. 15:541(24). A conviction for any offense provided for in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal, or federal law equivalent to such offense. An individual convicted of the attempt or conspiracy to commit any of the defined sex offenses shall be considered a sex offender for the purpose of this regulation.

3. *Sexually Violent Predator*—a judicial determination as provided for in R.S. 15:560 et seq., for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (24) and who has a mental abnormality or

anti-social personality disorder which makes the person likely to engage in predatory sexually violent offenses.

E. Procedures

1. Sex offenders shall be placed on electronic monitoring based on the following levels of priority:

a. sex offenders with victims under the age of 13 years pursuant to R.S. 14:43.1(C)(2) and (3), 14:43.2(C)(2) and (3), 14:43.3(C), 14:78.1(D), 14:81.1(D)(1) and (3) and 14:81.2(E);

b. child sexual predators and sexually violent predators based upon a judicial determination made in accordance with established policy and procedures. Pursuant to the provisions of R.S. 15:560.4, these sex offenders shall be required to be electronically monitored utilizing electronic location tracking;

c. sex offenders under supervision by the division of probation and parole who pose a high level of risk due to indicators such as past and present criminal behavior/arrests, citizen complaints/reports, officer observation and/or other related risk indicators.

2. Each sex offender being electronically monitored shall pay the cost of such monitoring. The cost attributable to the monitoring of a sex offender who has been determined unable to pay shall be borne by the department if, and only to the degree that such funds are made available by appropriation of state funds or from any other source.

a. A sliding scale of payment may be imposed if the offender is unable to pay all (or any portion) of such costs. The division of probation and parole shall determine the offender's ability to pay by considering income to include all earned and unearned income (i.e. benefits, such as unemployment, disability, retirement, real estate) and all assets and basic living expenses and care of dependents, excluding mandated judgments. Factors to be considered may also include public assistance, such as food stamps, Temporary Assistance for Needy Families, Medicaid, public housing and earnings of less than 200 percent of the federal poverty guideline.

b. Whenever the sex offender cannot fully pay the costs, the determination of ability to pay and amount of payment will be made by the supervising officer with the approval of his supervisor or the district administrator or designee.

c. Failure to comply with established payment responsibilities when it is determined the sex offender had sufficient income shall be deemed a major violation and dealt with according to the division of probation and parole's policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:560.4(B), (C), and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1630 (August 2008), LR 38:432 (February 2012).

§409. Performance Grid and Administrative Sanctions

A. Purpose—to establish the secretary's policy for addressing the behavior of an offender through the use of a performance grid and administrative sanctions. The performance grid and administrative sanctions ensure consistent and timely actions which shall be imposed in response to violations enumerated on the grid. This works to achieve public safety by holding offenders accountable for their behavior and reinforcing positive behavior.

B. Applicability—deputy secretary, director of probation and parole, regional administrators, district administrators and all probation and parole officers. The director of probation and parole is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to address violations in a timely, consistent and reasonable manner by use of the performance grid, which may include administrative sanctions. Absent significant risk to public safety, these actions and/or administrative sanctions would be graduated and proportional with the level of violations. The needs of the offender shall also be considered to assist in the successful completion of their sentence. The grid is a tool to guide probation and parole officers in the application of administrative sanctions. It is also the secretary's policy to recognize and reward offenders for achieving progress made towards goals formulated in the supervision plan.

D. Definitions

Actions—added conditions or requirements placed on the offender by the probation and parole officer, the court or the board of parole in an effort to prevent any further violations by an offender.

Administrative Sanctions—imposed by the probation and parole officer to address technical violations in accordance with Act No. 104 of the 2011 Regular Session to include, but not be limited to: jail; non-custodial treatment; community service work; house arrest; electronic monitoring, restitution centers, transitional work programs, day reporting centers and other local sanctions not already imposed as special conditions of supervision.

Performance Grid—a four level instrument used to register any violation enumerated on the performance grid by an offender and the actions taken by a probation and parole officer in response to those violations. Each level is graduated to address the seriousness of the violations that occur.

Violations—any behavior, action or inaction, which is contrary to the conditions of probation or parole supervision which may or may not be enumerated on the performance grid.

E. The following violations are specific to violations in which probation and parole officers may use the administrative sanctions.

Parole Technical Violations—all violations of the conditions of parole, except those resulting in a new arrest, charge, conviction of a felony or an intentional misdemeanor directly affecting the person or being in possession of a firearm or other prohibited weapon.

Probation Technical Violations—all violations of probation, except those resulting in an arrest for a subsequent criminal act.

F. General Application of Performance Grid in Response to Violations

1. Timely and appropriate actions shall be taken in accordance with the procedures of this regulation when a probation and parole officer becomes aware of an offender's violation(s).

2. The officer shall utilize the performance grid for enumerated violations specific to the offender and the violation. The absence of any other technical violation from the performance grid does not prohibit the probation and parole officer from addressing these violations in an appropriate manner.

3. The performance grid shall not be utilized to address violations of not guilty by reason of insanity and interstate compact cases.

4. When using the performance grid, the probation and parole officer shall locate the performance grid specific to the offender, select the enumerated violation(s) and choose the appropriate coinciding action(s) and/or administrative sanctions. When imposing sanction(s) for violations, all appropriate actions shall be selected to fully address violations, especially when selecting jail as an administrative sanction (i.e., substance abuse treatment after jail sanction is imposed).

5. Although a wide range of actions and administrative sanctions are available for response to certain violations, probation and parole officers may determine that a departure from the recommended actions may be a more appropriate response to a violation(s). The reasons for the departure shall be explained in the narratives.

6. Actions taken for a positive drug screen shall also include mandatory retesting within 45 days.

7. When the offender completes the last action directed, the offender returns to a compliant status. Any new violation that occurs after the offender has returned to compliant status for six months will be addressed as a level 1 violation.

G. Administrative Sanctions

1. When using the performance grid, probation and parole officers may opt to utilize administrative sanctions when authorized by the court or board of parole. These administrative sanctions are located in the actions column of the performance grid. The violation(s) and subsequent sanction(s) shall be noted on the performance grid when completing case narratives as described in Paragraph E.5 of this regulation. The performance grid establishes the level and type of administrative sanctions that may be imposed by probation and parole officers and the level and type of violations that warrant a recommendation that the offender be returned to the court or the board of parole.

2. When imposing administrative sanctions, the following factors shall be taken into consideration:

a. severity of the violation;

b. prior violation history;

c. severity of the underlying criminal conviction;

d. any special circumstances, characteristics or resources of the offender;

e. protection of the community;

f. deterrence;

g. availability of local sanctions, including, but not limited to: jail; non-custodial treatment; community service work; house arrest; electronic monitoring; restitution centers; transitional work programs; day reporting centers and other local sanctions not already imposed as special conditions of supervision.

3. When imposing administrative sanctions (including jail sanctions) that are not already conditions of supervision (i.e., electronic monitoring, substance abuse treatment, etc.) the probation and parole officer shall complete the notification of administrative sanctions and shall obtain supervisor approval prior to imposing the sanctions.

4. For the offender to accept the administrative sanction, the offender must be given notice of the violation(s), must waive his right to a hearing and counsel, must consent to the administrative sanction being imposed and must admit the violation(s). All offenders who are offered administrative sanction(s) shall receive the following process.

a. The notification of administrative sanctions form shall be printed, read and thoroughly explained to the offender. The offender shall then be given the option of accepting or refusing the imposed administrative sanction(s).

b. When the offender agrees to the administrative sanction(s), the offender, supervising probation and parole officer and supervisor shall sign and date the notification of administrative sanctions form. The offender shall be provided a copy of the completed notification of administrative sanctions form.

c. If jail is being imposed as an administrative sanction, CAJUN and case management shall be updated by appropriate district office staff (support employee or probation and parole officer) to indicate correct location and transfer dates. The local jail facility shall also be provided a completed notification of administrative sanctions form for their records.

d. When a jail sanction is chosen, the probation and parole officer is limited to the number of jail days in the appropriate level, regardless of the number of violations that have occurred. The number of total jail days an offender

serves cannot exceed 60 days in a 12 month period. This twelve month period begins upon the imposition of the first jail sanction.

e. The court, board of parole, district attorney and defense counsel of record shall be provided a copy of the notification of administrative sanctions form.

5. If the offender refuses the administrative sanction(s), the offender shall be given the opportunity to explain in writing on the notification of administrative sanctions form why the administrative sanction is being refused. The refusal shall be witnessed and dated. This information shall be provided to the court or board of parole for further action.

6. Monthly reports shall be submitted electronically no later than the tenth day of the month following the reporting period utilizing the C-05-001 reporting database and appropriate C-05-001 form.

H. Rewards and Recognition

1. The performance grid shall also recognize and reward offenders for positive behavior changes, compliance with the conditions of supervision and progress made towards achievement of goals. Timely and appropriate action shall be taken in response to positive behavior as enumerated in the performance grid.

2. Recognition shall also be achieved by reducing the level of supervision and early termination, suspended status and self reporting as established in current policy and procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 38:1597 (July 2012).

Chapter 5. Reserved

EDITOR'S NOTE: Chapter 5, Administration of Medications to Children in Detention Facilities, has been moved to Chapter 9.

Chapter 7. Youth Services

Subchapter A. Administration

EDITOR'S NOTE: §701, Selective Service Registration, has been moved to §715.

§701. Access to and Release of Active and Inactive Records—Youth [Formerly §102]

A. Purpose. To establish the secretary's policy and procedures for access to and release of records of active and inactive juvenile records.

B. Applicability. This regulation applies to all persons employed by the department and those who are under contract with the department. The deputy secretary, assistant secretary of the Office of Youth Development, wardens of juvenile facilities, and the probation and parole program director/juvenile are responsible for implementing this regulation and conveying its contents to all affected persons.

C. Definition

Law Enforcement Agencies—those agencies designed to enforce federal, state or municipal laws and who receive public funds as their primary source for operation, i.e., sheriff's offices, local and state police departments, departments of corrections, state attorneys general, U.S. attorneys, district attorneys, and the Federal Bureau of Investigation.

D. Release of Information and Records

1. All information obtained on a juvenile shall be confidential and shall not be subject to public inspection or be disclosed directly or indirectly to anyone except in accordance with this regulation. None of the provisions contained herein are intended to restrict the ability of the department to provide any contract facility with full and complete information on any juvenile housed therein.

2. Generally, written consent by the juvenile, parent or guardian or attorney of record is required before a person may be granted access to the juvenile's case files. Access includes viewing the record and receiving copies of documents from a juvenile's record.

3. Release of Initial Documents to Attorney (Initial Contact—No Attorney Client Relationship Yet). Upon receipt of a completed written consent form executed by the juvenile (see Subsection M), the institution may provide copies of the following information to an attorney who has met with the juvenile and requested information:

a. JIRMS Master (JPRNMASA);

b. disciplinary reports for the quarter;

c. court documents;

d. time computation worksheet;

e. custody classification/reclassification for the preceding two quarters;

f. a listing of programs completed including alcohol/drug abuse education. However, no acknowledgment of the juvenile's alcohol/ drug abuse treatment may be given.

4. Release of Records upon Establishment of Attorney Client Relationship. An attorney client relationship sufficient to allow release of a juvenile's record is established upon the occurrence of the following:

a. juveniles age 18 and older:

i. receipt of a written consent form executed by the juvenile (see Subsection N) of his intent to be represented by the attorney named therein;

b. juveniles under age 18:

i. in order to release information from the record of a juvenile, the institution will require receipt of a written consent form (see Subsection O) executed by the parent/guardian of the juvenile; or

c. alternatively, release may also be accomplished through the occurrence of all of the following:

i. juvenile has affirmed his intent through execution of a written document to enter into an attorney client relationship with a particular attorney or law firm and a release form is executed by the juvenile which allows general access by the attorney to the juvenile's record (see Subsection N). Additionally, if the juvenile intends to allow release of records pertaining to education, alcohol/drug abuse treatment or HIV/AIDS status, the juvenile must execute a specific confidentiality waiver for each individual category of documents; and

ii. receipt by the institution housing the juvenile of a copy of the letter written by the attorney, notifying the juvenile's parent/guardian that the juvenile has requested the attorney to represent him. The letter must contain language directing the parent/guardian to notify the institution or the court of juvenile jurisdiction, should the parent object to the representation and/or access to records; and

iii. receipt of postal "Proof of Mailing" verifying that the letter in Clause D.4.c.i. above has been mailed to the parent/guardian; and

iv. receipt of a written statement made by the attorney attesting that he/she has made efforts to contact the parent/guardian; and

v. at least 10 business days have elapsed since receipt by the institution of all documents listed in Clause D.4.c.i. through iv above, and the parent/guardian has not voiced an objection. Once the attorney client relationship is established whether through a consent form executed by the parent/guardian or through the provision of documents required in Clause D.4.c.i through v above, the documents shall be filed in the juvenile's case file at Clip 8. Establishment of the attorney client relationship shall also be entered in the JIRMS.

5. Information on a particular juvenile may be released without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the following:

a. Board of Parole;

b. Board of Pardons;

c. governor;

d. sentencing judge;

e. counsel for a juvenile in a delinquency matter;

f. district attorneys;

g. law enforcement agencies;

h. Department of Public Safety and Corrections personnel, including legal representatives and student workers;

i. appropriate governmental agencies or public official, when access to such information is imperative for the discharge of the responsibilities of the requesting agency, official or court officer and the information if not reasonably available through any other means; and

j. court officers with court orders specifying the information requested.

6. Fingerprints, photographs, and information pertaining to arrests and disposition of delinquent offenses, as well as information regarding escapes may be released to law enforcement agencies without special authorization.

7. The secretary or his designee may approve the reading of information to the following:

a. social services agencies assisting in the treatment of juvenile;

b. appropriate governmental agencies or officials;

c. approved researchers who have guaranteed in writing anonymity of all subjects.

8. The secretary or his designee may approve selective reading (but not copying) of information by a private citizen or organization aiding in the rehabilitation of, or being directly involved in the hiring of, the juvenile under the following conditions, when:

a. it appears that the withholding of the information would be to the juvenile's disadvantage;

b. the requested information is necessary to further the rehabilitation or the likelihood of hiring the juvenile;

c. the requested information is not reasonably available through other means;

d. the juvenile or his parent or guardian has given written consent for the release of information.

E. Release of Information to Crime Victims

1. Both the information contained in a Victim Notice and Registration Form and the fact that a notification request has been made are confidential. Any questions from outside the department about whether particular persons have requested notification or whether there has been a notification request for particular juveniles should be referred to the Crime Victims Services Bureau.

2. Information may be released to victims, witnesses, and others directly injured by the criminal acts of persons under the state's authority in accordance with Department Regulation No. C-01-007 "Crime Victims Services Bureau."

F. Subpoenaed Records

1. Whenever the records of a juvenile are subpoenaed, they shall be submitted to the appropriate court for a ruling as to whether the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determinate in camera. If the court makes any one of the following determinations, the information shall be withheld:

a. the information is not relevant to the proceedings; or

b. the information was derived from communications which were obviously made in the confidence that they would not be disclosed; or

c. the confidentiality is essential to the future useful relations between the source and the recorder of the information.

2. Should the court authorize disclosure of the records in accordance with the subpoena, the party who caused the subpoena to be issued shall pay a fee for the cost of production of the records in accordance with R.S. 39:241 (see Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records"), unless the court determines that the party has been granted pauper status in accordance with law.

G. Records Not Subpoenaed Submitted to the Courts for Review. The department reserves the right to submit any record to the appropriate court for a ruling as to whether the information should be turned over to party requesting information.

H. Access to and Release of Medical Records. Refer to Department Regulation No. B-06-001J "Health Care" and LSUHSC JCP Policies J/HC-RT 02-01 and 05-01 for specifics governing access to and release of medical records.

I. Department's Access to Information and Records of Other Agencies. During the course of any investigation which the department is authorized by law to conduct, or which is necessary for the rehabilitation of persons in the custody or under the supervision of the department, the department shall have access to information and records under the control of any state or local agency which is reasonably related to the rehabilitation of the juvenile.

J. Juvenile Access to Records. Information contained in the juvenile's record shall be confidential and shall not be released to him except in accordance with the following.

1. A juvenile may, upon request, have access to his JIRMS Master (JPRNMASA); a time computation worksheet; any court documents that are related to his incarceration; disciplinary reports; custody classification/ reclassification and case plan.

2. A juvenile shall not have access to another juvenile's record.

3. The following is a list of additional information that will not be accessible to the juvenile (This is not an exhaustive list.):

a. disposition reports;

b. social history;

c. information revealing or tending to reveal the identity of a confidential informant;

d. unusual occurrence reports;

e. admission summary;

f. correspondence from any non-corrections source directly solely to institutional officials;

g. correspondence or inquiries originated by institutional personnel;

h. investigations conducted by non-departmental agencies (district attorney, state police, FBI, etc.);

i. progress notes;

j. progress reports to the court;

k. investigations conducted by Corrections Services; and

l. non-disciplinary court-related institutional investigations.

4. Each institution shall establish procedures for juveniles to follow when requesting copies of documents from their records and the fees charged for such copies.

K. Information Requests. Verbal requests to the department for information may be acceptable. However, the secretary or his designee reserves the right to require a written request before releasing any information. In that case, the individual or agency must certify in writing that they will not release the information to any other agency.

L. Fees. The fee schedule for copies of public records is established in Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records."

M. Consent for Release of Initial Information to Attorney

CONSENT FOR RELEASE OF INITIAL INFORMATION TO ATTORNEY

My name is _____. My date of birth is _____. I am in the custody of the Louisiana Department of Public Safety and Corrections and housed at _____ Correctional Center for Youth.

I talked and met with _____, an attorney at law. I want this attorney and the law firm _____to have copies of my JIRMS Master (JPRNMASA), disciplinary reports for the quarter, court documents, time computation worksheet, custody classification/reclassification for the two preceding quarters, and a listing of programs I have completed.

_____
Date

_____
Signature

_____
Witness

N. Statement of Representation and Release of Records

STATEMENT OF REPRESENTATION AND RELEASE OF RECORDS

My name is_____. My date of birth is _____. I am in the custody of the Louisiana Department of Public Safety and Corrections and housed at _____ Correctional Center for Youth.

I want to have _____, an attorney at law, represent me.

I give my consent for my record to be copied or looked at by this attorney. This includes records contained in my medical file, mental health information and social history.

I understand that if I want to release certain records to my attorney I must waive my rights of confidentiality specifically as to those records.

_____ By placing my initials here I am confirming that I want to waive my rights as to psychological and psychiatric documents, including but not limited to evaluations, reports and progress notes.

_____ By placing my initials here I am confirming that I want to waive my rights to confidentiality as to these particular records and allow my attorney to view/copy my **education** records.

_____ By placing my initials here I am confirming that I want to waive my rights to confidentiality as to these particular records and allow my attorney to view/copy any **alcohol/drug treatment** information which might be in my record.

_____ By placing my initials here I am confirming that I want to waive my rights to confidentiality as to these particular records and allow my attorney to view/copy any **HIV/AIDS** information which might be in my record.

_____
Date

_____
Signature

_____
Witness

O. Parent/Guardian Consent to Release of Juvenile Records

PARENT/GUARDIAN CONSENT TO RELEASE OF JUVENILE RECORDS

I, _____, parent/guardian of _____, a juvenile in the custody of the Louisiana Department of Public Safety and Corrections, do hereby give my consent to release the records of my child to _____, the attorney representing him/her.

I hereby authorize the above-named attorney to view/receive copies of my child's records. I understand that included in my child's records are social, family-history and medical/mental health information.

Further, I have initialed below where it is my intention to waive my child's confidentiality and specifically authorize release to his/her attorney the following named documents.

_____ By placing my initials here I am confirming that I intend to waive my child's rights as to psychological and psychiatric documents, including but not limited to evaluations, reports and progress notes.

_____ By placing my initials here I am confirming that I intend to waive my child's rights to confidentiality and allow the attorney to view/copy my child's **education** records.

_____ By placing my initials here I am confirming that I intend to waive my child's rights to confidentiality and allow the attorney to view/copy any **alcohol/drug abuse treatment** information which might be in my child's record.

_____ By placing my initials here I am confirming that I intend to waive my child's rights to confidentiality and allow the attorney to view/copy any **HIV/AIDS** information which might be in my child's record.

_____
Date

_____
Signature

_____
Witness

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.12, 15:840.1, 15:909, 39:241, C.Cr.P. Art. 875, and Ch.C.Art. 412.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 30:77 (January 2004).

§702. Youth Offender Custody, Classification and Assignment [Formerly §308]

A. Purpose. To establish procedures for the assignment and reassignment of juvenile offenders disposed by the juvenile court to the custody of the Department of Public Safety and Corrections.

B. General

1. The assignment of juvenile offenders in the custody of the Department of Public Safety and Corrections shall be based upon a classification of the risks and needs presented by the offender. This classification shall be based upon ascertainable events and behaviors and shall be provided for all juvenile offenders in the custody of or supervised by the Department Public Safety and Corrections, Office of Juvenile Services.

2. The reassignment of offenders in agency custody shall be clearly based upon the documented needs of the offender and the risks presented and not solely upon the established duration of the treatment program.

3. The offenders and the offender's family or guardian shall be informed of the alternatives and outcomes of the assignment or reassignment and be included in the treatment/service plan.

4. Offender assignments and reassignments shall be accompanied by the offender classification, staffing and due process procedures specified below.

5. At all times the services provided the offender shall be part of a written treatment/service plan. Each offender's treatment/service plan shall be regularly reviewed as per OJS policy to assure that the most appropriate services are being provided, within the least restrictive setting available.

C. Definitions. The following definitions apply within the context of document.

Administrative Review—the process by which custody offenders reassigned to a higher level of nonsecure care may request a second level review of the reassignment.

Appeal—the process by which custody offenders may initiate a further review of the assignment decision to secure custody.

Assessment—the process of gathering the necessary social, legal, psychological, behavioral, and educational information about the juvenile offender to indicate the appropriate level of care and custody.

Assignment—the process of placing the custody offender in the available treatment program most appropriate to his/her indicated needs and risks.

Case Review—the process of reconsideration or verification that the custody offender's treatment is appropriate to meet the identified needs.

Classification—the process by which the juvenile offender is assessed relative to needs and risks presented.

Custody Offender—those juvenile offenders disposed to the custody of Department of Public Safety and Corrections by a court of juvenile jurisdiction.

Due Process Hearing—those administrative hearings conducted at the time of a custody offender's reassignment to secure levels of custody from previous nonsecure custody settings.

Levels of Care—the range of treatment services and programs available for custody offenders arranged on a scale from least restrictive to most restrictive.

Nonsecure Custody—includes services and programs available to custody offenders at all levels of care less restrictive than those provided in a secure custody setting.

Petition for Second Review by the State Level Review Panel—the process by which an offender in secure custody, whose referral for early release has been denied by the state level review panel, may request a second review by that panel.

Reassignment—the authorized move of a custody offender from one treatment program to another.

Reclassification—the process by which juvenile offenders have their needs and risk assessments reviewed and rescored based upon observable events and behavior.

Release—the termination, either by court order or expiration of a court order, of Department of Public Safety and Corrections, custody of a juvenile offender.

Secure Custody—that highest of the levels of care indicating a maximum (within law) restriction of a juvenile offender's rights, or freedoms.

Staffing—the process by which a team of professionals reviews, discusses, and plans, along with the offender, for best meeting the offender's identified needs.

State Level Review Panel—a multi-disciplinary team charged with the responsibility of reviewing requests from an offender's release from a juvenile correctional institution to a less restrictive placement and subsequently issuing a report indicating confirmation or rejections of the recommendation.

D. Minimal Procedural Requirements

1. Predispositional or disposition modification recommendations to the court concerning Department of Public Safety and Corrections custody of offenders.

a. In all cases, Office of Juvenile Services staff recommendations to the court for an offender to be placed in the custody of the Department of Public Safety and Corrections shall be preceded by a case staffing. Documentation of the staffing proceedings and final recommendations shall be maintained in the offender's case record. Recommendations for Department of Public Safety and Corrections custody of offenders not currently or previously having received services in the community shall be supported only by the most stringent circumstances of risk and/or need. The final committee recommendations shall be fully supported by information presented at the staffing and be included in the report to the court.

2. Offender Classification and Assessment

a. If the initial case staffing supports a recommendation for Department of Public Safety and Corrections custody, then the committee shall also conduct a classification staffing in order to determine the appropriate level of custody necessary to conduct a full assessment of the offender's risk and needs. The level of custody may be secure or nonsecure. All offenders served by the Office of Juvenile Services are classified as to their level of risk and need. This custody level decision shall be supported by the offender's risk and needs classification, by the available social and behavioral history, as well as by any previous history of treatment or supervision. Results of the classification staffing should be submitted to the court along with the earlier recommendation for custody.

b. For those offenders disposed to Department of Public Safety and Corrections custody without prior study and recommendation by Office of Juvenile Services staff, the classification staffing shall be held within 15 working days of disposition and receipt of all available information from the court, and except in cases of emergency before assignment of the offender to a program of treatment/services. In these cases a confirmation of the need for Department of Public Safety and Corrections custody must be considered in staffing prior to determining whether the offender requires a secure or nonsecure setting for assessment.

c. Offenders determined to require nonsecure custody for assessment, shall have diagnostic and evaluative information sought in the community. Diagnostic and evaluative assessment for offenders classified for secure custody will be provided at the Juvenile Reception and Diagnostic Center for males and at the Louisiana Training Institute at Ball for females. Upon completion of this assessment, an assignment staffing is held at the OJS Regional Office (for nonsecure) or at JRDC/LTI-Ball (for secure) in order to determine the need for a secure or nonsecure, setting for treatment. The location of the assessment, i.e., secure or nonsecure, shall in no way limit the assignment of offenders to either secure or nonsecure treatment settings.

3. Offender Assignment

a. Offenders in the custody of Department of Public Safety and Corrections whose classification and assessment indicate need for treatment services in a nonsecure custody setting shall be referred for placement at treatment facilities and programs appropriate to the level of care indicated. Assignment of offenders needing nonsecure care may be to facilities or programs ranging from in-home services to residential care and to hospitalization as treatment needs indicate. In all cases, assignment will be made to the least restrictive environment available and appropriate to address offender needs and risks as determined by a case staffing.

b. Following assessment at either JRDC (males) or LTI-Ball (females) the offender is assigned to the secure custody facility most appropriate to meet the offender's needs and risks. If following assessment, a clinical staffing

at either of the diagnostic facilities determines that a secure custody setting is not able to address the offender's needs, a referral may be made to the director of the Division of Evaluation and Placement for placement in an alternate setting.

c. An appeal of a secure custody assignment is available as per procedures that follow this rule.

4. Case Review and Reclassification

a. All offenders disposed to Department of Public Safety and Corrections custody shall as a function of the case management process have developed an individual case plan. This case plan is developed in conjunction with the offender, his family and other resources to address those needs identified in the classification staffing. Periodic review of the case plan shall be provided as per OJS policy and procedure. As a function of this case review, the offender shall be reclassified. As a result of reclassification and staffing, the current assignment to a program for services at a particular level of care or custody may be changed. The offender could also be determined to be eligible for a recommendation for release from custody.

b. Case review and reclassification of custody offenders shall be accompanied in all instances by a staffing. Offenders being provided supervision by OJS staff and for whom reclassification indicates that agency custody should be pursued must be staffed and, if indicated, brought to court for action on this recommendation. Only the court can assign an offender to agency custody. Case review and reclassification of offenders in custody and assigned to nonsecure programs may result in a recommendation for release from custody. Such recommendation shall be made to the court for consideration and disposition. No offender shall be released from agency custody except by court order.

c. Offenders in agency custody and assigned to secure custody facilities may also be recommended for release following reclassification and staffing. In these cases, the recommendations for release shall first be made to the state level review panel (SLRP) for their concurrence. If the SLRP concurs with release recommendation, the assistant secretary must then approve making such a recommendation to the court.

d. Offenders considered for release but denied by the state level review panel may petition the panel for another review within 20 days of the denial if additional evidence/information is available to address the concerns reported by the panel. The petition for review must be signed by the superintendent. The OJS regional manager is notified of the petition for review.

e. Custody offender reassignments to higher or lower levels of custody and care may be undertaken by the agency following reclassification and staffing. The offender, family, court and other involved parties shall be notified of the reassignment within five working days of the reassignment. Such transfers shall be fully supported by information included in the reclassification and staffing and be documented in the case record. Reassignment of offenders in agency custody to a higher level of care in nonsecure custody settings may be effected by the agency upon the final staffing recommendations. The offender may petition the director of the DEP for administrative review of these transfers by submitting a request in writing within 72 hours of the notice of reassignment. The director of Division of Evaluation and Placement shall assign a staff member to fully review the case for recommendation to him within 10 working days. The director's decision is final. A face to face contact may be included in the administrative review at the discretion of the director.

f. Delinquent offenders in agency custody may be reassigned from nonsecure to secure custody settings based upon documented findings of reclassification and staffing. In all such cases, the offender shall be provided a full due process hearing as per departmental regulation within five working days of arrival at JRDC (males) or LTI-Ball (females).

E. Processes of Appeal and Review

1. Appeal of Custody Level

a. Available to offenders assigned to secure custody following assessment unless:

i. the presenting offense is classified among those of the highest severity in the OJS classification system; or

ii. the offender's initial classification custody score indicates a need for maximum custody.

b. Offender must notify the superintendent of the request for appeal in writing, within five working days of assignment.

c. Superintendent notifies OJS headquarters of the appeal request and schedules an appeal hearing.

d. A hearing officer assigned by OJS conducts an appeal hearing at the facility.

e. The offender is allowed to present information in his behalf and may be represented by someone of his choice; or will have a representative appointed by the superintendent.

f. The hearing officer considers the offender's statements and information as well as the information presented in the offender's case record and classification documents.

g. The hearing officer's decision is issued to the offender, his representative and the superintendent within five working days of the appeal hearing.

h. A second level appeal is available to the offender by submitting written notice of this request to the assistant secretary of OJS.

2. Administrative Review of Level of Care

a. Available to all offenders disposed by the court to the custody of the Department of Public Safety and Corrections, who, following a reclassification and staffing, are to be reassigned to a higher nonsecure level of care.

b. Upon receipt of written notice of the reassignment, the offender may choose to request an administrative review of that decision by:

i. submitting written notice of that request to the director of the Division of Evaluation and Placement (by way of the regional manager), within 72 hours;

ii. the director, upon receipt of the request for review, shall assign a member of his staff to fully review the case, the reclassification, and the reassignment decision;

iii. the director will issue his final decision to the offender and the regional manager within 10 working days of the receipt of the request for review, and his decision is final.

3. Due Process Hearings

a. Available to all offenders disposed by the court to the custody of Department of Public Safety and Corrections, who following a reclassification and staffing are:

i. recommended for reassignment from secure custody to the juvenile adjustment center; or

ii. recommended for reassignment to secure custody from a nonsecure program or facility.

b. For offenders in secure custody, upon receipt of the notice of a recommendation for reassignment to the juvenile adjustment center, the offender has a right to due process as provided in departmental regulation.

c. For offenders in nonsecure custody, a due process hearing as per departmental regulation shall be provided at JRDC (males) or LTI-Ball (females) within five working days of arrival following reassignment to secure custody.

4. Petition for Second Review by State Level Review Panel

a. Available to all offenders disposed by the court to the custody of Department of Public Safety and Corrections and residing in secure custody facilities/programs, who have had a recommendation for early release denied by the panel.

b. Upon receipt of the state level review panel's decision to deny a recommendation for early release, the offender may petition the panel for a second review by:

i. submitting the request for a second review to the chair of the state level review panel within 20 days; if:

(a). there is additional information available which directly relates to the reasons for denial cited by the panel in their decision; and

(b). the superintendent supports the petition and notifies the regional manager;

ii. the state level review panel will process second reviews within the constraints of established procedures and time-frames established for the panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:711, R.S. 15:833, R.S. 15:893.1(B), and R.S. 15:1111.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Juvenile Services, LR 14:27 (January 1988).

EDITOR'S NOTE: §703, Freon Recovery—Certification of Technicians and Recovery Equipment, has been moved to §717.

§703. Youth Placement Review Process [Formerly §312]

A. Purpose. To establish the secretary's policy regarding periodic placement reviews of all youth in the custody of the department in order to determine whether the youth is placed in the least restrictive placement most appropriate to their needs and consistent with the circumstances of the case and the protection of the best interests of society and the safety of the public within the state.

B. Applicability. Assistant Secretary of the Office of Youth Development, Wardens of juvenile facilities, Probation and Parole Director/Juvenile, and Probation and Parole District Managers.

C. Policy. Notwithstanding the provisions of any other regulation to the contrary, it is the secretary's policy, in accordance with R.S. 15:902.3, to authorize a periodic placement review process whereby all youth in the department's custody are screened in a multi-disciplinary placement review process. Following an initial review of all custody cases, the review for secure care shall occur no less than quarterly and in conjunction with custody reclassifications. For non-secure programs, the review shall occur in conjunction with semi-annual placement reviews or upon successful completion of the placement program. The review will determine whether the youth is placed in the setting most appropriate to their needs consistent with public safety interests, based upon a formal criteria established through department policy.

D. Definitions

Adjudication—after the presentation of evidence, or the entering of a plea, the entering of a judgment by the court which indicates whether the facts as alleged in the petition forming the basis of the action have been proven, i.e., whether the family is in need of services or the child committed the delinquent act.

Aftercare—the control, supervision and care exercised over a youth upon exit from a secure facility or non-secure residential program into the community.

Fourteen Legal Days—14 calendar days except when the fourteenth day ends on a weekend or legal holiday. When this occurs, the period extends to the close-of-business on the next day that is not a weekend or legal holiday. The 14-day timeframe begins the day after the filing of a legal document with the court.

Louisiana Children's Code Article 897.1—requires that juveniles who are adjudicated delinquent for any of six most serious violent crimes (first degree murder, second degree murder, aggravated rape, aggravated kidnapping, armed robbery, and treason) must remain in a secure environment until the disposition ends. Except for armed robbery, dispositions rendered under provisions of this Article must extend until the twenty-first birthday.

Non-Secure Non-Residential Program—provides rehabilitative services to a youth who resides at home. The youth may receive the services in his home or at a central location to which he reports daily. Youth served may be in custody or on probation or parole.

Non-Secure Residential Program—provides housing, supervision and rehabilitative care for youth in the custody of the department primarily between the ages of 12-17. These facilities are usually characterized by a lack of physical security such as perimeter fences, security locks and controlled access to the facility.

Secure Care—facilities for adjudicated delinquents providing treatment and education characterized by facility design including such things as perimeter fences, security locks, supervision, and staff control that restricts on a 24-hour basis the ability of residents to enter or leave the premises.

YouthCARE—system wide positive behavior management program based upon principals of adolescent growth and development.

E. Placement Review Process of Non-Secure Care Youth

1. Youth in non-secure residential programs will be reviewed to determine the appropriateness of transition to a less restrictive setting. Screening criteria to be used in identifying youth to be reviewed are as follows:

a. in a residential program five months or more; or

b. FINS adjudication regardless of length of time in a residential program.

2. A review team in each Probation and Parole District Office will review cases which meet the above criteria. The review team will consist of, but not be limited to, the following individuals:

a. district manager;

b. residential facility representative;

c. placement officer from district of origin;

d. treatment provider as necessary;

e. unbiased individual;

f. youth; and

g. youth's parent/guardian.

3. The review will consist of discussion and evaluation of the youth's progress and needs in the areas of:

a. educational/vocational needs/progress;

b. medical concerns;

c. mental health concerns;

d. general treatment needs/progress in the areas of substance abuse, anger management, cognitive behavior, etc.;

e. behavioral concerns;

f. home environment;

g. review of community risk assessment;

h. aftercare plans;

i. special needs concerns (i.e., SMI, low cognitive abilities, special education disabilities, psychotropic medication needs);

j. availability of services to address needs, especially special needs youth;

k. most recent case staffing findings; and

l. availability of services in the community.

4. A determination of the appropriate course of action regarding the youth's placement will be made by the participants. Once a determination is reached, the plan will be developed. Following the review, if the recommendation is to transition the youth into a less restrictive setting, the DYS district office will submit a motion to modify disposition to the appropriate attorney for review and signing. The motion will then be returned to the DYS for filing with the clerk of court and submission to the court. The motion shall include the following:

a. recommendation;

b. relevant documentation supporting the recommendation, including, but not limited to, the risk and needs assessments; and

c. aftercare plan.

5. The court will have 14 legal days to do one of the following:

a. make no response during the 14 day period, in which case the district office shall proceed with the recommendation;

b. reject the recommendation and deny the motion;

c. notify the department in writing that there is no objection and accept the motion as orders of the court; or

d. schedule a future hearing and issue an order rejecting, modifying, or accepting the recommendation after the hearing.

6. All motions will be delivered to the clerk of court and a copy of the stamped motion will be obtained for probation and parole records. At the same time that the motion is submitted to the court, the appropriate sheriff's office and any registered crime victim, if applicable, shall also be notified.

7. Each Probation and Parole District Office will maintain a document listing all youth who met the criteria for review for transition to a less restrictive setting. This document will include the results of the review and the rationale for the recommendation.

F. Placement Review Process of Secure Care Youth

1. Youth currently in secure care will be reviewed to determine the appropriateness of a transfer to a less restrictive setting. The placement criteria process will be conducted at each facility through a multi-disciplinary team

activity that will take into consideration multiple aspects of the youth's classification profile to determine if the youth is placed in the most appropriate setting.

2. The team will be composed of the following individuals:

a. deputy warden, chairperson;

b. education;

c. dorm security;

d. program manager;

e. youth's case manager;

f. LSUHSC staff (if needed);

g. treatment provider (if needed);

h DYS representative (via phone conference);

i. youth;

j. youth's parent/guardian(s) (in person, via phone conference, and/or prior interview).

3. The multi-disciplinary review process will include a thorough review and assessment of the youth's needs, strengths and weaknesses. At a minimum, the multi-disciplinary team will consider the following prior to recommending placement:

a. educational/vocational needs/progress;

b. medical concerns;

c. mental health concerns;

d. general treatment needs/progress in the areas of substance abuse, anger management, cognitive behavior, etc.;

e. behavioral concerns;

f. level of participation in YouthCARE;

g. home environment;

h. custody level (both prior and present);

i. review of community risk assessment;

j. proposed aftercare/release plans;

k. special needs concerns (i.e., SMI, low cognitive abilities, special education disabilities, psychotropic medication needs);

l. availability of services to address needs, especially special needs youth; and

m. most recent secure custody screening document (must have been done within the last year).

4. A schedule of the multi-disciplinary review activities will be issued by the deputy warden and disseminated to all department heads and team members. In an effort to better promote parental/guardian input, the case manager will make telephone contact and/or formal written correspondence with the youth's parent/guardian about the scheduled date and approximate time of the multi-disciplinary activity. If any member of the multi-disciplinary team is not represented at the staffing, written comments or reports shall be used in the staffing to ensure education, medical, mental health, recreation and security activities are considered.

5. A determination of the appropriate course of action regarding the youth's placement will be made by the participants. Once a determination is reached, the plan will be developed. Following the review, if the recommendation is to transition the youth into a less restrictive setting, the DYS District Office will submit a motion to modify disposition to the appropriate attorney for review and signing. The motion will then be returned to the DYS office for filing with the clerk of court and submission to the court. The motion shall include the following:

a. recommendation;

b. relevant documentation supporting the recommendation, including, but not limited to, the risk and needs assessments; and

c. aftercare plan.

6. The court will have 14 legal days to do one of the following:

a. make no response during the 14 day period, in which case the district office shall proceed with the recommendation;

b. reject the recommendation and deny the motion;

c. notify the department in writing that there is no objection and accept the motion as orders of the court; or

d. schedule a future hearing and issue an order rejecting, modifying, or accepting the recommendation after the hearing.

7. All motions will be delivered to the clerk of court and a copy of the stamped motion will be obtained for probation and parole records. At the same time that the motion is submitted to the court, the appropriate sheriff's office and any registered crime victim, if applicable, shall also be notified.

8. Each Probation and Parole District Office will maintain a document listing all youth who met the criteria for review for transition to a less restrictive setting. This document will include results of the review and the rationale for the recommendation.

G. Quality Assurance. A copy of all screening forms, as well as multi-disciplinary team review forms, are to be maintained for a period of three years as a component of system quality assurance.

H. Procedures. Refer to Attachment A for Risk Screening Document and Attachment B for Secure Screening/Data Collection Form.

I. The effective date of this regulation is September 15, 2003.

J. Attachment A—Risk Screening Document

D.R. # B-02-012
Attachment A
(1 of 6)

Office of Youth Development
Risk Screening Document

Offender: Date of Current Rating: JIRMS#
Most Serious Present Adj. Offense: Date of Disposition:

1.	Age at First Adjudication			Score
	Age 12 or younger			(10)
	Age 13			(07)
	Age 14			(05)
	Age 15 or older			(02)
2.	Severity of Present Adjudicated Offense			
	High Severity: L. R. S. 14.2, and Ch. C. Art 897.1			(10)
	Moderate Severity: All other felonies			(06)
	Low Severity: All misdemeanors and FINS			(03)
3.	Most Serious Prior Adjudicated Offense			
	High Severity (see above)			(05)
	Moderate Severity (see above)			(03)
	Low Severity (see above)			(01)
	No Prior Adjudicated Offense record			(00)
4.	Number of Prior Adjudications			
	Four or more Felony adjudications			(10)
	Three Felony or four or more Misdemeanor offenses			(05)
	Two Felony grade offenses or three Misdemeanor offenses			(03)
	One Felony or two Misdemeanors/FINS adjudications			(01)
	One prior misdemeanor or one Prior FINS or No Prior Adjudications			(00)
5.	History of Probation or Parole Supervision or DPS&C Custody			
	Current			(02)
	Within past 12 months			(01)
	No Prior History of Supervision or Custody			(00)
6.	Number of Out-of-Home Placements			
	Non-Secure		Secure	
	Three or more	or	One or more	(02)
	One or Two			(01)
	No Prior Out-of-Home Placement(s)			(00)
7.	Prior Escapes or Runaways			
	From a Secure facility (more than once)			(03)
	From a Secure facility (1) or Non-Secure (2 or more times)			(02)
	From a Non-Secure facility once (1)			(01)
	No Prior Escapes or Runaways			(00)
			Total Score	____

Supervision Level based on above score:

Level	**Assessment**
Red	12 and above
Yellow	11 and Lower

D.R. #B-02-012
Attachment A
(2 of 6)

Administrative/Case Review Report

Identifying Information
Youth's Name:
Youth's Date of Birth:
Petition Number(s) for CNF or CND:

Placing District:
Placing District PPO:

Review
Date of Initial Placement:
Date of Initial Plan:

Date of Last Review: N/A
Date of Current Review:

Facility Information
Name of Facility:
Address:

Phone Number:

Reason Youth Entered Care:
Placement History:

Judicial Determination
Was court recommendation regarding placement followed? ○ Yes ○ No
If no, why not?
Was Judicial Determination of Reasonable Efforts documented? ○ Yes ○ No
If no, why not?

Criteria For Placement
Did the Psychological Evaluation recommend Non-secure Placement? ○ Yes ○ No
If no, explain:

Change In Placement
Has there been a change in placement since the last review? ○ Yes ○ No
If yes: Date of Current Placement:
Date Written Notification sent to Court:
Explain Reason for Change in Youth's Placement:

Appropriateness of Placement
Discuss appropriateness of services provided at this facility, which match this youth's specific needs, as identified in the Psychological Evaluation or Individual Service Plan:

Is Facility a Safe Setting in the best interests and needs of the youth? ○ Yes ○ No
Is the Facility Liscensed by DSS, Bureau of Liscensing? ○ Yes ○ No
If no, explain:
Is the Facility monitored by the Office of Youth Development as per Department Regulation C-05-003?
○ Yes ○ No
Date of last monitoring:

Close Proximity

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Attachment A
(3 of 6)

Is this the closest facility available, which best meets the needs of this youth? ○ Yes ○ No

If no, explain:

Least Restrictive

Is this the least restrictive environment available which best meets the youth's specific needs?

○ Yes ○ No

If no, explain:

Identify Previous Need Areas

☐ Family	☐ Peer Relationships
☐ Drug Use	☐ Employment
☐ Alcohol Use	☐ Sexual History
☐ Emotional Stability	☐ Physical Health
☐ School/Education	☐ Independent Living Skills

Current Need Areas

Family

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Drug Use

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Alcohol Use

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Emotional Stability

Youth's Mental Health Diagnosis:
Youth's Current Status:
Discussion of Youth's Psychotropic Medications:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

School/Education

D.R. #B-02-012
Attachment A
(4 of 6)

Name of School: Type:

Is the current IEP (Individual Education Plan) in the file? ○ Yes ○ No

Youth's Current Status - Performance/Grades:
Youth's Current Status - Attendence:
Youth's Current Status - Behavior/Discipline:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Peer Relationships

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Employment

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Sexual History

Youth's Current Status:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:
Explain:

Physical Health

Has there been a change in Medical/Dental Providers since last Kid Med form? ○ Yes ○ No

Youth's Current Status:
Discussion of Youth's Non-Psychotropic Medications and Immunizations in last six months:

Is the current Immunization Record in the file? ○ Yes ○ No

Discussion of Progress Towards Meeting Goals:

Measurement of Progress:

Independent Living Skills (if youth is/will be 16 before next review)

Youth's Current Status:

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Attachment A
(5 of 6)

Breifly Describe the Independent Living Services Provided by the Facility:
Discussion of Progress Towards Meeting Goals:
Measurement of Progress:

Measurement of Progress

Number of Need Areas Completed:
Number of New Need Areas:
Number of Remaining Need Areas:

Permanency Plan

Hearing Scheduled: at
Identify the Permanent Plan:
Return to Parent/Guardian:
Place with a relative:
Emancipation/Independent Living: Explain why:
Date Staffed with OCS for Termination of Parental Rights Prior to 11 Month Review:
If not, explain:

Visitation Plan

Is Visitation between the youth and Permanent Plan appropriate? ○ Yes ○ No
If No, why?
Has the facility Visitation Plan been discussed with the Permanent Plan? ○ Yes ○ No
If No, why?
Does the youth participate in Home Passes with the Permanent Plan? ○ Yes ○ No
Discussion of the Home Passes:
Discussion of Family Visits at Facility:

Panel's Recommendation regarding Continued Need for Placement

The Compelling Reason why this youth continues to require placement:
Projected Release Date:

Comments
Youth:

Family:

Facility:

PPO:

Other:

Signatures are attached.

D.R. #B-02-012
Attachment A
(6 of 6)

	Signatures	Notified	Attended	Date
Youth		○ Yes ○ No	○ Yes ○ No	
Parent/Guardian		○ Yes ○ No	○ Yes ○ No	
Parent/Guardian		○ Yes ○ No	○ Yes ○ No	
Facility Representative		○ Yes ○ No	○ Yes ○ No	
PPO		○ Yes ○ No	○ Yes ○ No	
Supervisor/DM		○ Yes ○ No	○ Yes ○ No	
Program Specialist		○ Yes ○ No	○ Yes ○ No	
Others:		○ Yes ○ No	○ Yes ○ No	
		○ Yes ○ No	○ Yes ○ No	
		○ Yes ○ No	○ Yes ○ No	
		○ Yes ○ No	○ Yes ○ No	
		○ Yes ○ No	○ Yes ○ No	
		○ Yes ○ No	○ Yes ○ No	
Administrative Review Panelist		○ Yes ○ No	○ Yes ○ No	

If any party failed to be notified of review, explain:
If any party has not, or refuses to sign, explain:

K. Attachment B—Secure Screening/Data Collection Form

D.R. #B-02-012-Attachment B

SECURE SCREENING/DATA COLLECTION FORM

YOUTH:_____ **JIRMS:** _____ **DORM:** _____

HISTORY: Prior and Present Custody Levels

Minimum *Medium* *Maximum* Date: _____

Minimum *Medium* *Maximum* Date: _____

Minimum *Medium* *Maximum* Date: _____

Secure Custody Screening Document
Total Score: _____ Date: _____

OFFENSE:_____ **FTD:** _____

IS YOUTH 897.1? ❑Yes ❑ No

DATE OF COMMITMENT: _____ **DATE OF LAST QUARTERLY STAFFING:** _____

NUMBER OF SCHEDULE B VIOLATION FOUND TO BE VALID _____

PRIOR MODIFICATIONS: ❑Yes ❑ No

If yes, provide narrative (include date, specifics about modification, response by court)
Attach a copy

_____

_____

IS YOUTH MAKING ADEQUATE PROGRESS IN MEETING GOALS OF IIP? ❑Yes ❑ No
Explanation of Response:_____

_____

ONE ON ONE INTERVIEW WITH YOUTH: **DATE:**_____
SUMMARY OF MEETING :

_____

_____

PHONE CONTACT WITH PARENT: ❑Yes ❑ No
PHONE NUMBER_____ (IF NO PHONE, WAS NOTIFICATION OF STAFFING SENT TO PARENT/GUARDIAN?)
PARENTAL CONCERNS:

_____

_____

_____ _____
Case Manager *Date*

Note: *If the youth is an 897.1 youth, has less than 45 days to his/her full term date, had 10 or more validated schedule B violations, or has been in secure care for less than 90 days* ***do not complete*** *the CRM form. For all other youth, the CRM form is to be completed prior to the multi-disciplinary staffing.*

AUTHORITY NOTE: Promulgated in accordance with Act 1225 of the 2003 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 30:80 (January 2004).

EDITOR'S NOTE: §705, Tobacco-Free and No Smoking Policy, has been moved to §719.

§705. Telephone Use and Policy on Monitoring of Calls—Youth [Formerly §314]

A. Purpose. To establish the secretary's policy regarding the use of telephones by juveniles and the monitoring of telephone calls at all juvenile institutions.

B. Applicability. Deputy secretary, undersecretary, assistant secretary of the Office of Youth Development and wardens of juvenile facilities. It is the responsibility of each warden to implement this regulation and convey its contents to the juvenile population, employees, and the public.

C. Policy. It is the secretary's policy that uniform telephone procedures, including the ability to monitor and/or record juvenile telephone calls to preserve the security and orderly management of the institution and to protect the public safety, be established and adhered to at all institutions. Each institution will offer juveniles (including the hearing impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any juvenile.

D. Procedures

1. General

a. Each juvenile will be assigned a personal identification number (PIN), which is not the juvenile's JIRMS number, which must be used when placing outgoing telephone calls.

b. At each juvenile institution, a unique calling number will be used for calling the PZT Hotline.

c. Each juvenile will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal, and legal calls. Each juvenile's outgoing telephone calls will be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be entered by the contractor or by appropriately trained institutional staff. Changes to the master list of parents and attorneys representing a juvenile are to be expedited. All attempts should be made to institute such changes within six working days. The six days shall begin to run upon receipt by the appropriate institutional staff of the juvenile's written request that the change be made.

d. For new juveniles, PIN and master list numbers will be entered into the telephone system upon intake at the Juvenile Reception and Diagnostic Center.

e. Upon the request of a telephone subscriber, the institution may block a telephone number and prevent the subscriber from receiving calls from a juvenile housed in the facility. To accomplish a block of a particular number, the institution should contact the contractor to request that a universal block be put into place.

2. Telephone access (outgoing calls) shall be as follows.

a. Personal or Family Calls (Routine). Regardless of custody status, juveniles will be provided an opportunity to make telephone calls to their home at the state's expense when the juvenile's case worker determines that the call will promote the goals of the juvenile's intervention plan. Collect telephone access should be made available when not in conflict with school, work or other programming. Specific times for telephone usage in the various living areas shall be established by the warden who shall communicate the telephone schedule to the population.

b. Personal or Family Calls (Emergency). Requests for access outside of normally scheduled hours may be made through the dormitory officer, counselor, or shift supervisor. Upon receiving information of a family emergency, the warden or designee shall notify the juvenile as soon as possible.

c. Legal Calls. Juveniles will be given meaningful access to telephones for privileged communications with their attorneys, including being advised that their attorney has requested contact.

3. Telephone access (incoming calls) shall be as follows.

a. Personal or Family Calls (Routine). Messages may be relayed at the warden's discretion.

b. Personal or Family Calls (Emergency). The warden shall establish a procedure for juvenile notification of legitimate personal or family emergencies communicated to the institution.

c. Legal Calls. Juveniles may be given notice that their attorney has requested contact. Complete verification is required prior to processing.

4. Monitoring

a. Inmates shall be put on notice of the following.

i. Telephone calls in housing areas are subject to being monitored and/or recorded and that "use" constitutes "consent."

ii. It is the juveniles' responsibility to advise all other parties that conversations are subject to being monitored and/or recorded.

iii. A properly placed telephone call to an attorney will not be monitored and/or recorded unless reasonable suspicion of illicit activity has resulted in a formal investigation and such action has been authorized by the secretary or designee.

b. The telephone system will normally terminate a call at the end of the authorized period, (normally 15

minutes); however, the warden or designee may authorize calls of a longer duration as circumstances warrant.

c. The system will automatically broadcast recorded messages indicating that the telephone call is originating from a correctional facility.

d. Juveniles shall not be allowed access to employee home telephone numbers and shall not be allowed to call any staff member of the department.

e. Each institution will advise its population of the proper way to place a legal call.

f. Only personnel authorized by the warden may monitor juvenile telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public will be communicated to other staff members or other law enforcement agencies. Telephone calls to attorneys may not be routinely monitored (see LAC 22:I.314.D.4.a.iii); staff will immediately disconnect from any telephone call if it appears that is the case. All other information shall be held in strict confidence.

g. Juveniles being processed into the system through the Juvenile Reception and Diagnostic Centers will be required to "consent" in writing that their telephone calls are subject to being monitored and/or recorded. A copy of this "consent" shall be placed in the juvenile's institutional record.

h. Each institution's orientation manual must include the information contained in this regulation as a means to notify the population of its contents and verbal notification must be given in the orientation program. Existing juvenile populations shall be put on notice by a sign posted at each telephone. The sign shall reflect the following information:

ATTENTION

> This telephone has been electronically programmed to monitor and/or record telephone calls. By using this telephone, you consent to the monitoring and/or recording of your conversation, except for properly placed legal calls.

5. Remote Call Forwarding

a. Remote Call Forwarding (RCF) is a mechanism by which juveniles may employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RFC in essence is an automated 3-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but merely a number within the telephone switching equipment local to the facility where the juvenile is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded again to a cell phone and other unauthorized telephones. This forwarding is done through the normal 3-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or un-authorized activities since the end call location is not readily being identified, verified or its actual location known. This affords untold opportunity for juveniles to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The juvenile population should be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity will result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system wide block of the number should be initiated pursuant to LAC 22:I.314.D.1.e.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2848 (December 2003).

§707. Probationary Period

A. Purpose. This rule will supplement the Employee Manual regarding probationary appointments and the attainment of permanent status and increase the probationary period to 12 months.

B. Applicability. The undersecretary or designee, unit heads, Youth Services (YS) Central Office's Human Resources Manager, Unit Human Resources staff, all newly hired classified employees and their supervisors. Unit heads shall ensure compliance with this policy.

C. Policy. It is the deputy secretary's policy that probationary periods for YS employees will be for a period of 12 months. If an employee performs assigned duties in a satisfactory manner during the 12-month period, the employee will attain permanent status. If the employee does not perform assigned duties satisfactorily, the employee will be separated from employment.

D. Definitions

Agency Preferred Re-Employment List—a list of names of permanent employees who were laid off or demoted in lieu of a layoff.

Appointing Authority—Deputy Secretary of YS.

Classified Employee—an employee who is hired under the Civil Service system on a probational appointment and attains permanent status.

ISIS—Integrated Statewide Information Systems.

Permanent Appointment—the appointment of a probationary employee after certification by the appointing authority or designee, signifying that the employee has met the required standard of work during the probationary period.

Probational Appointment—an essential part of the examination process; used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet required work standards. Employees who are required to serve probationary periods are those appointed to the following: permanent positions following certification from an open competitive employment list; original appointments to permanent positions in non-competitive classes; non-competitive re-employments based on prior service, except those hired from the agency's preferred re-employment list in a position which was filled with a probational appointment; and those employees who have an interruption of a probationary period for military purposes.

Unit Head—facility directors, probation and parole program director, and the deputy secretary or designee for YS Central Office.

YS Central Office—offices of the deputy secretary, undersecretary or designee of the Office of Management and Finance, assistant secretaries and their support staff.

E. General. The appointing authority may separate a probationary employee at any time under Civil Service Rule No. 9.1(e).

F. Probational Appointments

1. All newly hired employees appointed on probational appointments shall serve a 12-month probationary period as a test period of satisfactory work performance as outlined in their job descriptions and determined by their supervisors.

2. A probationary employee who is absent for military training or active duty in excess of 30 consecutive calendar days shall return to work in the probationary status at the point reached in the probationary period before leaving. Absences of 30 consecutive calendar days or less shall be counted as part of the probationary period.

3. A former employee who is on the agency preferred re-employment list and is re-employed in a position that must be filled with a probational appointment must serve a 12-month probationary period.

4. An employee who is permanently transferred, reassigned, or demoted to another position shall be eligible for permanent status in the new position after completing the probationary period that began prior to the change in position(s).

5. The probationary period of a part-time employee is computed on the same calendar basis as though employed full-time.

6. While on probationary status, an employee earns and can use annual, sick, and compensatory leave. The employee also gets paid for holidays and is eligible for health care and retirement benefits.

G. Permanent Appointments. Employees with permanent status who are promoted, transferred, reassigned, or demoted to another position are not required to serve a probationary period in the new position.

H. Permanent Appointment Action Following Probationary Period

1. A permanent appointment of a probationary employee shall begin upon certification by the appointing authority or designee to Civil Service that the employee has met the required standard of work while on probationary status.

2. A permanent appointment must be reported to Civil Service through the ISIS Human Resources System.

I. Monitoring Procedures

1. The Human Resources (HR) staff will run reports from the ISI Human Resources System of employees who are eligible for permanent status.

2. When an employee is eligible, HR staff will complete a "tickler" and forward to the employee's supervisor.

3. The supervisor will make a recommendation regarding permanent status and forward the recommendation to the appointing authority for approval.

4. The appointing authority will return the approval to the HR staff for entering into the ISIS Human Resources System.

5. The HR staff will notify the employee of the action taken with a copy of the "Employee Notification Form."

AUTHORITY NOTE: Promulgated in accordance with Civil Service Rules Nos. 8:10(b) and 17:25(a).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:1463 (August 2006).

§709. Youth Transfer to Adult Facility [Formerly §335]

A. Purpose. To establish the secretary's policy regarding the limited transfer of juvenile offenders 17 years of age or older to adult facilities.

B. To Whom This Regulation Applies. LAC 22:I.335 is applicable to the deputy secretary, assistant secretaries, wardens, and director of the Division of Youth Services of the Department of Public Safety and Corrections.

C. Definitions

Adult—an individual convicted by a criminal court and sentenced to the custody of the Department of Public Safety and Corrections (DPS&C).

Disposition—the written order of the juvenile court, following adjudication, which specifies the court's sentence.

Juvenile—an individual who is adjudicated delinquent by a judge exercising juvenile jurisdiction and sentenced to the custody of the DPS&C.

D. Policy

1. It is the secretary's policy, in accordance with R.S. 15:902.1, to authorize the limited transfer of juveniles adjudicated delinquent to adult facilities when the juveniles have attained the age of 17 years and are otherwise eligible as defined by this regulation.

2. Juvenile offenders who are adjudicated delinquent for an offense that, if committed by an adult, could not result in a sentence at hard labor, are not eligible for transfer.

3. Generally, juvenile offenders will be transferred to one of the following adult facilities:

a. Adult Reception and Diagnostic Center (ARDC);

b. Elayn Hunt Correctional Center (EHCC);

c. Wade Reception and Diagnostic Center (WRDC);

d. David Wade Correctional Center (DWCC);

e. Louisiana Correctional Institute for Women (LCIW).

4. Juvenile offenders in adult facilities will not have a parole or diminution of sentence release date.

a. They will only have a "full term date." This date will be either:

i. their twenty-first birthday;

ii. their eighteenth birthday if the crime was committed before their thirteenth birthday and it is not a crime enumerated under *Louisiana Children's Code*, Article 897.1;

iii. the date upon which the juvenile has completed the period of commitment as specified in the judgment of the juvenile court; or

iv. the date which reflects the maximum term that an adult could receive if sentenced for the same offense, whichever is earlier.

b. If the period of commitment specified by the juvenile court exceeds the twenty-first birthday, the eighteenth birthday under circumstances outlined, or the maximum term for which an adult could be sentenced for the same crime, then the Office of Youth Development and the headquarters legal section should be notified immediately.

5. Absent special statutory or regulatory restrictions to the contrary, juveniles in adult facilities will participate in all work, education, and other rehabilitative programs on the same basis as adults and will be subject to the same classification and disciplinary processes as adults, including custody status determination. Security supervision and security practices will also be the same for juvenile offenders in adult facilities as for adult inmates.

6. Records of juveniles housed in adult facilities shall be confidential and information may not be disclosed to anyone except in accordance with Department Regulation No. B-03-003, "Access to and Release of Juvenile Offender and Ex-Offender Records," as set forth in R.S. 15:574.12 and *Louisiana Children's Code*, Article 412.

E. Procedures

1. A classification committee will be formed at all juvenile facilities to review offenders for eligibility and suitability for transfer and to make appropriate recommendations to the warden. It will be the responsibility of this committee to review all relevant information.

a. The offender shall be given 24-hour notice of the proposed transfer and shall be allowed to appear before the classification committee to provide input into the decision making process. He may select a staff representative to assist him in accordance with the process outlined in the "Disciplinary Rules and Procedures for Juvenile Offenders."

b. The following variables should be considered by the classification committee when evaluating a juvenile offender for possible transfer to an adult facility:

i. chronological age of 17 years or older;

ii. emotional and physical maturity;

iii. disciplinary history and potential to disrupt juvenile institutional operations;

iv. potential to benefit from educational programs;

v. potential to benefit from other programs;

vi. offenders diagnosed with mental health and/or medical special needs who can be better served in an adult facility;

vii. offenders who pose a threat to security, i.e., who are considered escape risks, who have exhibited violent behavior, who are committed for serious offense(s), or who have an extensive criminal history;

viii. to accomplish one of the following objectives:

(a). minimize risk to the public;

(b). minimize risk to institutional staff; and

(c). minimize risk to other offenders.

c. Disciplinary history may impact the recommendation, but the transfer itself is not a disciplinary sanction or disciplinary activity. The disciplinary committee can refer offenders to the classification committee for review.

2. The warden of each juvenile facility will review the recommendation made by the classification committee and will make the final determination relative to transfer. The secretary and assistant secretaries will be notified of any transfer. In addition, the warden will provide notification to

the appropriate juvenile judge, Division of Youth Services office, the legal guardian, and the classification administrator at ARDC, and WRDC. The notification must be given at least 72 hours prior to the proposed transfer, unless waived by the secretary or his designee.

3. Notification to the classification administrator at ARDC should include pertinent information, e.g., the Juvenile Information Reporting Management System (JIRMS) master record, judicial commitment documents, classification committee report and recommendation, and warden's decision. ARDC PreClass Section will then assign a unique six digit Department of Corrections (DOC) number to each juvenile-in-adult custody (such number will begin with the numeral seven followed by the juvenile's original JIRMS number), update the CAJUN II information, and establish the adult institutional record prior to transfer (except in emergency cases). The classification administrator will schedule the date of transfer and will notify the appropriate juvenile institution.

4. The sending facility will be responsible for the transportation of the offender to the appropriate receiving institution and will provide all institutional and medical records at the time of transfer in accordance with Department Regulation No. B-06-001, "Health Care." The offender's personal funds should be transmitted by check at the time of transfer or as soon as possible thereafter. In addition, the JIRMS transfer screen will be updated to reflect the transfer and will be subsequently utilized for inquiry purposes.

5. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

6. ARDC, WRDC, or LCIW will conduct a full evaluation in accordance with department regulations and ACA standards to determine subsequent placement at EHCC or DWCC (or suitable housing assignment at LCIW). The evaluation will include, but is not limited to, the following:

a. emotional and physical maturity to evaluate the need for assignment to Level 1 or Level 2 protective custody;

b. review of information previously generated by JRDC, as available;

c. history of gang affiliation and prior juvenile institutional assignment and security history;

d. special educational needs or other programming needs and the appropriateness of assignment to academic and/or vocational programs;

e. medical needs, including substance abuse assessment, and assignment of an appropriate medical level of care;

f. mental health needs with particular emphasis on suicide potential and assignment of an appropriate mental health level of care; and

g. consideration of geographical location.

7. Upon completion of evaluation, the transfer section at ARDC will schedule transfer to the appropriate permanent facility.

8. The receiving institution will assign housing and provide services as set forth in department regulations and American Correctional Association (ACA) Standards. The records office of the receiving institution will maintain the juvenile institutional record and the adult inmate record and will update the CAJUN database. Upon discharge, all institutional records will be returned to the Juvenile Reception and Diagnostic Center at Jetson Correctional Center for Youth.

9. The adult facility must report the location and condition of the juvenile to the juvenile court every six months (or more frequently if requested). This format may be utilized to make early release recommendations as appropriate.

10. Sex offender notifications are generally not applicable to juvenile offenders housed in adult facilities. Other crime victim notice requirements for juveniles as indicated in Department Regulation No. C-01-007, "Crime Victims Services Bureau," are applicable.

11. Visiting lists will be established pursuant to the provisions of Department Regulation No. C-03-006, "Inmate Visitation." These transfers are to be considered as new admissions for the purposes of §335.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:902.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 24:104 (January 1998).

§710. Reporting and Documenting Escapes (Youth Services) [Formerly §320]

A. Purpose. To establish the secretary's policy regarding the notification of law enforcement agencies of escapes from juvenile institutions within the Department of Public Safety and Corrections and the maintenance of records and details of escapes.

B. To Whom This Regulation Applies. This regulation is applicable to all superintendents within the Department of Public Safety and Corrections, Corrections Services.

C. Definitions. For the purpose of this regulation, the following definitions shall apply:

Division Director—either the director of the Division of Institutions or the director of the Division of Evaluation and Placement.

Escape—the unauthorized absence of an offender from the grounds of a secure juvenile correctional institution, or from the custody of an employee while in transit, or from the lawful custody of a law enforcement officer, or failure to return from a furlough, or being absent from a secure juvenile institution without leave.

Law Enforcement Agency—the sheriff's office, any city police department in the parish in which the escape occurs, and the Office of State Police.

Secure Juvenile Institution—an institution, inclusive of subunits, that is used exclusively for juveniles who have been adjudicated delinquent and is characterized by exclusive staff control on a 24-hour basis over the rights of its residents to enter or leave the premises.

Unit Head—the superintendent or highest ranking Office of Juvenile Services employee physically present and in charge of a juvenile institution at the time of an escape.

D. Procedure

1. The unit head shall, within 10 minutes after being notified that a juvenile offender has escaped from or left the premises or grounds of the institution without authority, notify, or take necessary steps to ensure the notification, of every law enforcement agency, as defined herein, and the appropriate division director. The division director shall notify the assistant secretary of the Office of Juvenile Services, who shall notify the deputy secretary of Corrections Services, who shall notify the secretary of the Department of Public Safety and Corrections.

2. The unit head shall maintain a record and description of every escape from the institution. The record shall list the following:

a. date and time of escape;

b. number of offenders who escaped;

c. offense(s) for which the escapee(s) was placed at the institution;

d. name of each law enforcement agency notified;

e. time each law enforcement agency was notified;

f. name of the person receiving notification; and

g. name of the employee or agent who notified the law enforcement agency.

3. The report shall be available for public inspection and shall list all prior escapes, if any, from the institution within the last five years, or the date of the last escape. A copy of the report shall be delivered to each law enforcement agency and the assistant secretary of the Office of Juvenile Services by the end of each fiscal year.

E. The effective date of this regulation is July 20, 1991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:909(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 17:671 (July 1991).

§711. Student Visiting and Correspondence (Youth Services) [Formerly §321]

A. Purpose. To establish the secretary's policy regarding student visiting and correspondence at all juvenile institutions and facilities within the Department of Public Safety and Corrections.

B. To Whom This Regulation Applies. This regulation is applicable to all superintendents of juvenile operational units of the Department of Public Safety and Corrections, Corrections Services.

C. General. R.S. 15:833 provides that the Secretary of the Department of Public Safety and Corrections may authorize visits and correspondence under reasonable conditions, between students and approved friends, relatives, and other persons. It is the secretary's policy that uniform visiting and correspondence procedures be established and adhered to at all units, and that visiting and correspondence be under reasonable conditions and in keeping with the most recent court decisions relating to visiting and correspondence in correctional institutions. It is also the secretary's policy that visiting at the institution and correspondence between students and friends be encouraged and supported.

D. Correspondence

1. Letters. Students shall be allowed to send and receive letters from all persons including persons in other institutions. There shall be no restriction on the number of correspondents, number of letters written, the length of any letter, or the language in which a letter may be written. Before sending or receiving letters, students will be required to sign a copy of the attached form. Student mail, both outgoing and incoming, shall be handled without delay and on a daily basis.

a. Inspection of Outgoing Letters. All outgoing letters are to be posted unsealed and inspected for contraband. Exception: Outgoing legal or official mail (see Clauses i-viii) may be posted sealed and may not be opened except with a search warrant:

i. identifiable courts;

ii. identifiable prosecuting attorneys;

iii. identifiable probation and parole officers;

iv. identifiable state and federal departments, agencies, and their officials;

v. identifiable attorneys;

vi. identifiable members of the press;

vii. secretary, deputy secretary and/or assistant secretary of the Department of Public Safety and Corrections; and

viii. for purposes of this exception, *identifiable* means that the official or legal capacity of the addressee is listed on the envelope: John Doe, Assistant District Attorney; John Doe, City Desk Editor, John Doe, Judge; John Doe, Secretary of Labor, etc. Additionally, the name, official or legal capacity, and address of the addressee must be verifiable. If the name, address, and official or legal capacity cannot be verified, designated institutional personnel shall state in writing the means employed to verify the

information and the fact that it could not be determined to be correct and true. Upon the determination that this mail is not identifiable official or legal mail, said mail shall be treated as all other outgoing mail, and shall be opened and inspected for contraband.

b. Inspection of Incoming Letters. Incoming letters may be opened and inspected for contraband. Exception:

i. letters from identifiable Department of Public Safety and Corrections' officials are not to be opened; and

ii. letters from the following may be opened and inspected for contraband only in the presence of the student/addressee:

(a). identifiable courts;

(b). identifiable probation and parole officers;

(c). identifiable prosecuting attorneys;

(d). identifiable attorneys;

(e). identifiable members of the press; and

(f). identifiable state and federal agencies and officials.

iii. for purposes of these exceptions, see §321.D.1.a.viii of this regulation for the definition of identifiable. Upon the determination that this mail is not identifiable official or legal mail, said mail shall be treated as all other incoming mail and shall be opened and inspected for contraband.

c. Reading of Letters

i. When the superintendent determines that it is necessary to the maintaining of security, order, or rehabilitation of the institution, he may require the reading of a student's mail. In such cases, a written record shall be kept in the appropriate office and shall include:

(a). student's name;

(b). a description of the mail to be read (e.g., outgoing only from a particular person, etc.);

(c). the specific reasons it is necessary to read the mail, including all relevant information and the names of the person(s) supplying information;

(d). length of time the mail is to be read;

(e). signature of the superintendent or his representative; and

(f). notes on the nature of the mail read, but no copies of the mail unless necessary for later use as evidence.

ii. At the termination of the reading period, a copy of all but §321.D.1.c.i.(c) shall be placed in the student's file with the entire original remaining in the appropriate office.

d. Stationery and Stamps. The institution will provide indigent students sufficient stationery, envelopes, and postage for all legal and official correspondence and for at least two letters of personal correspondence each week. Stationery and stamps for other letters will be made available for purchases by the students.

2. Packages

a. Approved Items. Subject to the approval of the assistant secretary, each superintendent will prepare and make available to the student population a list of items which may be received in packages.

b. Inspection of Packages. All packages shall be inspected for the purpose of discovering contraband. Before sending or receiving packages, students may be required to sign a form consenting to the opening of packages for the purpose of inspecting for contraband. Items which are not on the approved list will be returned to the sender with a note specifying the reasons for the return.

3. Publications. Books, magazines, newspapers, and printed matter which may be legally sent through the postal system shall be approved for students, unless deemed to constitute an immediate threat to the security of the institutions.

4. Withholding of Correspondence. If it is determined that any letter or publication passed through the mail illegally or that its presence within the institution would present an immediate threat to the security of the institution, it may be withheld. However, the student shall be notified in writing of this action within five days and shall be advised of his right to appeal the decision to withhold to the superintendent and then to the secretary.

5. Restrictions on Correspondence. All students, regardless of status, shall be allowed to receive approved correspondence. However, those students in isolation may have their privilege of originating correspondence restricted to communications with the courts and legal counsel during the period of isolation.

6. Collection and Distribution of Mail. The collection and distribution of mail is never to be delegated to a student. Neither is the mail to be dropped on a table or other convenient location for each student to come and look for his own. Mail shall be delivered promptly to the student to whom it is addressed.

E. Visiting. The guidelines for students visiting are set forth below.

1. There will be no discrimination in visiting. All students and visitors will be provided equal opportunity for visiting, except that any who abuse the visiting procedure may expect imposition of restrictions. Disciplinary measures imposed for offenses not related to visiting will not be used as a basis for denying visits. Visits with attorneys will be governed by Department Regulation Number 30-19B. A student should not be compelled to see a visitor whom he does not wish to see, but he should be required to sign a statement to that effect.

2. At least one day per month will be set aside for visiting by parents and other approved persons, preferably on weekends. Special visits for unusual circumstances and for those who cannot visit on regular visiting days are permissible. On regular visiting days persons will be allowed

to visit for at least seven hours, preferably between the hours of 9 a.m. and 4 p.m.

3. Instructions for visiting students must be furnished to parents or guardians. These instructions must be mailed to parents or guardians in advance of the visit. These should include:

a. who may visit;

b. days and time of visits; and

c. rules governing visits.

4. Visitors shall be treated with courtesy at all times and shall not be subjected to unnecessary inconvenience, embarrassment, delays, or harassment in accomplishing a visit.

F. All rules, regulations, and procedures presently in force will be revised in accordance with this directive and submitted to the secretary for approval. All subsequent revisions will also be submitted to the secretary for approval prior to their becoming effective.

G. Cancellation. This regulation supersedes Department Regulation 30-20 dated 8 June 1978.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juvenile Services, LR 11:1094 (November 1985).

§713. Youth Administrative Remedy Procedure [Formerly §326]

A. Purpose. The purpose of this regulation is to establish an administrative remedy procedure specific to juvenile offenders through which an offender may seek formal review of a complaint which relates to most aspects of his stay in secure care if less formal procedures have not resolved the matter.

B. Applicability. Assistant Secretary/Office of Youth Development, wardens, Youth Programs Compliance Division staff and employees and offenders of each juvenile institution.

C. Definitions

ARP Coordinator—a staff member designated by the warden whose responsibility is to coordinate and facilitate the ARP process.

Business Days—Monday through Friday.

Calendar Days—consecutive days including weekends and holidays.

Case Manager—a staff member whose primary responsibilities include a assisting offenders.

Emergency Grievance—a matter in which disposition within the regular time limits would subject the offender or others to substantial risk of personal injury, or cause other serious or irreparable harm.

Grievance—a written complaint on an offender's behalf regarding a policy, condition, action, or incident occurring within an institution that affects the offender personally.

Initiation of the ARP Process—for a particular complaint, the administrative remedy procedure shall commence the day the request is accepted in the ARP process.

Offender—a person incarcerated in a juvenile correctional institution.

Sensitive Issue—a complaint which the offender believes would adversely affect him if it became known at the institution.

Youth Programs Compliance Division (YPCD)—a division located at the Office of Youth Development Headquarters in Baton Rouge. Employees of this division are responsible for monitoring the ARP process.

D. Policy

1. The administrative remedy procedure for juveniles has been established for offenders to seek formal review of a complaint which relates to most aspects of their incarceration. Such complaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other relief authorized by law. By way of illustration, this includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, lost personal property, denial of publications, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

2. Offenders may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. Disciplinary reports are not grievable and must be handled through the disciplinary appeal system. Court decisions and pending criminal and adjudication matters over which the department has no control or jurisdiction shall not be appealable through this administrative remedy procedure.

3. All offenders, regardless of their classification, impairment or handicap, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through this grievance procedure, a complaint that a reprisal occurred.

4. All offenders may request information and obtain assistance in using the administrative remedy procedure from his case manager, counselor, or other staff member. Nothing in this administrative remedy procedure will serve to prevent or discourage an offender from communicating with the warden or anyone else in the department.

E. General Procedures

1. Dissemination. New employees and incoming offenders must be made aware of the administrative remedy procedure in writing and by oral explanation at orientation and have the opportunity to ask questions and receive oral answers. A simplified version of the administrative remedy procedure will be provided in booklet form to the offenders during the orientation process. This version of the procedure shall also be posted in areas readily accessible to all employees and offenders.

2. Informal Resolution. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal ARP process. This informal resolution may be sought by talking to his case manager, counselor, or other staff member. An attempt at informal resolution does not affect the timeframe for filing an ARP; therefore, the offender and staff member assisting with informal resolution must be alert to the 90 calendar day filing timeframe so that the opportunity to file an ARP is not missed when it appears that the situation will not be informally resolved before the expiration of the filing period.

3. Initiation of ARP

a. An ARP is initiated by completing the first part of the Juvenile ARP Form (see Subsection N). No request for ARP shall be denied acceptance because it is not on a form; however, all requests must contain a statement or phrase to the effect: "This is a request for administrative remedy;" "This is a request for ARP;" or "ARP." Upon receipt by the ARP coordinator, any such request will be attached to an ARP Form.

b. The offender has 90 calendar days after the incident occurred in which to file a complaint. The ARP is considered "filed" upon receipt by the ARP coordinator or designee. This includes those ARPs placed in the ARP or grievance box over the weekend or on a legal holiday. The ARP forms shall be available at designated sites at each institution and from case managers.

c. The offender shall complete the first part of the form outlining the problem and remedy requested. His case manager, counselor, or other staff member will be available for assistance in completing the form at each stage of the process.

d. If additional space is needed for completing any part of the form, another page of paper may be used and attached to the original form. The offender must give the completed, original form to his case manager or place it in the designated collection site to be picked by the ARP coordinator.

e. Offenders released from secure care prior to filing their ARP should send the ARP directly to the ARP coordinator. The ARP must be postmarked within 90 days or received within the 90 calendar day timeframe, if not mailed.

4. Screening of Requests. The ARP coordinator will screen all requests prior to the step one review/response. If the same complaint is received from different offenders, each must be reviewed as an individual complaint. If the ARP is rejected, the reason(s) for rejection shall be noted on the Juvenile ARP Form. Copies of ARP acceptances, rejections, etc. will be maintained by the ARP coordinator. The Youth Programs Compliance Division will be copied on all rejections. A request may be rejected for one or more of the following reasons (See Part 10, "Judicial Review," for consequences of rejection).

a. The complaint pertains to a disciplinary matter, court decision or a judge's order in the offender's case.

b. The complaint concerns an action not yet taken or decision which has not yet been made.

c. There has been a time lapse of more than 90 calendar days between the event and receipt of the initial request.

d. The date of the event is not on the form. In this case, the form will be returned to the offender to have the correct date noted, however, the original 90 day time limit will still apply.

e. The offender has requested an administrative remedy for another offender.

f. A request is unclear. If this occurs, the request may be rejected and returned to the offender with a request for clarity. The deadline for this request will begin on the date the re-submission is received by the ARP coordinator (within five calendar days in a secure facility and 10 calendar days if the offender has been released).

g. An offender refuses to cooperate with the inquiry into his allegation. If this occurs, the request may be rejected by noting the lack of cooperation on the Juvenile ARP Form and returning it to the offender.

h. The request is a duplicate of a previous request submitted by the same offender.

i. The request contains several unrelated complaints. Normally, an offender should not include more than one complaint in a single ARP. The ARP coordinator has the discretion to accept or reject the ARP if it contains several unrelated complaints.

5. Reprisals. No action shall be taken against any offender for the good faith use of or good faith participation in the ARP. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are, as determined by the ARP coordinator, frivolous or deliberately malicious may be disciplined under the appropriate rule violation contained in the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Step One (Maximum Time Limit—21 Calendar Days) ARP Coordinator's Review and Warden's Response

1. The offender will begin the process by completing the first part of a Juvenile ARP Form, which will briefly set out the basis for the claim and the relief sought. The form must be submitted within 90 calendar days of the incident which caused the grievance. The 90-day requirement may be waived by the warden when circumstances warrant, i.e., if the offender is ill for an extended period of time or if a significant, unusual event affects the offender's ability to file

the ARP. The offender may also request a five calendar day extension from the ARP coordinator if additional time is needed to prepare the ARP.

2. The original Juvenile ARP Form submitted by the offender will become part of the process, and will not be returned to the offender until the warden's response (step one) has been finalized.

3. ARPs shall be screened and logged by the ARP coordinator. If appropriate for handling, the ARP coordinator or fact-finding person assigned by the ARP coordinator will begin fact-finding, including communication with the various program managers for program specific complaints, if needed. The ARP coordinator will send notice to the offender via a copy of the Juvenile ARP Form regarding the status (acceptance/rejection) of the request. The warden should be kept appraised of the status of the ARP throughout the process.

4. ARPs filed by an attorney must include proof of representation in the form of a signed pleading, a letter signed by the offender's parent or guardian advising of the retention of the attorney or some other legal authorization for the attorney's representation. The ARP coordinator or fact-finding person cannot interview the offender without contacting the attorney to give the attorney an opportunity to be present during the ARP coordinator/fact-finding person's interview with the offender. The offender may not be interviewed without the attorney (unless the attorney waives his presence) for a minimum of two business days after the staff's contact with the attorney. If the attorney cannot be available within this timeframe, the ARP process will proceed as usual. If no proof of representation is attached to the ARP, the 48-hour waiting period is not required.

5. If the offender advises the ARP coordinator or fact-finding person during the investigation that he has spoken with an attorney about the ARP, the interview must cease. The ARP coordinator or fact-finding person will obtain the attorney's name and telephone number from the offender and contact the attorney following the procedures described in the preceding Paragraph.

6. The ARP coordinator will submit the ARP, supporting documentation and recommendation to the warden for final step one action, which must be completed within 21 calendar days of receipt of the ARP by the ARP coordinator. Emergency and medical, safety or abuse-related requests should be handled expeditiously. Abuse-related requests should also be copied to the Project Zero Tolerance Investigators for verification that an investigation has been or is being conducted (if appropriate to the circumstances.)

7. The warden may return the Juvenile ARP Form to the ARP coordinator for additional information or further review prior to rendering the response.

8. Once the warden's response has been entered onto the original Juvenile ARP Form, the form will be returned to the ARP coordinator. The ARP coordinator will log and forward the original to the offender, keep a copy for the ARP file and send a copy to the appropriate section of the institution, if applicable. Copies of documents gathered in preparation of the review and response to the grievance will be maintained in the ARP file.

9. Unless the offender appeals to step two, no further action is needed at this level.

G. Step Two (Maximum Time Limit—21 Calendar Days) Secretary's Response

1. An offender who is dissatisfied with the step one decision may appeal to the secretary. Within 10 days of receipt of the step one decision, the offender must complete the next part of the original ARP noting the request for the step two review and provide it to his case manager or place it in the designated collection site for the ARP coordinator to pick up. His case manager or other staff member will be available to assist as needed with filing the appeal.

2. The ARP coordinator will retain a copy for the ARP file, log and mail the original form along with copies of any supporting documentation directly to the secretary or his designee. For the purpose of the step two response, this authority has been delegated by the Secretary to the assistant secretary of the Office of Youth Development (OYD).

3. A final decision will be made by the assistant secretary/OYD and the offender will be notified of the decision by mail (copy of the ARP Form) postmarked within 21 calendar days of the assistant secretary's receipt of the appeal. The assistant secretary/OYD will retain a copy of the ARP and return the original to the ARP coordinator. The ARP coordinator will copy the decision to the warden, offender's attorney (if ARP was filed by the attorney), and to the ARP file. The ARP coordinator will also insure the original response is sent to the offender and obtain the offender's signed acknowledgment of receipt.

H. Judicial Review

1. If an offender's ARP is rejected or if he is not satisfied with the step two response, he may seek judicial review of the decision pursuant to R.S. 15:1177 et seq., within 30 calendar days after receipt and signing acknowledgment of receipt of the decision.

2. In these cases, the ARP coordinator will notify the offender's parents or guardian and attorney (if applicable), in writing, that the departmental grievance procedure has been exhausted.

I. Timeframes and Extensions

1. An offender may make a written request to the ARP coordinator for an extension of up to five calendar days in which to initiate an ARP. He may make a written request to the warden for an extension of up to five calendar days in which to appeal to the secretary. (This does not limit the warden's discretion under Section 8.A. to grant any filing timeframe waiver that he deems appropriate.) The warden must certify valid reasons for the delay.

2. The warden may make a written request to the assistant secretary/OYD for an extension of up to seven calendar days for the step one review/response. The offender must be notified in writing of such an extension. The assistant secretary/OYD may extend time needed for his

response when such is deemed necessary. However, in no case may the cumulative extensions exceed 30 calendar days. This does not include waivers granted by the warden due to the offender's illness or other significant, unusual events.

3. Unless an extension has been granted, no more that 42 calendar days shall elapse from the ARP coordinator's receipt of the ARP to completion of the step two process. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

J. Sensitive Issues

1. If the offender believes his complaint is sensitive and he would be adversely affected if it became known at the institution, he may file the complaint directly with the assistant secretary/OYD. The offender must explain, in writing, the reason for not filing the complaint at the institution.

2. If the assistant secretary/OYD agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint. When this occurs, the assistant secretary/OYD shall also send a copy of this communication to the warden and to the ARP coordinator. The ARP coordinator will insure that the decision is delivered to the offender and obtain the offender's signature acknowledging receipt.

3. The offender shall then have the normal 90 calendar day deadline from the date the incident occurred or seven calendar days from the date he receives the rejection (whichever is longer) to submit his request through regular channels beginning with step one.

K. ARPs Related to Lost Property Claims

1. Under no circumstances may an offender be compensated for unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders. If the loss of personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed as described below.

2. If a state-issue item is available, the offender will be offered such as replacement for the lost personal property. If a state-issue replacement is not available, the warden or his designee will determine a reasonable value for the lost personal property. The maximum liability is $50. Regardless of whether the ARP results in a monetary or non-monetary replacement, the Lost Property Agreement Form (see Subsection O) will be completed and submitted to the offender for his signature. ARPs (with Lost Property Agreement forms attached) resulting in monetary settlements will be forwarded to the assistant secretary/OYD for review and processing. These ARPs must include a cover letter advising that the ARP is for settling a lost property claim.

3. The ARP will be processed in accordance with the established timeframes and guidelines except that the response will not be delayed pending the processing of the monetary award by the assistant secretary/OYD.

L. Miscellaneous

1. Records. Administrative remedy procedure records are confidential and release of these records is governed by R.S. 15:574.12 and Ch. C. Art. 412. Records shall be kept at least three years following final disposition of the request. The assistant secretary/OYD shall formulate a procedure for orderly disposal of these records. The following records must be maintained. The institution may retain other records as deemed appropriate.

a. A database (on computer) will be maintained by the ARP coordinator which will document the nature of each request, all relevant dates, recommendations and dispositions of steps one and two.

b. Each institution will submit reports on ARP activity in accordance with Department Regulation No. C-05-001-J.

c. Individual ARPs and dispositions, and all responses and pertinent documents shall be kept on file at the ARP coordinator's office.

2. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through step one. The warden of the receiving institution will assist in communication with the offender.

3. Discharged Offenders. If an offender is discharged before the review of an ARP, or if he files an ARP after discharge, the institution will complete the processing and will notify the offender at his last known address. (The 90 calendar day timeframe in which to file an ARP applies regardless of whether the offender has been discharged from secure care.)

4. Monetary Damages. Based upon credible facts within an ARP, the assistant secretary/OYD may find cause to believe that monetary damages are a fair and just remedy. The assistant secretary/OYD shall consult with the secretary and the legal section of the department to determine if monetary damages are appropriate. Upon finding that monetary damages should be awarded, a dollar amount of the monetary damages to be awarded must be determined. This matter shall be referred to the Office of Risk Management (ORM) of the Division of Administration. If a settlement is reached, a copy of the signed release shall be given/faxed to the appropriate institution.

5. Annual Review. The warden shall annually solicit comments and suggestions from offenders and staff regarding the handling of requests, the efficiency and the credibility of the administrative remedy procedure and report the results of such review to the assistant secretary/OYD and the director of YPCD.

M. Effective Date. Only ARP requests filed on or after the effective date of this regulation, as adopted pursuant to the Administrative Procedure Act, shall be governed by this

procedure and all ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I.325, Administrative Remedy Procedure. All juvenile lost property claims filed prior to the effective date of this rule will be administered in accordance with LAC 22:I.389. All juveniles lost property claims filed after the effective date of this rule shall be governed by this procedure only.

N. Juvenile ARP Form

DPS&C—CORRECTIONS SERVICES Number: _____-____-___
JUVENILE ARP FORM Date Received:_____
Name: _____ JIRMS Number:_____
Institution: _____ Housing Unit:_____
"THIS IS A REQUEST FOR ARP"
(You may ask your case manager or other staff members for help completing this form.)
State your problem (WHO, WHAT, WHEN, WHERE AND HOW) and the remedy requested (what you want to solve the problem):
Problem: _____
_____
_____
_____
Remedy requested: _____
Date of Incident:_____ Today's Date: _____
This form must be completed within 90 calendar days of the date of the incident and given to the ARP Coordinator or placed in the ARP/grievance box.
Step One—ARP Coordinator's Review and Warden's Response
(Maximum Time For Processing: 21 calendar days)
____ Denied ___Rejected ___Returned ___ Accepted Date: _____
Reason: _____
_____ Handled Informally By _____
AC's Recommendation:
Sent to Warden on: _____AC's Signature: _____
Warden's response to your ARP Step One request: _____
_____
_____
_____
Date: _____ Warden's Signature: _____
If you are not satisfied with this response, you may go to Step Two. The ARP Coordinator must submit your request to the Secretary within 10 calendar days after you receive the Step One response.
Received Step One on: _____ Juvenile's Signature: _____
Request Step Two: _yes __no Reason for Step Two request: ___
_____
Date Step Two request received by AC: _ Date Sent to Secretary: _
AC's Signature: _____
Step Two—Secretary's Response
(Maximum Time For Processing: 21 calendar days)
Date Received:
Secretary's response to ARP Step Two request: _____
_____
_____
_____
Date: _____ _____
Secretary's Signature
Date received Secretary's response:_____ _____
Juvenile's Signature
If you are not satisfied with this response, you may seek judicial review. A request for judicial review must be submitted to the court within 30 calendar days after receiving the Step Two decision.

O. Lost Property Agreement

Rev. 01-01-02

LOST PROPERTY AGREEMENT

I, _____(Offender name), JIRMS # _____, filed an ARP for _____(description of lost property.) My ARP was filed on _____. I have received _____as a settlement for my lost property. Since I have received a settlement for my lost property, the State of Louisiana (Department of Public Safety and Corrections [DPS&C]) does not owe me anything for my property which was reported lost on _____(Date ARP filed.) I agree to release the State of Louisiana (DPS&C) and any of its agents, representatives, officers and employees from any liability for compensation, damages and any other amounts that may be owed to me because my property was lost. I also agree to discharge the State of Louisiana of any liability that may exist. I agree to all the terms of this agreement.

WITNESSES:
_____
_____
(Signature of Offender)
_____ _____
(Date)
Warden's Approval _____
Secretary's Approval _____
(Necessary for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:861 (April 2002), amended LR 28:1994 (September 2002).

§715. Selective Service Registration [Formerly §701]

A. Purpose. To establish the deputy secretary's policy regarding Selective Service Registration for employment or appointment to a classified or unclassified state civil service position.

B. Applicability: undersecretary, deputy assistant secretaries, probation and parole program director, youth facility directors, and all human resource personnel.

C. Policy. It is the policy of the deputy secretary that any person who is required to register for the federal draft under Section 3 of the Military Selective Service Act (50 U.S.C. App. §453) must register for such draft prior to employment or appointment to a classified or unclassified position with Youth Services (YS).

D. Definitions

Unit Head—youth facility directors, probation and parole program director, and the deputy secretary or designee for YS Central Office.

Y.S. Central Office—offices of the deputy secretary, undersecretary of the office of management and finance, assistant secretary of the office of youth development, and their support staff.

E. Procedures

1. Each unit head is responsible for verifying that all male applicants, age 18 through 25, who are required to register with selective service provide proof of such registration in order to be eligible for classified or unclassified state civil service employment.

2. The applicant's selective service card will be copied and the copy attached to the applicant's application.

3. If the applicant does not have his selective service card available, he must complete and sign the Verification of Selective Service Registration form stating that he has registered with selective service, will present his selective service card as soon as possible or be terminated from employment.

4. A veteran of the armed forces of the United States may submit a copy of his discharge papers or his discharge certificate as verification of service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:33 and the Military Selective Service Act, 50 U.S.C. App. §453.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:108 (January 2006).

§717. Freon Recovery—Certification of Technicians and Recovery Equipment [Formerly §703]

A. Purpose. To provide for procedures to comply with the refrigerant recycling requirements of the Clean Air Act (CAA).

B. Applicability: deputy secretary, undersecretary or designee, deputy assistant secretaries, youth facility directors, probation and parole program director and regional managers.

C. Definitions

Regional Managers—the managers of the Division of Youth Services field offices located throughout the state.

Unit Head—youth facility directors, probation and parole director, and the deputy secretary or designee for Youth Services.

YS Central Office—offices of the deputy secretary, deputy assistant secretaries, and undersecretary or designee of the Office of Management and Finance, of the Office of Youth Development and their support staff.

D. Policy. It is the deputy secretary's policy to comply with Section 608 of the CAA, Refrigerant Recycling and Technician Certification.

E. Procedures. Each unit head shall ensure compliance with the following:

1. utilize service practices that maximize recycling of ozone-depleting compounds during the servicing and disposal of air conditioning and refrigeration equipment;

2. either:

a. certify to the Environmental Protection Agency (EPA) that recycling or recovery equipment has been acquired and that persons are adequately trained in the use of appropriate equipment, servicing or disposing of air conditioning or refrigeration equipment (including automobile air conditioners); or

b. utilize outside vendors with approved equipment and practices to provide this service.

AUTHORITY NOTE: Promulgated in accordance with Section 608 of the Clean Air Act, 1990, as amended (CAA), including final regulations published on March 14, 1993 (58 FR 28660), and the prohibition that became effective on July 1, 1992.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:102 (January 2006).

§719. Tobacco-Free and No Smoking Policy [Formerly §705]

A. Purpose. To establish the deputy secretary's policy to: protect the health and safety of Youth Services (YS) staff, youth and visitors from exposure to environmental smoke, reduce the risk of second-hand smoke, reduce the entrance of contraband, provide a healthy environment for youth, promote a healthy and wholesome example for our youth, establish a no smoking and tobacco-free policy for youth housed in secure care facilities, and establish a policy regarding smoking and use of tobacco products by YS staff.

B. Applicability—All Employees, Youth and Visitors of YS.

C. Policy. The deputy secretary recognizes the health and safety issues caused by exposure to environmental smoke; therefore, this policy shall be implemented and enforced for YS Central Office, regional offices and facilities. Youth housed in secure care facilities will not be allowed to smoke or use tobacco products at any time. Smoking and other tobacco product use is prohibited in all facility buildings, facility grounds, buildings located in the regional offices and YS Central Office. Smoking is also prohibited in all state vehicles.

D. Definitions

Facility—all buildings and grounds related to any Office of Youth Development (OYD) secure care residential housing for youth.

Tobacco Product—any cigar, cigarette, smokeless tobacco, smoking tobacco or any other related product that contains tobacco.

Y.S. Central Office—Offices of the Deputy Secretary, Undersecretary of the Office of Management and Finance, and their support staff.

E. Procedures for Facilities Only

1. No smoking or tobacco products are allowed within the facilities at any time.

2. Smoking is permitted outside the facility gates in designated areas.

3. Tobacco products may be checked in at the front gate for use during breaks or lunchtime in the designated areas located outside the facility gates.

4. This policy applies to all persons within the facility gates.

5. Signs shall be placed outside the facility gates declaring that the facilities are tobacco-free and smoke-free.

6. All YS facility job applicants shall be informed that the facilities are tobacco-free and smoke-free.

F. Procedures for Implementation (for all YS)

1. Copies of this policy shall be posted in all office workplaces.

2. "No Smoking" signs shall be clearly posted in all areas where smoking is prohibited.

3. The deputy secretary will designate a smoking area for YS Central Office.

4. Regional managers will designate a smoking area for each regional office.

5. Facility directors will designate a smoking area for each facility outside of the secure area of the facility.

6. Facility directors will notify the youth that they will not be allowed to smoke or use tobacco products at any time.

7. It is the responsibility of all employees to adhere to the provisions of this policy and to report any non-compliant activities to the appropriate supervisor.

8. Employees will not be granted additional breaks or additional time on regularly scheduled breaks to access designated smoking areas for the purpose of using tobacco products.

G. Disciplinary Actions

1. Any staff found guilty of non-compliance with this policy will be subject to disciplinary action.

2. Any youth found guilty of non-compliance with this policy will be subject to disciplinary action as tobacco products are considered contraband.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1300.21-1300.26 and R.S. 14:91.8.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Division of Youth Services, Office of Youth Development, LR 32:640 (April 2006).

Subchapter B. Classification, Sentencing, and Service Functions

§721. Marriage Requests

A. Purpose. To establish the deputy secretary's policy concerning youth marriage requests.

B. Applicability: deputy secretary, deputy assistant secretaries, and youth facility directors. It is the responsibility of the youth facility directors to convey the contents of this policy to youth who make a request to be married while assigned to a secure care facility. The legal age for obtaining a marriage license is 18 years old.

C. Policy. It is the deputy secretary's policy that youth marriage requests be handled in accordance with the procedures outlined herein.

D. Procedures

1. A youth's request to be married should be submitted to the youth facility director (director) for review.

2. The youth is required to participate in at least one counseling session with the facility chaplain, which is intended to assess the youth's level of responsibility to make a decision of this nature. The director will discuss the marriage proposal with both parties, either personally or through a chaplain, and document that the parties were counseled. In addition, the director will insure that the appropriate staff person provides a courtesy notification to the parent/guardian of the youth's marriage request. Documentation of these actions must be filed in the youth's case record under Clip II.

3. The youth must certify that both parties meet all legal qualifications for marriage. The youth is responsible for gathering this information, but may request assistance from his/her case manager.

4. If the chaplain chooses not to perform the marriage, he/she will inform both parties. In this situation, the chaplain will speak with the individual who is to perform the marriage to insure that they are fully aware of the situation of the youth. Only approved and licensed authorities (e.g., clergy and judges) will be permitted to perform the marriage ceremony.

5. If both parties are assigned to secure care facilities, the marriage will be postponed until one of the parties has been released.

6. The youth making the request must pay for all costs associated with the marriage ceremony.

7. Nothing in this policy is intended to preclude staff from volunteering, with the director's approval, to assist the youth with the marriage ceremony, as long as such assistance does not interfere with other facility activities and staff responsibilities.

8. Absent unusual circumstances related to legitimate safety concerns, the director should approve the marriage request and set an appropriate time and place for the ceremony. Furloughs will not be granted for a marriage ceremony.

AUTHORITY NOTE: Promulgated in accordance with Turner v. Safley, 482 U.S. 78, 96 L.Ed.2d 64, 107 S.Ct. 2254 (1987); R.S. 9:201 through 204.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:107 (January 2006).

§723. Educational and Work Assignment Experience Incentive Program

A. Purpose—to provide youth the opportunity to acquire employability skills, and to develop a good work ethic through work assignments on-campus and off-campus, and to provide pay incentives for accomplishment of specific academic goals; and to integrate restorative justice by assessing a percentage of a youth’s incentive compensation in order to make payment toward restitution.

B. Applicability—deputy secretary, undersecretary, assistant secretary, deputy assistant secretaries, deputy undersecretary, facility directors, principals, and all OJJ secure care youth.

C. Policy. It is the deputy secretary's policy that there shall be an Educational and Work Experience Incentive Program to provide educational incentives, job assignment training and work opportunities to youth in secure facilities

to facilitate their reintegration into the community as responsible citizens upon release from commitment.

D. Definitions

Education Program Coordinator (EPC)—an educational employee appointed by the Principal who is charged with the responsibility of initial start up, coordination and oversight of the Educational Incentive Program.

Global Positioning System (GPS)-Active—a constellation of orbiting satellites put in place by the US Military, and now used for many tracking services. In the OJJ application of GPS, a youth shall wear a GPS receiving device, most likely an ankle bracelet, which will allow a remotely-located person to monitor the youth's exact location 24 hours a day, 7 days a week.

Off-Campus Work Assignment Program Board of Directors (Work Assignment Program Board)—a board of directors at each facility where youth are participating in the Off-Campus Work Assignment Program, who shall meet twice a month to discuss the progress of youth assigned off campus, and shall meet as necessary to consider requests for new youth off-campus assignments, and who shall make final decisions regarding off-campus youth assignments, except for those youth adjudicated for offenses falling under Children's Code Article 897.1 as noted in Section IX of this policy. The Board shall be comprised of the following members:

a. facility director;

b. principal/assistant principal;

c. work assignment program coordinator (WAPC);

d. vocational education teachers;

e. SSD regional coordinator (if applicable);

f. youth's probation officer;

g. program manager;

h. youth's assigned case manager.

Off-Campus Work Assignment Supervisor—work assignment supervisor responsible for supervising and evaluating youth assigned off-campus.

On-Campus Work Assignment Supervisor—an employee who supervises and evaluates youth assigned to on campus work assignments.

Restitution-Court-Ordered—money that a youth has been ordered to pay by a court.

Restitution-Owed to the Facility—money a youth has been ordered to pay through the disciplinary process to reimburse the facility for financial loss due to his misconduct.

SCR/Contren modules—student competency record as established by a particular trade/Contren Learning Series provides the training curricula in more than 30 trades. Contren modules are groupings of classes vocational students must complete to receive credentials in their trade that are nationally recognized.

Work Assignment Placement Staffing—a staffing held to place, remove or reassign youth in the on-campus work assignment program. Required participants are as follows:

a. work assignment program coordinator (WAPC);

b. on-site work assignment supervisor;

c. program manager;

d. case manager.

Work Assignment Program Coordinator (WAPC)—an employee appointed by the director, after receiving recommendations from the Principal, who shall be supervised by the director/designee, and who is charged with the responsibility of initial start up, coordination and oversight of the Work Assignment Incentive Program.

Youth Portfolio—the portfolio is used as a purposeful collection of student work assignment that exhibits the student's efforts, progress and achievements in one or more areas.

E. Educational Incentive Program. The Educational Incentive Program encourages youth to accomplish certain educational goals through participation in the Directors' Club, which offers recognition, participation in special activities and rewards.

1. Eligibility:

a. youth enrolled in the GED program;

b. youth earning Carnegie units;

c. youth enrolled in vocational programs;

d. youth enrolled in an educational/training program leading to college course work; or

e. youth earning a certificate of achievement.

2. Enrollment. Enrollment applications for the Educational Incentive Program [Attachment B.7.2(a)] shall be made available to youth in all living areas and schools. Completed applications are to be turned into the EPC, who shall verify the youth's eligibility to enroll. Upon verification the youth shall be entered into the program.

3. Youth Progress. Youth progress, including accomplishments and verification of accomplishments, shall be monitored and reported by the EPC on the Educational Incentive Program Tracking Form [Attachment B.7.2 (b)] to the principal.

4. Verification of Education Goals. Youth enrolled in eligible educational programs who meet the goals outlined below will be entitled to participate in the Director's Club once written verification/certification is received. Verification of a youth's accomplishments must accompany the Educational Incentive Program Tracking Form and be maintained in the youth's portfolio. Required verifications/certifications are as follows.

a. For youth enrolled in the GED program or earning Carnegie units, passing the GED test or earning a high school diploma.

b. For youth enrolled in vocational programs, completion of programs/ certifications such as: completion of major components of the Student Competency Record (SCR) as established by the respective trade, completion of contren modules, or attainment of other nationally recognized certifications. Other achievements may be recognized at the discretion of the facility director.

5. Director's Club Activities. With the approval of the director, the EPC shall develop and implement programs which recognize youth for accomplishment of educational goals. Special activities such as off campus trips to colleges or trade schools should be provided when possible. Contingent upon resources, small gifts or monetary rewards may also be available.

6. Program Availability. Not all programs and opportunities are available at all facilities due to restrictions imposed by funding, grants, physical plant, and community participation. The Directors' Club activities and rewards are based on the availability of resources.

F. On-Campus Work Assignment Incentive Program. The On-Campus Work Assignment Incentive Program provides youth with the opportunity to acquire marketable skills, necessary work habits and work experience. Incentive payments will be made based on available resources. All OJJ secure care youth, who have received their GED, high school diploma, or certificate of achievement, are eligible for this program, subject to the screening and placement requirements in Section C.

1. Hours and Incentive

a. Louisiana law provides that youth under the age of 16 may be permitted to work hours per day or no more than 40 hours per week after school hours and during non-school days.

b. Louisiana law provides that youth 16 years of age and older may work any number of hours per day and per week.

c. Incentive to youth may be in the form of wages, learning a skill or gaining work experience.

d. Beginning incentive shall be five cents per hour, and through merit raises, may increase to a maximum of ten cents per hour. Merit raises of one cent per hour may be awarded upon the recommendation of the work assignment supervisor, with the approval of the work assignment program coordinator (WAPC) and director. Payment of incentives and merit raises are contingent upon available resources. If compensation is through the payment of incentives, hourly payments shall range from five to ten cents per hour.

e. Incentives paid shall be deposited in accordance with the procedures established in YS Policy No. B.9.3 "Youth Banking".

2. Job Assignment Announcements and Applications

a. Job assignment announcements shall be developed by potential work assignment supervisors and the WAPC. All Job Assignment Announcements shall be approved by the facility director prior to posting.

b. Job assignment announcements and the Work Experience Incentive Program Application forms shall be posted in all living areas and schools.

3. Application Review and Placement

a. The WAPC shall conduct an initial review of a youth's application to participate in the On Campus Work Assignment Incentive Program, and shall provide copies of the youth's application to the persons attending the Work Assignment Placement Staffing. The copies shall be distributed prior to the staffing to facilitate review of the application.

b. A Work Assignment Placement Staffing shall be held to discuss and reach a consensus concerning the youth's placement in the On Campus Work Assignment Program. The youth shall be in attendance at this staffing.

c. The outcome of the staffing shall be forwarded to the director for final approval.

4. Medical Clearance. All youth must receive medical clearance prior to beginning work assignments. Medical clearance is defined as "the clinician has found the youth to be physically fit, emotionally stable, and the work assignment does not interrupt the youth's prescribed daily medication schedule". The medical clearance shall be documented in the youth's medical record and a copy sent to the WAPC for filing with the youth's application, utilizing the Medical Clearance Form.

5. Youth's Notification

a. A completed Youth Notification Form confirming a youth's placement in a particular job assignment, following medical clearance, shall be sent to the youth, the work assignment supervisor, the youth's assigned counselor, the dorm leader assigned to the youth's living area, and the youth's portfolio within five working days.

b. A completed Youth Notification Form shall also be sent to those youth who timely applied and were not selected to participate within five days.

6. Work Assignment Program Agreement. An orientation, conducted by the work assignment supervisor, shall be held on the youth's first day of work. A Work Assignment Program Agreement form shall be signed by the youth and work assignment supervisor. The original document shall be maintained by the WAPC, with a copy placed in the youth's portfolio.

7. Weekly Performance Evaluation and Incentive Schedule

a. The work assignment supervisor shall complete a Weekly Performance Evaluation form, documenting how the youth has functioned in his job assignment, along with a

Youth Work Assignment Incentive Schedule form and forward these documents to the WAPC on a weekly basis. The work assignment program coordinator shall forward the Youth Incentive Schedule to the facility business office for calculation and processing of the youth's incentive payment. Payments to the youth shall be made from the Youth Welfare Fund in accordance with the guidelines outlined in YS Policy No. B.9.3 "Youth Banking".

b. Copies of all evaluation forms, hours worked, and any other documentation related to performance and pay shall be maintained by both the work assignment supervisor and the WPC, with copies placed in the youth's portfolio.

c. A poor performance evaluation as documented on the work assignment supervisor's Weekly Performance Evaluation Form shall result in a documented conference between the WAPC, the work assignment supervisor, the youth, and the youth's assigned case manager. Youth may be subject to removal from the assigned program or reassignment if the behavior does not improve by the next weekly evaluation report.

8. Removal from Job

a. A work assignment supervisor, the WAPC, the youth's case manager or the group leader assigned to the youth's living area may request removal of a youth from a job assignment by completing a Work Assignment Removal Request and submitting it to the WAPC. The request shall be heard within two working days of receipt of the Work Assignment Removal Request at a Work Assignment Placement Staffing, which the youth shall attend. If a youth is removed from a job assignment as a result of a staffing or due to poor performance evaluations, a new job assignment shall not occur again for a minimum of 14 days. If the reason for removal was based on a Major Violation Report or a serious incident, the youth shall not be eligible for job reassignment for 90 days.

b. A youth may request the WPC remove him from a current job assignment and/or consider him for another job reassignment by completion of a new Youth Work Assignment Application form.

9. Life Skills Instruction. Instruction and discussion/activities about life skills shall be incorporated into the LaMod process.

G. Off-Campus Work Assignment Incentive Program. The Off-Campus Work Assignment Incentive Program provides work assignment training opportunities with public or private entities and businesses for youth who have obtained a GED or received a high school diploma, with the goal of acquiring necessary work habits, development of marketable skills, work experience and pay incentives.

1. Eligibility:

a. youth who have obtained a GED or high school diploma;

b. written permission has been obtained from a parent/guardian for youth under the age of 18;

c. youth who have demonstrated a willingness and ability to work at locations off of the facility grounds without posing a safety risk to individuals and/or the community, and who are otherwise qualified;

d. youth who are not under investigation for or have a detainer pending legal charges;

e. youth who are not deemed to be a high risk for runaway or escape and/or engaging in additional criminal conduct.

2. Hours and Compensation

a. Louisiana law provides that youth under the age of 16 may be permitted to work eight hours per day or no more than 40 hours per week after school hours and during non-school days.

b. Louisiana Law provides that youth 16 years of age and older may work any number of hours per day and per week.

c. Incentive to youth may be in the form of wages paid by the employer, learning a marketable skill or gaining work experience.

d. Incentive paid shall be deposited in accordance with the procedures established in YS Policy No. B.9.3 "Youth Banking".

e. Incentive wage statements reflecting earnings and available funds shall be provided to the youth following each transaction, detailing balances for drawing accounts, savings accounts and restitution payments.

3. Work Assignment Prohibitions (R.S. 23:161)

a. Louisiana law prohibits minors from being employed in the following occupations:

i. hazardous operations or more than 12 feet above the ground or floor;

ii. with certain dangerous power-driven machinery, punch presses, milling machines, circular saws, radial saws, etc.;

iii. any job or site that is hazardous or injurious to life, health, safety or welfare.

b. Employer must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) Standards.

4. Job Announcements and Applications. The WAPC shall locate suitable job openings through contacts, web searches, and other means as appropriate. Job announcements, applications, and eligibility requirements for off-campus job assignments shall be posted in all living areas and schools.

5. Application Screening and Placement

a. The WAPC shall conduct an initial screening for appropriateness of a youth's participation in the Off-Campus Work Assignment Incentive Program by completing the Screening/Approval Request. Factors such as age,

completion of educational requirements, interest, degree of motivation, information gained from youth's assigned case manager and the dorm leader assigned to the youth's living area, as well as adjudication information, shall be documented. The WAPC shall forward each youth's application with his screening report to the members of the Work Assignment Program Board for their review prior to the next scheduled meeting.

b. The Work Assignment Program Board shall meet as needed to make recommendations concerning job placement for youth. The board discussions shall include topics addressed during staffings for furloughs/early release such as the following:

i. is youth on minimum or medium custody level at first quarterly staffing and has a low or moderate offense on the Severity of Offense Scale;

ii. is youth on minimum or medium custody level at the second quarterly staffing if offense is a high or highest offense on the Severity of Offense Scale;

iii. has youth made progress on identified treatment needs;

iv. has youth received a violation report for, and been found guilty of, a Major Code of Conduct Violation within the last 90 days for:

(a). assault or threats of assault (youth/youth);

(b). assault or threats of assault (youth/staff);

(c). contraband (only a positive drug screen or weapon);

(d). escape;

(e). threats and intimidation; or

(f). gang/gang-like organization/activity.

c. The Work Assignment Program Board shall forward its recommendation to the deputy secretary/designee who shall make the final decision for OJJ regarding job placement except for those youth adjudicated for an offense under Children's Code Article 897.1 (see section 1) or for a sex offense for which the youth is required to register (see section 10).

d. The WPC shall schedule an interview with prospective employers and prospective youth to discuss work prohibitions, work assignments, evaluation processes, progressive discipline procedures and security procedures.

6. Medical Clearance. Youth must have medical clearance prior to beginning a work assignment. Medical clearance is defined as "the clinician has found the youth to be physically fit, emotionally stable, and the work assignment does not interrupt the youth's prescribed daily medication schedule". Medical clearance shall be documented in the youth's medical record and a copy sent to the WAPC for filing with the youth's application, utilizing the Medical Clearance Form.

7. Youth's Notification

a. A completed Youth Notification Form confirming a youth's placement in a particular job assignment, following medical clearance, shall be sent to the youth, the parent/guardian, the work assignment supervisor, the youth's assigned counselor, the dorm leader assigned to the youth's living area, and the youth's portfolio within five working days.

b. A completed Youth Notification Form shall also be sent within five days to those youth who timely applied and were not selected to participate.

8. Work Assignment Program Agreement. A youth orientation shall be conducted, while the WAPC is on-site, by the work assignment supervisor on the youth's first day of work. The Work Assignment Program Agreement form shall be completed following the orientation by the youth, the work assignment supervisor and WAPC. The original agreement shall be maintained by the WAPC, with a copy placed in the youth's portfolio.

9. Weekly Performance Evaluation and Incentive Schedule

a. The work assignment supervisor shall complete a Weekly Performance Evaluation Form, documenting how a youth has functioned in his job assignment, along with a Youth Work Incentive Schedule form and forward these documents to the WAPC on a weekly basis. The WAPC shall forward the Youth Incentive Schedule to the facility business office for calculation and processing of the youth's incentive payment if applicable. Payments to the youth's account shall be made in accordance with the guidelines outlined in YS Policy No. B.9.3 "Youth Banking".

b. Copies of all evaluation forms, payroll work assignment hours, and any other documentation related to performance and incentive pay shall be maintained by both the work assignment supervisor and the WAPC, with copies placed in the youth's portfolio.

c. A poor performance evaluation as documented on the work assignment supervisor's Weekly Performance Evaluation form shall result in a documented conference between the WAPC, the work assignment supervisor, the youth, and the youth's assigned case manager. Youth may be subject to removal from the program or reassignment to an on-campus work assignment if the behavior does not improve by the next weekly evaluation report.

10. Removal from Job

a. A work assignment supervisor, the WAPC, the youth's case manager or the dorm leader assigned to the youth's living area may request removal of a youth from a job assignment by completing a Work-Assignment Removal Request. This request is to be submitted to the WAPC. The request shall be heard at a meeting of the Board, which the youth shall attend, within two working days of receipt of the Work-Assignment Removal Request. If a youth is removed from a job assignment as a result of a staffing or due to poor performance evaluations, a new job assignment shall not occur again for a minimum of 14 days. If the reason for removal was based on a Major Violation Report or a serious

incident, the youth shall not be eligible for job reassignment for 90 days.

b. A youth may request the WAPC remove him from a current job assignment and/or consider him for another job assignment by completion of a new Youth Work Application Form.

11. Life Skills Education. Instruction and discussion/activities about life skills shall be incorporated into the LaMod process.

12. Risk Management Procedures

a. Youth shall be fitted with an active Global Position System (GPS) for tracking and monitoring purposes.

b. Youth shall report to the WAPC at the beginning and end of each work day for placement and removal of the GPS tracking system on their person.

c. The WAPC shall be responsible for monitoring of the GPS tracking system for each youth on a daily basis and maintaining all reports.

d. A weekly GPS tracking report for each applicable youth shall be compiled and forwarded to the director for review.

e. Facility search procedures for youth shall be completed on a daily basis for all participating youth in accordance with YS Policy No. C.2.3.

f. Facility staff shall transport youth back and forth to their job assignment each day.

g. Any security problems noted for steps a – f above shall immediately be brought to the attention of the director.

H. Off-Campus Work Assignment Incentive Program for Youth Adjudicated Under Children's Code Article 897.1. All steps in Subsection G of this Section must be adhered to for those youth adjudicated under Children's Code Article 897.1 seeking placement in an off-campus work incentive program. Youth adjudicated for Aggravated Rape who are required to register as a Sex Offender, must also comply with Subsection I below. Additionally, the youth's application must go through the following steps.

1. Approval from both the Off-Campus Work Assignment Program Board of Directors, as well as the deputy secretary/designee must be granted utilizing the Screening/Approval Request form.

2. Following approval of the deputy secretary/designee, a Notice to the Court and district attorney of the Work Assignment Incentive Program Furlough utilizing the "Off-Campus Work Assignment Incentive Program Screening/Approval Request", shall be sent to the judge sentencing the youth for the Ch.C. Art. 897.1 offense, and also include a progress report containing the following:

a. educational/vocational information;

b. amount/percentage of time served for adjudicated commitment;

c. current custody level;

d. treatment progress;

e. parental/guardian involvement or contact attempts in youth's treatment.

3. The judge and district attorney must approve the work furlough for the youth to leave the grounds. If the district attorney objects, the OJJ attorney shall request that a contradictory hearing be set in the matter.

I. Off-Campus Work Assignment Incentive Program for Youth Adjudicated Delinquent for a Sex Offense for Which the Youth Is Required To Register. All steps in Subsection G of this Section must be adhered to for those youth seeking placement in an off-campus work assignment incentive program who have been adjudicated delinquent for a sex offense for which the youth is required to register. Additionally, the youth's application must go through the following steps to be approved.

1. Approval from both the Off-Campus Work Assignment Program Board, as well as the deputy secretary/designee must be granted utilizing the "Off-Campus Work Assignment Incentive Program Screening/Approval Request".

2. Following approval by the deputy secretary/designee, the Central Office Furlough Coordinator shall notify the Louisiana Bureau of Criminal Identification and Information (Bureau) of the work furlough by completing and faxing the "Notification of Granting of Off-Campus Work Assignment Incentive Program Furlough", to the bureau 48 hours prior to the youth reporting to the off-campus work assignment. The notification and proof of its transmission shall be maintained by the Central Office Furlough Coordinator with copies forwarded to the WAPC and the director.

J. Drug Screening. Periodic drug screens shall be conducted in accordance with Youth Services Policy C.2.7 or at the discretion of the director.

K. Restitution. Incentive payments made to a youth are subject to the payment of restitution assessed through the disciplinary process in accordance with Youth Services Policy B.5.2 and/or by order of the court for restitution.

L. Program Report. An annual report shall be prepared by both the education program coordinator and the work assignment program coordinator and submitted to the deputy secretary/designee. The report shall include the number of youth who have participated in the program, the number of job assignments, job assignment duration, educational and work assignment incentive amounts paid, and restitution payment amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:905, and 36:405.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Division of Youth Services, Office of Juvenile Justice, LR 36:1784 (August 2010).

Subchapter C. Field Operations

§761. Crimes Committed on the Grounds of Youth Services Facilities/Office Buildings and/or Properties

A. Purpose. To establish policy regarding the investigation, reporting, and prosecution of crimes committed by youth in a secure care facility, employees and/or visitors on the grounds of secure care facilities or at any building or on any property under Youth Services (YS) control.

B. Applicability: All employees of Youth Services. Unit heads are responsible for ensuring that the investigation and reporting requirements described herein are met.

C. Definitions

Unit Head—youth facility directors, probation and parole program director, and the deputy secretary or designee for YS Central Office.

YS Central Office—offices of the deputy secretary, deputy assistant secretaries, undersecretary of management and finance or designee, and their support staff.

D. Policy. It is the deputy secretary's policy that whenever a criminal act is allegedly committed, the matter will be investigated immediately by facility/office personnel (with assistance from other law enforcement agencies where appropriate), and referred to the appropriate district attorney for consideration of prosecution. In some jurisdictions, the district attorney may waive review of certain offenses or classes of offenses. Where the district attorney has waived review, the unit heads are authorized to handle such matters internally.

E. Procedures

1. A quarterly summary of referrals should be submitted to the district attorney.

2. The unit head and the district attorney may agree on specific categories of offenses that will not be reportable for consideration of prosecution except that youth facility directors must report those offenses covered by "Project Zero Tolerance—A Balanced Approach to Reducing Violence."

3. Disciplinary action will be taken against employees involved in criminal activities.

4. Failure to investigate and/or report acts covered by this rule may be cause for disciplinary action.

5. Any unit head who has knowledge of any misappropriation of public funds or assets of YS shall immediately notify the deputy secretary, the legislative auditor, and the district attorney.

6. "Project Zero Tolerance—A Balanced Approach to Reducing Violence" should be referred to for specific instructions concerning investigation reports and evidentiary documents of offenses covered therein.

7. In cases with probable cause to believe that a youth 17 years of age or older assigned to a secure care facility has committed a felony-grade offense, YS will seek to have that youth arrested, charged, and if appropriate, transferred to adult jurisdiction within the Department of Public Safety and Corrections.

F. The sheriff's office may be contacted to effect the arrest or the arrest may be effected by an employee of YS who possesses a law enforcement commission with full arrest powers from either a local law enforcement agency or a special officer's commission issued by the state police pursuant to R.S. 40:1379.1.

G. If adult jail pre-trial confinement is appropriate, after the arrest the youth facility director or designee should contact the local sheriff's office to arrange for the transfer. If the sheriff's office is unable to provide pre-trial housing, the youth facility director or designee should contact the deputy secretary or designee to arrange for the assignment of the arrestee to an adult pre-trial facility.

H. To determine the appropriateness of the adult jail pre-trial confinement, the youth facility director should consider the diagnosis of any youth who is seriously mentally ill or developmentally disabled, or whose medical condition may indicate that such a transfer is not appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:101 (January 2006).

§763. Furlough Process and Escorted Absence

A. Purpose. To establish the deputy secretary's policy regarding temporary release on furlough of adjudicated youth for the purpose of assisting youth in maintaining family and community relations.

B. Applicability: Deputy secretary, assistant secretary, deputy assistant secretaries, facility directors, probation and parole program director, and regional managers.

C. Policy. It is the policy of the deputy secretary to use temporary furloughs within the state as a rehabilitative tool to assist youth assigned to a center for youth in maintaining family and community relations. The Division of Youth Services (DYS) and the facility shall work together to effect the furlough program from recommendation through implementation. The deputy secretary must approve all furloughs except family emergency furloughs.

D. Definitions

Administrative Furlough Review Committee (AFRC)—the multi-disciplinary committee responsible for determining furlough eligibility.

Escorted Absence—a temporary absence authorized by the director of a facility in which youth are escorted off the grounds by facility staff.

Furlough—the authorized temporary release of a qualified youth from the grounds of a center for youth, or community-based secure detention facility, without the

supervision of facility staff, for the purposes of aiding in the youth's rehabilitation, maintaining and/or enhancing family and community relations, and preparing the youth to make a satisfactory transition into society after his/her release.

E. Types of Furloughs

1. Standard Furlough—applies to all youth except for those committed to Youth Services under Children's Code Article 897.1, those assigned to a short-term program, or youth eligible for a family emergency furlough.

2. Children's Code Article 897.1 Furlough—applies only to youth committed to Youth Services under La. Children's Code Article 897.1 based upon a violation of R.S. 14:30 First Degree Murder, R.S. 14:30.1 Second Degree Murder, R.S. 14: 42 Aggravated Rape, R.S. 14:44 Aggravated Kidnapping and R.S. 14:64 Armed Robbery.

3. Short-Term Program Furlough—applies only to youth assigned to a short-term program.

4. Family Emergency Furlough—the authorized temporary release of a qualified youth due to a crisis prompted by the death or life-threatening illness or injury of a family member or legal custodian, and such furlough is deemed beneficial for the youth in meeting the needs of youth/family.

F. Furlough Eligibility Criteria, Exclusion Criteria and Procedure

1. Standard Furlough

a. Criteria for eligibility:

i. youth is on a minimum custody level; or

ii. youth is on a medium custody level, provided the youth has had no rule infraction within the past 60 calendar days; and

iii. youth is making progress on identified treatment needs, including taking medication; and

iv. youth's parent/custodian must have participated in a minimum of three family integration sessions, which may be conducted via telephone.

b. Exclusions from standard furlough eligibility:

i. youth is on a maximum custody classification level;

ii. youth is on suicide watch;

iii. youth is under investigation for and/or has pending criminal charges;

iv. there is documented evidence of previous unsuccessful furlough.

c. Screening and Referral for Standard Furlough

i. Youth must be screened at quarterly staffing, beginning at the second quarter staffing, regional staffing or during the placement review process. If appropriate, a referral to the Administrative Furlough Review Committee (AFRC) for furlough consideration should be made by completing page 1 of the Furlough Referral and Application Form.

d. Standard Furlough Staffing

i. The AFRC must staff the furlough candidate's application using all information appropriate, but at a minimum:

(a). Progress Reports;

(b). Dormitory Management Team Review Form;

(c). Furlough Application Form;

(d). Reintegration Plan;

(e). Individual Treatment Plan; and

(f). medical considerations.

ii. The furlough recommendation is made and pages 2 and 3 of the Furlough Referral and Application Form is completed.

e. Standard Furlough Duration

i. Standard furloughs may be granted in increments of time between 2 hours to 14 consecutive days.

ii. A standard furlough may be granted for a cumulative period up to 30 days in a calendar year, with no more than 14 consecutive days being granted/taken at any given time. Additional furlough authority greater than 30 days in a calendar year must be approved by the deputy secretary and must be submitted with justification for the need for additional furlough days.

2. Children's Code Article 897.1 Furlough

a. Criteria for eligibility:

i. youth has served a minimum of 60 percent of his commitment and has maintained a minimum custody level for six months prior to furlough referral or has been in the physical custody of youth services for a minimum of three years and has maintained a minimum custody level for twelve months prior to furlough referral; and

ii. youth has made progress in youth services' behavior modification program; and

iii. youth is making progress on identified treatment needs; and

iv. youth's parent/custodian must have participated in a minimum of three family integration sessions, which may be conducted via telephone.

b. Exclusions from Children's Code. 897.1 Furlough eligibility:

i. youth is on medium or maximum custody level;

ii. youth is currently on suicide precautions;

iii. youth is under investigation for and/or has pending criminal charges;

iv. there is documented evidence of a previous unsuccessful furlough.

c. Screening and Referral for Children's Code Article 897.1 Furlough

i. Youth must be screened at quarterly staffing, beginning with the second quarterly staffing, or regional staffing. If appropriate, a referral to the Administrative Furlough Review Committee (AFRC) for furlough consideration should be made by completing page 1 of the Furlough Referral and Application Form.

d. Children's Code Article 897.1 Staffing

i. The AFRC must staff the furlough candidate's application using all appropriate information, but at a minimum:

(a). Progress Reports;

(b). Dormitory Management Team Review Form;

(c). Furlough Application Form;

(d). Reintegration Plan;

(e). Individual Treatment Plan; and

(f). medical needs.

ii. The furlough recommendation is made by completing pages 2 and 3 of the Furlough Referral and Application Form.

e. Children's Code Article 897.1 Furlough Duration/Conditions

i. Children's Code Article 897.1 furloughs may be granted in increments of time between two hours to 14 consecutive days. Initial furloughs should be short, with subsequent furloughs being granted for longer periods of time, unless the circumstances demand otherwise.

ii. A Children's Code.Art.897.1 furlough may be granted for a cumulative period up to 30 days in a calendar year, with no more than 14 consecutive days being granted/taken at any given time. Additional furlough authority, greater than 30 days in a calendar year, must be approved by the deputy secretary and must be submitted with justification for the need for additional furlough days.

iii. If a furlough is approved, a youth will be required to wear an electronic monitoring device during the furlough and shall be monitored by the appropriate regional office.

3. Short-Term Program Furlough

a. Criteria for eligibility:

i. youth must demonstrate active participation in a short-term program; and

ii. youth is making progress on identified treatment needs; and

iii. youth is on minimum or medium custody level; and

iv. youth is within four weeks of his/her projected date of program completion; and

v. youth's parent/custodian must have participated in a minimum of three family integration sessions, which may be conducted via telephone.

b. Exclusions from short term program furlough eligibility:

i. youth is on maximum custody classification level;

ii. youth is on suicide precautions;

iii. youth is under investigation for and/or has pending legal charges; or

iv. there is documented evidenced of a previous unsuccessful furlough.

c. Screening and Referral for Short Term Program Furlough

i. Youth must be screened at the 45-day staffing. If appropriate, a referral to the AFRC for furlough consideration should be made by completing page 1 of the Furlough Referral and Application Form.

d. Short Term Program Furlough Staffing

i. The AFRC must staff the furlough candidate's application using all appropriate information, but at a minimum:

(a) Progress Reports;

(b) Dormitory Management Team Review Form;

(c) Furlough Confirmation Form;

(d) Reintegration Plan;

(e) Individual Treatment Plan; and

(f) medical needs.

ii. The furlough recommendation is made and pages 2 and 3 of the Furlough Referral and Application Form are completed.

iii. The Short Term Program Furlough must include a Reintegration/Treatment/Transitional Plan of Action containing the objectives and activities of the youth throughout the duration of the furlough. The plan of action will be documented on the Reintegration Activity for Short-Term Program Furlough Form.

e. Duration of Short Term Program Furloughs

i. Short Term Program Furloughs may be granted for a cumulative five calendar days.

ii. Short Term Program Furloughs may not exceed three consecutive days at any given time.

iii. Youth must be within four weeks of his projected date of program completion.

4. Family Emergency Furlough

a. Criteria for Eligibility. A family emergency furlough may be granted under either of the following conditions:

i. youth has confirmation/recommendation from the court that committed him/her to the custody of youth services; or

ii. youth is not eligible for any other type of furlough and his/her case manager recommends the family emergency furlough on the basis of individual case data/ information. The family emergency furlough will be granted only after receiving approval from the director of the facility.

b. Exclusions from consideration of family emergency furlough:

i. youth is on suicide watch;

ii. youth is under investigation for and/or has pending legal charges;

iii. youth is deemed to be at high risk for runaway or escape and/or engaging in additional criminal conduct;

iv. youth has been adjudicated under Ch. C. Art. 897.1.; or

v. there is documented evidence of previous unsuccessful furlough.

c. Referral for Family Emergency Furlough

i. A staffing must be held which includes the participation of the youth's probation officer, the dorm manager, the case manager, and the facility's deputy director, or in his absence, an assistant director. The staffing may occur via conference call.

ii. If the staffing results in a recommendation for the furlough, the deputy director or assistant director shall transmit the request for approval to the director along with all documentation verifying the emergency.

iii. If the director approves the furlough, the director shall specify the period of time allowed for the furlough.

iv. A written notice of furlough which includes the reason for the furlough, shall be prepared, signed by the director and faxed to the committing court, district attorney, deputy secretary and probation officer.

v. After faxing notice of furlough to the court and district attorney, if no written confirmation is received, a follow-up call must be made to confirm the district attorney and court's response to the proposed family emergency furlough. If there is no objection the furlough may proceed.

vi. If approved, a youth who is on a medium or maximum custody level will be required to wear an electronic monitoring device and shall be monitored by the appropriate regional office.

vii. Prior to a youth receiving a family emergency furlough, the facility director shall approve the family member(s), guardian(s), or other custodian(s) of the youth who will be overseeing the activities of the youth, providing primary care, and assuming responsibility for the youth throughout the duration of the furlough period.

d. Duration of Family Emergency Furlough

i. A family emergency furlough may not exceed three calendar days.

G. Administrative Furlough Review and Approval Process

1. Administrative Furlough Review Committee shall consist of the following:

a. deputy director or designee named by the director;

b. dorm manager for the applying youth;

c. mental health director or designee (LSUHSC) provider (if applicable);

d. school principal or designee; and

e. probation officer assigned to the applying youth, or the immediate supervisor (in person, via phone conference, or by prior interview).

2. Screening

a. Youth currently in secure facilities will be reviewed to determine the appropriateness of furloughs. Screening of youth for appropriateness of furlough will occur, at a minimum, during the quarterly staffing. It may also occur during the regional staffing or placement review process.

b. If a youth is determined to be appropriate for furlough after screening, the Administrative Furlough Review Committee will then consider the furlough within ten working days. The AFRC is required to consider multiple aspects of the youth's classification profile and treatment plan in determining furlough eligibility.

3. Referrals

a. Referrals for review of appropriateness of furlough may be made by those participating in the staffing, a probation officer, juvenile court or other interested person. Exclusion criteria must be considered prior to making the referral to the AFRC. Page 1 of the Furlough Referral Application Form shall be utilized to transmit information on youth being referred to the AFRC.

4. AFRC Review Process

a. The AFRC review process will include a thorough review and assessment of the youth's needs, strengths, and weaknesses. At a minimum, the AFRC team will consider the following prior to recommending a furlough:

i. educational/vocational needs/progress;

ii. mental health concerns;

iii. general treatment needs/progress in the areas of substance abuse, anger management, thinking errors;

iv. behavioral concerns;

v. level of participation in the behavior management program;

vi. home environment;

vii. custody level;

viii. community risk assessment;

ix. proposed aftercare/release plans;

x. special needs concerns (i.e., SMI, mental retardation, psychotropic medication needs, self harm);

xi. most recent secure custody screening documents (must have been done within the last year);

xii. escape risk; and

xiii. travel arrangements.

b. The probation officer will conduct a home study for purposes of the furlough within 10 working days. During the course of the home study the probation officer will have the proposed custodian complete or assist in the completion of the Request for Custodian Information Form. The custodian information form will be submitted to the director as part of the Furlough Referral and Application Form.

c. A schedule of the AFRC activities will be issued by the deputy director/designee and disseminated to all department heads and dorm managers. In an effort to better promote parent/guardian input, the case manager will make telephone contact and/or formal written correspondence with the youth's parent/guardian about the scheduled date and approximate time of the AFRC meeting. The parent/guardian shall be invited to participate in the meeting.

d. The AFRC will send a completed furlough application form to the director.

e. With the exception of family emergency furloughs, once approved by the director, the furlough application will be forwarded to the deputy secretary for final approval.

5. Furlough Action by Deputy Secretary

a. Once approved by the facility director, the furlough application must be transmitted to the deputy secretary for review and final approval. All documentation used to support the director's approval of the furlough must be transmitted to the deputy secretary along with the Furlough Referral and Application Form.

b. The furlough application with supporting documentation must be transmitted to the deputy secretary five working days prior to mailing of the notice to the court(s) and district attorney(s) of plans to furlough a youth.

c. The deputy secretary will notify the facility director of the decision by returning page 3 of the Furlough Referral and Application Form. If the furlough is denied, the director or case manager will meet with the youth, notify the parent/guardian and DYS.

6. Notice to Court and District Attorney

a. If the furlough is approved by the deputy secretary, the director of the facility shall provide written notice to the court(s) and district attorney(s) of plans to furlough the youth.

i. Written notice shall include:

(a). reference to R.S. 15:908 regarding the authority designated to youth service to authorize a temporary furlough;

(b). whether the furlough requested is for a youth sentenced under Children's Code 897.1;

(c). statement that the furlough will not be authorized over the objection of the court or if the district attorney objects, until the conclusion of a contradictory hearing; and

(d). statement that the furlough program is a continuing rehabilitative process expected to last throughout the youth's commitment.

ii. For all furloughs except emergency family furloughs, written notice shall be furnished to the court at least 14 calendar days prior to the start date of the furlough.

iii. Notice of approved furloughs will also be provided to the appropriate regional office.

H. Conditions of Furlough

1. Custody Receipt

a. As per R.S. 15:908(B), the adult assuming custody of the child for the furlough must sign a custody receipt. In most cases, the person assuming custody will be the parent or guardian. If the parent or guardian is unable to travel to the facility to assume custody of the youth, a responsible family member may accept custody of the youth. This person must be an approved adult family member, age 21 or over, who is either included on the youth's previously approved visitation list or is known to the Office of Community Services worker or the assigned probation officer. A previously approved adult may also accept custody of the youth.

2. Conditions of Furlough

a. Case managers are responsible for reviewing furlough conditions and sanctions with the youth and family member or previously approved adult who will take custody of the youth. The case manager shall provide the youth and custodian with a copy of the conditions and sanctions. Following review of the furlough conditions and sanctions with the youth and custodian, the case manager will have the youth and custodian sign the Conditions of Furlough Form acknowledging that they understand the conditions and sanctions. The youth will sign the furlough contract.

b. All furloughs require that the youth participate in urine drug screening following a furlough.

c. The custodian will also be required to read and sign a Furlough Custodian Agreement.

3. Transportation

a. The responsible adult will physically transport the youth from the facility and return the youth to the facility.

I. Return of Youth to Facility

1. The youth will be returned to the facility. Upon return to the facility the youth will be transported to the infirmary for a wellness check and mandatory urine drug test.

2. The supervising probation officer will submit a report to the facility.

3. A case manager will interview the youth and assess the success of the visit.

4. A completed report will be submitted to the court and a copy sent to the regional office.

J. Sanctions for Violation of Furlough Rules

1. Types of Violations and Available Sanctions

a. Absent without leave (AWOL):

i. disciplinary infraction for escape;

ii. twelve months in youth services secure custody prior to any further furlough consideration;

iii. filing of criminal charges for escape and/or related charges.

b. Positive drug screen:

i. disciplinary infraction for intoxication and/or contraband;

ii. six months in youth services secure custody prior to any further furlough consideration;

iii. recommendation for referral to substance abuse services;

iv. modification of needs assessment to reflect recent usage of illegal/intoxicating substances (completion of substance abuse assessment).

c. Commission of crime while on furlough:

i. disciplinary infraction for aggravated disobedience;

ii. twelve months prior to any further furlough consideration;

iii. recommendation for referral to an appropriate treatment program.

d. Other violations:

i. therapeutic interventions appropriate to behavior.

2. Documentation of Violations

a. Documentation of rule violations while on furloughs will be reported on an Unusual Occurrence Report (UOR).

b. Reports are to be written by the employee (case manager, program manager, dorm manager, security staff, or probation officer) who discovers the furlough violation.

c. The regional office is to be notified in writing of any youth placed on escape status as a result of a furlough violation. Follow procedures outlined in YS Policy No. C.2.1 "Reporting and Documenting Escapes, Apprehensions, Runaways and AWOL's" regarding escapes.

K. Facility Furlough Program

1. The director of each facility shall implement a furlough program in compliance with the intent of this policy.

2. Provisions for annual review for program effectiveness shall be included.

L. Furlough Forms. The forms referred to above shall be named as follows and contain no less than the following information.

1. Furlough referral and application form:

a. type of furlough requested;

b. youth personal, offense, and custody classification level information;

c. disciplinary infraction review section; and

d. Administrative Furlough Review Committee section.

2. Reintegration activities for short-term furlough:

a. activities and appointments to be completed while on furlough.

3. Request for custodian information:

a. youth personal information;

b. information about makeup of custodial family, address, phone, work address;

c. information about the furlough custodian, his relationship to the youth, his criminal history.

4. Notice to court and district attorney:

a. reference to R.S. 15:908 regarding the authority designated to youth service to authorize a temporary furlough;

b. whether the furlough requested is for a youth sentenced under Children's Code 897.1;

c. statement that the furlough will not be authorized over the objection of the court or if the district attorney objects, until the conclusion of a contradictory hearing; and

d. statement that the furlough program is a continuing rehabilitative process expected to last throughout the youth's commitment.

5. Custody receipt:

a. acknowledgement of conditions and duration of the furlough, signed by the facility director;

b. acknowledgement of conditions and duration of furlough, and assumption of safety, well-being, and return of the youth, signed by the furlough custodian.

6. Furlough contract:

a. signed statements from youth that the conditions of the furlough have been explained to him, that he understands them, that he will follow them, that he understands that approval of future furloughs depends on the success of the instant furlough, and a telephone number for him to contact in the event concerns or questions arise.

b. conditions of furlough, setting forth the general terms and conditions of furlough, the sanctions for violating these conditions, notice that the youth will be requires to submit to drug testing upon his return from furlough.

7. Furlough custodian agreement:

a. acknowledgement of and agreement to certain facts, including that the youth will reside with the furlough custodian and not leave the state, that he can provide housing, meals and transportation to and from the facility, that he understands the conditions of furlough, and other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:405.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:102 (January 2006).

§765. Correspondence and Packages

A. Purpose. To establish the deputy secretary's policy and procedures for sending and receiving mail and packages at all secure care facilities.

B. Applicability—Assistant Secretaries, Deputy Assistant Secretaries and All Facility Directors. Each director is responsible for implementing and for conveying the contents of this policy to youth, affected employees and affected members of the public.

C. Policy. It is the deputy secretary's policy that reasonable restrictions (consistent with acceptable custody practices and the interests of crime victims) may be placed on youth's ability to receive letters, publications and packages through the mail. Reading or censorship of letters and publications should generally be limited to those items containing material that interferes with legitimate youth services (YS) objectives (including, but not limited to, deterrence of delinquency, youth rehabilitation, facility security, freedom from sexual harassment) or if reading or censorship is necessary to prevent the commission of a crime or to protect the interests of crime victims. All outgoing mail shall be stamped to indicate that it originated from a secure care facility. The receipt of packages through the mail must conform to the list of approved package items. Packages must be inspected and handled in accordance with this policy. All incoming and outgoing mail and packages must include the youth's JIRMS number.

D. Definitions

Indigent Youth—a youth under the supervision of YS who has little or no money.

E. Procedures for Letters

1. Receiving and Sending Letters through the Mail

a. Restrictions on the number of letters written or received and the length or the language of the letter must be justified in accordance with this policy and documented. Restrictions on whom youth may send letters to and receive letters from must be justified in accordance with this policy. Youth may not send or receive letters to or from inmates in adult prisons unless the person is officially listed in their record as an identifiable parent, legal spouse, sibling or grandparent, or unless the director has approved the exception.

b. Upon written request of the person receiving correspondence from a youth, or if requested by the minor's parent or legal guardian, the facility may refuse to mail correspondence addressed to that person.

c. All incoming and outgoing mail shall be handled without unjustified delay. Letters should be held no longer than 24 hours and packages should be held no longer than 48 hours, exclusive of weekends, holidays and emergencies. This does not prohibit the holding of mail for youth who are temporarily absent from the facility.

d. No record shall be kept of whom a youth corresponds with except when the director determines that it is necessary for legitimate YS objectives or to prevent the commission of a crime or to protect the interests of crime victims. The keeping of such record must be authorized in writing. Facility staff may maintain copies/logs for verification purposes.

e. Youth may not initiate contact with the victim(s) of their crime(s) or the victims' family members except in accordance with specific procedures established by the director in conjunction with Crime Victims Services Bureau.

2. Inspection of Letters

a.i. Outgoing Letters. All outgoing letters must be posted unsealed and inspected for contraband. The youth's name, JIRMS number, living area, and facility address shall be written or typed in the upper left hand corner of the envelope. Drawing, writing and marking on envelopes, other than the return and sending address, is not permitted. All outgoing mail shall be stamped to indicate that it originated from a secure care facility. Exception: Outgoing privileged mail to the following may be posted sealed and will not be opened or inspected except as indicated in Paragraph E.4:

(a). identifiable courts;

(b). identifiable prosecuting attorneys;

(c). identifiable probation and parole officers;

(d). state and local chief executive officers;

(e). identifiable attorneys;

(f). deputy secretary, undersecretary or designee, deputy assistant secretary and other officials and administrators of grievance systems of YS; and

(g). local, state or federal law enforcement agencies and officials.

ii. It is the responsibility and duty of the facility staff to verify the legitimacy of the official listed on the envelope. For purposes of this exception, *identifiable* means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, the letter is to be treated as regular mail and an appropriate inquiry made into the youth's intent in addressing the envelope as privileged mail.

b.i. Incoming Letters. Incoming letters may be opened and inspected for contraband. Incoming privileged mail (see following list) may be opened and inspected for contraband only in the presence of the youth addressee except as indicated in Paragraph E.4:

(a). identifiable courts;

(b). identifiable prosecuting attorneys;

(c). identifiable probation and parole officers;

(d) state and local chief executive officers;

(e). identifiable attorneys;

(f). deputy secretary, undersecretary or designee, deputy assistant secretaries, and other officials and administrators of YS grievance systems; and

(g). local, state, or federal law enforcement agencies and officials.

ii. See Clause E.2.a.ii for the definition of *identifiable*. Upon the determination that this mail is not identifiable privileged mail, it shall be treated as all other incoming mail and shall be opened and inspected for contraband and an appropriate inquiry made as to the sender's intent in addressing the envelope as privileged mail.

3. Reading of Letters. Youth's letters may be read only when the director or his designee has information that the correspondence may contain material that interferes with legitimate YS objectives or to prevent the commission of a crime or to protect the interests of crime victims. In such cases, a written record shall be kept and shall include:

a. youth's name and number;

b. the specific reason it is necessary to read the mail;

c. approximate length of time the mail is to be read;

d. a photo copy and a list of each piece of correspondence including the date received and the name of the sender; and

e. signature of the director or his designee.

4. Mail Precautions. The directors are authorized to open and inspect incoming and outgoing privileged mail outside of the youth's presence under the following circumstances (see also YS Policy No. A.2.30 "Mail Precautions" for additional information):

a. packages and letters that are unusual in appearance or appear different from mail normally received or sent by the individual;

b. packages and letters of a size or shape not customarily received or sent by the individual;

c. packages and letters which have a city and/or state postmark that is different from the return address;

d. packages and letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue; or

e. when reasonable suspicion of illicit activity has resulted from a formal investigation and the deputy secretary or designee has authorized inspection.

5. Stationary, Envelopes, and Stamps

a. These items shall be available for purchase in the canteen.

b. Indigent youth shall have access to the postage necessary to send out approved legal mail on a reasonable basis and the basic supplies necessary to prepare legal documents.

F. Procedures for Packages

1. Approved Items for Packages. Legitimate catalog vendors shall be used to the maximum extent feasible to minimize the possibility of contraband being introduced into the facilities. Generally, items available in the canteen should not be approved for receipt in packages.

2. Inspection of Packages. All packages shall be inspected for contraband. Such inspection shall be done in a manner that is not intended to damage the contents of the package. A list shall be kept of the items that a youth has received through the mail. Employees will note brand names of each item received whenever possible. Upon discovery of unapproved items in an incoming package, the youth will be sent a notice of the contents of the package, the date of its receipt, and the reason that the package is unacceptable. If the unapproved items (other than perishables) are of a nature to be returned, the youth will be notified that he has 21 days to provide return postage for the package. At the end of the twenty-first day the disposal process may begin as outlined in Paragraph F.3. Postage will be provided for indigent youth. When a package is returned to sender, a note will be sent with it specifying the reason for its return. Exception: All sealed packages, may be opened and inspected in the presence of the youth, in which case an inventory of the packaged contents is not required. Upon receipt of a package handled in this manner, the youth shall sign a statement that the youth agrees that all items due him are in the package. If the youth agrees that all contents are in the package, staff shall document this in accordance with facility procedures, including giving the youth the option of either returning the package or accepting the package and dealing directly with the vendor regarding any dispute.

3. Disposal of Items Received in Packages and Letters. No items, other than perishables, should be disposed of prior to the exhaustion of an administrative appeal. Failure to timely file an appeal constitutes exhaustion.

a. Unapproved items for which no postage has been provided and for which appeals have been exhausted shall be disposed of in the following manner with the method of disposal documented:

i. perishable items shall be destroyed;

ii. non-perishable items may be placed in use in the facility if legitimately needed, clothing may be used for youth discharging;

iii. items may be donated to a charitable organization;

iv. items of little or no value may be destroyed; and

v. cash shall be deposited as self-generated revenue in the facility's operating appropriation in accordance with R.S. 14:402(F).

b. The following list of contraband items received in a letter or package, and any other pertinent information, shall be turned over to law enforcement authorities in the parish where the facility is located, with notification to the local FBI agent (if appropriate) or the U.S. Postal Service:

i. any controlled dangerous substance;

ii. any weapon or explosive;

iii. any escape plans; and

iv. any plans for criminal activity or acts that constitute criminal behavior.

c. Appropriate documentation shall be maintained on all items returned to sender or otherwise disposed of.

d. No unapproved items shall be given to or purchased by an employee of YS.

e. Upon approval of the director, unapproved items, other than those listed in Subparagraph F.3.b, may be disposed of by turning the item(s) over to an approved visitor of the youth who received the unapproved item(s). The approved visitor must sign a receipt for the item(s).

G. Procedures for Publications

1. Books, magazines, newspapers, pamphlets, leaflets, brochures, and other printed material are considered publications. Such printed material may be read and inspected for contraband and unacceptable depictions and literature. Unless otherwise provided by facility rules, all printed material must be received directly from the publisher.

2. Refusal of Publications. Printed material shall only be refused if it interferes with legitimate YS objectives or to prevent the commission of a crime or to protect the interests of crime victims. This includes, but is not limited to, the following categories:

a. the printed material concerns escape methods or plans;

b. the printed material concerns plans to violate or disrupt facility rules or routines;

c. the printed material concerns the introduction, purchase, or instructions for the manufacture of controlled dangerous substances, alcohol, or other substances or apparatus not consistent with the security or stability of the facility;

d. the printed material concerns the introduction of or instructions for the use, manufacture, storage, or replication of weapons or instructs in the use of martial arts;

e. the printed material contains material which, reasonably construed, is written for the purpose of communicating information which could promote the breakdown of order by youth disruption, such as strikes or riots or instigation of youth unrest for racial or other reasons; or

f. the material features nudity on a routine or regular basis or promotes itself based upon such depictions, or is sexually explicit and may contribute to a sexually offensive environment and the sexual harassment of staff or youth. This includes material presented in a manner to provoke or arouse lust, passion, or perversion, or exploit sex.

3. Newspapers and magazine clippings are considered publications for the purpose of censorship and review pursuant to this policy. However, they are not required to originate from the publisher. The quantity received may be limited by what can be reasonably viewed for security reasons in a timely manner.

4. If the printed material contains a presentation of sexual behavior that meets the definition of "material harmful to minors" as established in R.S. 14:91.11, it shall be refused. Such material generally exploits, is devoted to or principally consists of descriptions of illicit sex or sexual immorality for commercial gain and is presented in a manner to provoke or arouse lust, passion, or perversion or exploit sex.

5. Procedures When Publication Is Refused. When a publication is refused, the youth may appeal by filing a "Request for Administrative Remedy" pursuant to YS Policy No. B.5.3. The facility should retain possession of the disputed item(s) until the exhaustion of an administrative appeal and judicial review. Failure to timely file constitutes exhaustion.

6. Youth are not allowed multiple copies of publications.

H. Collection and Distribution of Mail

1. Youth may not collect or distribute mail. An employee will give mail directly to youth.

2. When mail is received for a youth who has been transferred to another facility or released, the facility should attempt to forward the mail to the youth.

3. Youth will be notified when incoming or outgoing letters are withheld in part or in full.

I. Procedures for Photographs or Digital or Other Images

1. Youth will not be allowed to receive or possess photographs or digital or other images that interfere with legitimate YS objectives or to prevent the commission of a

crime or protect the interests of crime victims. This includes photographs or digital or other images that expose the genitals, genital area (including pubic hair), anal area, buttocks, or female breasts (or breasts that are designed to imitate female breasts). These areas must be covered with non-transparent garments. Lingerie will not be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses may be sufficient cause for rejection regardless of the type of clothing worn.

2. Each facility shall develop a procedure to reasonably restrict a youth's possession of multiple copies of the same photograph or digital or other image.

3. Hard backed photographs or digital or other images that are subject to alteration or modification may be rejected.

4. The term "photograph" includes other images such as those created by a digital imaging device or electronic mail.

5. When a photograph or digital or other image is refused, the youth may appeal by filing a "Request for Administrative Remedy" pursuant to YS Policy No. B.5.3. The facility shall retain possession of the disputed item(s) until the exhaustion of the administrative appeal process. Failure to timely file constitutes exhaustion.

AUTHORITY: Promulgated in accordance with R.S. 14:91.11, R.S. 14:402 and R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Division of Youth Services, Office of Youth Development, LR 32:637 (April 2006).

§767. Research

A. Purpose. To establish the deputy secretary's policy regarding medical and social science research of secure care facilities and to address the direct participation of youth in such research.

B. Applicability. Deputy assistant secretaries and all facility directors.

C. Policy. It is the deputy secretary's policy that secure care facilities are encouraged to support, engage in, and use medical and social science research activities relevant to program services and operations. Requests and proposals for such research will be reviewed and approved in accordance with the procedures outlined herein. Proposed medical and social science studies which involve more than minimal risk to youth must be reviewed under and comply with federal regulations and shall be reviewed and approved by an authorized Institutional Review Board (IRB). The sole purpose for overseeing human subject research is to ensure that it meets applicable federal guidelines, complies with Youth Services (YS) policies, and protects the individual.

D. Definitions

Certification—the official notification by the facility to YS Central Office that a research project or activity involving human subjects has been reviewed and approved by an Institutional Review Board in accordance with an approved assurance.

Human Subject—a living individual about whom an investigator (whether a professional or student) conducting research obtains data through intervention or interaction with the individual or identifiable private information.

Institution—any public or private entity or agency.

Institutional Review Board (IRB)—a board, consisting of at least five members with various backgrounds, established to provide complete review of research activities commonly conducted by the institution as described above.

Minimal Risk—the probability and magnitude of harm or discomfort anticipated in the research are not greater than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

Research—a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

E. Procedures

1. Studies of the possible causes, effects, and processes of secure care and studies of these facility structures and/or youth in secure care facilities may only be conducted upon the approval of the deputy secretary.

2. The director shall review the research proposal and meet with the researcher(s) to discuss the contents of the proposal and plans for the results. During the discussion the director shall cover appropriate issues listed below under criteria and negotiate the level of review and dissemination of the results with the researcher(s) prior to initial approval.

3. The director shall initially approve a research proposal based on the following criteria before forwarding it to the deputy secretary for final approval:

a. the conduct of research in the facility complies with professional and scientific ethics and with applicable state and federal guidelines for the use and dissemination of research findings;

b. the research presents no more than minimal risk to youth;

c. the research consists of no more than interviews and/or written questionnaires and surveys, analysis of census and demographic data, or procedures that do not manipulate bodily conditions;

d. facility staff may assist research personnel in carrying out research and evaluation;

e. any direct youth participation or involvement is voluntary and requires consent from the youth’s parents or legal guardians if the youth is under the age of 17; if there is no direct contact with youth and the research proposal only consists of retrieving data which has been previously collected during the normal course of business, no parental/guardian consent is needed;

f. the names of all participants are confidential;

g. prior to publication and/or presentation, a written report of the results of all medical and social science research must be shared with YS;

h. the research activities will not interfere with the normal operations of the facility;

i. qualified persons conduct the research;

j. the research will be conducted at no cost to YS, unless conducted at its request;

k. research findings will not be shared without express written consent of the deputy secretary;

l. no studies or research may be conducted for profit; and

m. the deputy secretary must approve the distribution list of the research findings and reports.

4. Any proposed research studies that involve more than minimal risk to youth must be reviewed under and comply with applicable federal regulations. The director shall ensure that the researcher(s) verifies that the proposal has been reviewed and approved by an authorized IRB prior to forwarding it to the deputy secretary for final approval.

5. The deputy secretary will review the research proposal prior to final approval to ensure that it meets the overall goals, objectives, and mission of YS.

6. From the point that the deputy secretary has approved a research project, the director shall monitor its progress to ensure compliance with the provisions of this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.12(D)(2), 45 CFR §§46.101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:1249 (July 2006).

§769. Equine Health Management

A. Purpose. To establish the deputy secretary's policy regarding the maintenance of equine herd health for all horses at youth services (YS) facilities.

B. Applicability. The deputy secretary, undersecretary or designee, assistant secretaries, deputy assistant secretaries, and facility directors. The directors are responsible for implementing this policy and advising affected employees of its contents.

C. Policy. It is the deputy secretary's policy that all horses, whether privately owned and housed on the facility grounds or owned by YS, be subject to a structured health program designed to ensure humane treatment and to maintain records of all necessary veterinary treatment, vaccinations, and examinations.

D. Procedures

1. "Coggins" Testing for Equine Infectious Anemia (EIA)

a. All horses owned by YS shall be tested annually for EIA.

b. Privately owned horses kept or brought on facility grounds are also subject to mandatory annual Coggins testing. Testing shall be done at the owner's expense and testing records shall be maintained.

c. Facility staff responsible for maintaining horses shall keep written results of Coggins tests performed on all equine stock under their care.

d. Positive test results shall be reported immediately to the facility director or his designee, who shall notify or consult with a veterinarian for instructions on the disposition or handling of an infected animal.

2. Annual Vaccinations. All horses that come into contact with state owned horses must be vaccinated annually for tetanus, eastern and western encephalomyelitis, and West Nile virus. Records shall be maintained to reflect that each horse has received the annual vaccination.

3. Parasite Control. All state owned horses shall be de-wormed four to six times per year in accordance with a schedule prescribed by a veterinarian.

4. Dental Examinations. All staff responsible for the care of equine stock shall ensure that all state owned horses receive an annual dental examination by a veterinarian. The veterinarian should be authorized to perform routine maintenance as indicated by the dental examination.

5. General Care. Staff should pay careful attention at all times to the overall condition of the horses, including the animals' hooves. Any problems such as lameness, unusual discharge, hair loss, or other signs of sickness, injury, or hoof problems should be corrected immediately if possible or, if necessary, reported to the veterinarian charged with the care of the horses at that facility.

6. Additional Vaccinations. In the event of an outbreak of any disease, or the likelihood thereof, which may affect the equine stock, additional vaccinations or inoculations may be necessary. When a determination is made that additional vaccinations or treatment is necessary, the deputy secretary, his designee, or the director shall issue a directive requiring that all state owned as well as privately owned horses that are kept or brought on the facility grounds be given the necessary treatments.

E. Failure to maintain proof of compliance with this policy or failure to adhere to its provisions relating to privately owned horses could result in an order to immediately remove the animal from the grounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:405, R.S. 3:2095, L.A.C. 7:XXI.521.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:1248 (July 2006).

§771. Reporting and Documenting Escapes, Apprehensions, Runaways, and AWOLs

A. Purpose. This rule establishes the policy and procedures for reporting and documenting, escapes, apprehensions, runaways, and AWOLs (absent without leave).

B. Applicability. Assistant secretary, facility directors, Probation and Parole Program Director, and Youth Services (YS) Regional Managers.

C. Policy. It is the deputy secretary's policy that all escapes, apprehensions, runaways, and AWOLs, whether from a secure or non-secure facility, shall be reported and documented. Appropriate law enforcement agencies shall be notified as outlined herein and each unit shall maintain appropriate vigilance in apprehending youth.

D. Procedures

1. All escapes, apprehensions, runaways, and AWOLs shall be reported to YS Central Office in accordance with YS rules.

2. When an escape from a secure facility occurs, appropriate law enforcement agencies shall be notified in accordance with R.S. 15:909, as well as the control center at the Jetson Center for Youth (JCY). The prosecuting district attorney shall be notified immediately if required by YS rules. Appropriate law enforcement agencies shall also be notified of runaways and AWOLs.

3. The JCY Control Center is responsible for notifying NCIC and appropriate local law enforcement agencies of all escapes, runaways, and AWOLs.

4. The YS Central Office Duty Officer shall confirm that all notifications of escapes, apprehensions, runaways, and AWOLs have been made or cleared as appropriate.

5. For escapes from secure care facilities, the Office of Youth Development (OYD) will obtain a fugitive warrant from an East Baton Rouge Parish judge for the unserved portion of the disposition.

6. Notification of all apprehensions shall be in accordance with YS rules. The prosecuting district attorney shall be notified of apprehensions if required by YS rules.

7. Notification to registered crime victims shall be made in accordance with YS rules.

8. Directors of secure care facilities shall maintain a record and description of every escape from their facility pursuant to R.S. 15:909.

9. The report shall be available for public inspection and shall list any prior escapes within the last five years from that facility.

10. YS Central Office Duty Officer

a. All escapes and apprehensions shall be reported by telephone immediately to the YS Central Office Duty Officer and followed up with return receipt e-mail notification.

b. YS Central Office shall monitor facility progress of apprehension efforts and shall actively participate in apprehension efforts for youth who escape from any facilities. Searches shall be coordinated with the facility from which the youth escaped and the appropriate law enforcement agencies.

c. Information regarding escapes and apprehensions shall be reported pursuant to YS rules.

11. Investigative Report. After any escape from a secure care facility, an investigative report shall be prepared and submitted to the deputy secretary outlining any operational failures or weaknesses that contributed to the escape, as well as a plan of action implemented to minimize a recurrence. A critical incident review shall be conducted with the facility and central office staff within 14 days of the incident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:549, R.S. 15:909, R.S. 46:1844, and Ch.C. Art. 811.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:1907 (October 2006).

Subchapter D. Disciplinary Rules for Youth Offenders

§781. Preface
[Formerly §371]

A. This book of disciplinary rules and procedures constitutes clear and proper notice of same for each juvenile offender within the Department of Public Safety and Corrections.

B. This book is effective September 30, 1993.

C. This book rescinds and supersedes the "Offender Rules" for Juvenile Correctional Institutions dated February 17, 1984, as amended, and appeal decisions rendered pursuant to those rules and procedures.

D. Nothing in this book should be construed to create any additional rights or privileges under either state or federal law for any juvenile offender or groups of offenders over and above those already provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§783. Forward
[Formerly §373]

A. The "Disciplinary Rules and Procedures for Juvenile Offenders" are established to help provide structure and organization for the institution, and a framework within which the offender population can expect the disciplinary system to function. They must be followed at all juvenile facilities.

B. These rules, regulations, and procedures may only be changed by the secretary of the Department of Public Safety and Corrections.

C. In the event of a genuine emergency, such as a serious disturbance disrupting normal operations or a natural disaster, the secretary or his designee may suspend any and all disciplinary rules and procedures for the duration of the emergency. Full hearings must be held within a reasonable time after the end of the emergency for those offenders who were subject to serious sanctions (those that would have been appealable to the secretary under the provisions of these rules).

D. The pronouns "he" and "his" as they appear herein are used for convenience only and are not intended to discriminate against female employees or offenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§785. Definitions
[Formerly §375]

Administrative Segregation/Confinement (formerly referred to as *Room Confinement*)—a unit housing offenders whose continued presence in the general population poses a threat to life, property, self, staff, other offenders, the security or orderly running of the institution, or who are the subject of an investigation conducted by noninstitutional authorities. In addition, offenders who are pending transfer to another institution or pending assignment or reassignment within an institution may be held in "Administrative Segregation/Confinement." (Refer to Section 377.A. Disciplinary Procedures—Administrative Segregation/ Confinement Guidelines.)

Appeal—a request by an offender for review of a disciplinary decision.

Classification—a process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources.

Confidential Informant—person whose identity is not revealed to the accused offender but who provides an employee(s) with information concerning misbehavior or planned misbehavior.

Disciplinary Committee—a properly composed committee will consist of two employees: a duly authorized chairman, and a duly authorized member; each representing a different element (security, administration, or treatment) and authorized to conduct hearings and impose disciplinary sanctions in compliance with the procedures set forth in this document. The chairman must be approved by the secretary and the member must be approved by the superintendent. Any disciplinary committee chairman/member directly involved in the incident or who is biased for or against the accused cannot hear the case unless the accused waives recusal. Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias." If the decision of the disciplinary committee is not unanimous, the chairman will refer the case to another disciplinary committee. If the second decision is not unanimous, then a finding of not guilty is appropriate.

Disciplinary Hearing Officer—a ranking security officer (lieutenant or above) or any supervisory level employee from administration or treatment appointed by the superintendent who conducts hearings of minor violations and who may impose only minor sanctions. The disciplinary hearing officer may also hear protective custody cases. Any disciplinary hearing officer directly involved in the incident or who is biased for or against the accused cannot hear the case unless the accused waives recusal. Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias."

Disciplinary Report—a report on the approved form completed and filed by an employee who has reason to believe of his own knowledge that an offender has violated one or more disciplinary rules. Disciplinary reports may be heard by the disciplinary hearing officer or the disciplinary committee. (See also *Incident Report*)

Hearing—a fair and impartial review conducted by the disciplinary hearing officer or the disciplinary committee. A hearing must be scheduled as soon as possible but no later than seven days, excluding weekends and holidays, after the alleged violation.

Incident Report—a report on the approved form filed by an employee describing an instance of planned or committed misbehavior (usually filed when the information is obtained through sources other than the reporting employee's first hand knowledge-sources such as confidential informants, other offenders, or nonemployees), or to describe planned or committed misbehavior that may not be defined under a specific rule description. In addition, a document that may be used to review the appropriateness of a custody or classification assignment. Incident reports are heard by the disciplinary committee. (See also *Disciplinary Report*)

Informal Resolution—a procedure used when a minor rule has been violated and the employee believes it may properly be handled by reprimand and/or counseling.

Investigative Officer—an experienced employee assigned by the disciplinary committee or other appropriate staff to investigate a disciplinary report utilizing Form JR-8.

Investigative Report—a report on the approved form submitted to the disciplinary committee/hearing officer by an investigative officer detailing the facts pertaining to an investigation.

Major Offense—Schedule B rule violation. (Refer to §383.)

Minor Offense—Schedule A rule violation. (Refer to §381)

Restitution—restitution may be obtained by a disciplinary committee in accordance with Department Regulation Number 30-41 from an offender who damages or destroys property, escapes or attempts to escape, causes or attempts to cause injury to himself, other offenders, staff and/or civilians (this includes lost wages), or who has a pattern of alleging injury or illness with the result that medical expenses are

incurred and after a finding of guilt by the disciplinary committee following a full (due process) hearing. Restitution is not a disciplinary penalty.

Sanction—a disciplinary penalty.

Special Unit—a housing section that separates offenders who threaten the security or orderly management of the institution from the general population.

Staff Representative—a staff member selected by the offender in accordance with institutional procedure for the purpose of representing the offender before the disciplinary committee chairman/hearing officer. (See Form JR-1 for duties of staff representative and exceptions.) The superintendent or his designee shall publish a list of names of staff representatives and shall make the list available to the disciplinary hearing officers, disciplinary committee chairmen, and offenders. All case managers should appear on the list, as well as selected administrative, educational, security and other personnel. The case manager should normally be chosen; however, any employee chosen must be on duty at the time of the hearing and must be able to perform the function without serious disruption to normal job responsibilities. Employees who write the disciplinary report, who witness the reported incident, who investigate the incident, or conduct the disciplinary hearings may not act as staff representative for the particular case. If the staff representative encounters difficulties during the representation that he believes will prevent him from functioning properly (i.e., biases which would prevent him from being an offender advocate), he should request approval from the disciplinary committee chairman/hearing officer to be disqualified from the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§787. Disciplinary Procedures [Formerly §377]

A. Administrative Segregation/Confinement Guidelines (formerly referred to as *room confinement*). An offender whose continued presence in the general population poses a threat to life, property, self, staff, other offenders, or to the security or orderly running of the institution, or who is the subject of an investigation conducted by noninstitutional authorities, or who is pending review for or assignment to a special unit, or pending reassignment within an institution or to another institution, may (with the approval of the highest ranking supervisor on duty in the unit where the incident occurred), be placed in administrative segregation/ confinement. The supervisor, before the conclusion of his tour of duty, will review relevant documentation for completeness and correctness, and investigate as needed to confirm the reasonableness of the allegation or circumstances prompting the placement.

1. Placement of an offender in administrative segregation/confinement pending a disciplinary hearing should not normally exceed 24 hours unless justified for security reasons. (See §377.A. Administrative Segregation/ Confinement Guidelines above.)

2. Placement of an offender in administrative segregation/confinement pending case management review for possible placement in a special unit, protective care, or other reassignment review should not normally exceed 24 hours unless justified for security reasons. (See §377.A. Administrative Segregation/Confinement Guidelines above.) An incident report (Form JR-3) may be utilized to initiate placement under these circumstances. Review may be conducted by a disciplinary committee or other classification authority.

3. An offender who has been found guilty of a Schedule B offense may be placed in administrative segregation/confinement by the disciplinary committee for a period of time not to exceed five days as a sanction. [Refer to §379. Sanctions and §383. Penalty Schedule—Disciplinary Report (Heard by Disciplinary Committee)].

4. In the event an offender remains in administrative segregation/confinement for periods over 24 hours, the placement must be reviewed every 24 hours thereafter by the superintendent or his designee who may be a ranking security employee or administrative or treatment supervisor (who was not involved with the incident).

5. Offenders whose serious behavior problems or need for protective care extends beyond the five day maximum envisioned for administrative segregation/confinement should be reviewed by the appropriate classification authority for possible placement in a special unit where they can be separated from general population. Offenders may be held in excess of five days in administrative segregation/confinement pending such review and/or assignment to a special unit, or pending possible transfer to another institution, or pending assignment or reassignment within an institution only when they are at a high risk for assaultive behavior, present a danger to themselves or others or the security of the institution, or are in danger of being victimized by others.

6. During administrative segregation/confinement visual contact is made with an offender at least every 15 minutes (or more, depending upon his emotional state) and documented in the unit log book.

7. Time spent in administrative segregation/ confinement must be credited against any time spent in detention for disciplinary reasons even when the sentence is suspended. Credit will not be given for time spent in administrative segregation/confinement on a request for protection or while awaiting transfer to another area.

8. Offenders in administrative segregation/ confinement shall be allowed to receive all correspondence and to originate correspondence. Offenders in administrative segregation/confinement will be allowed: visits; clean clothing on a scheduled basis; toothbrush and toothpaste; sufficient heat; light; ventilation; toilet facilities; and the same meals as other offenders.

B. Informal Resolution

1. Many petty or minor acts of misbehavior do not warrant the time and effort of a full disciplinary proceeding, yet do warrant some staff response. Good judgment of institutional staff, when dealing with some misbehavior, can alleviate further problems. Formal disciplinary proceedings need not be initiated for such misbehavior if the employee feels that the situation can be controlled by verbal reprimand or counseling.

2. If the offender is unwilling to accept an informal resolution, the reporting employee shall prepare and forward a disciplinary report for processing. A record shall be kept of informal resolutions and reviewed by the supervisor on a daily basis. An informal resolution shall be documented in the log in the area in which it occurred.

C. Minor Offenses. After writing a disciplinary report alleging commission of a minor offense, the following steps will be followed.

1. Notice. A copy of the disciplinary report, as a notification of the charges, shall be given to the offender at least 24 hours prior to a hearing with the disciplinary hearing officer. The offender's written disciplinary report must be served before the end of the employee's shift and service documented on the disciplinary report. The employee will forward the disciplinary report to his supervisor for review and investigation as he deems appropriate to determine the relevancy and accuracy of the report. The supervisor will forward the disciplinary report to the disciplinary hearing officer. The disciplinary hearing officer is responsible for making certain the offender has the disciplinary report before conducting the hearing.

2. Hearing. The offender(s) shall be present during all phases of the hearing (except deliberations) unless he waives his right in writing, through obstructive behavior, or when another offender is giving a confidential testimony. Before the hearing can begin, the accused offender(s) must acknowledge that he/they understand their rights as outlined in Form JR-6. The offender shall be allowed a staff representative if requested. When it is apparent that the offender is not capable of effectively collecting and presenting evidence in his own behalf, a staff representative shall be appointed by the disciplinary hearing officer, even if one was not requested by the offender. The disciplinary hearing officer shall read the charge to the offender and ask that he plead guilty or not guilty. Unless the disciplinary hearing officer feels additional oral testimony is necessary, his decision may be based on the disciplinary report, the statements of the offender, and any other relevant written information presented at the hearing. He shall verbally advise the offender of his findings.

3. Record of Findings. At the conclusion of the hearing, the disciplinary hearing officer shall state his findings in writing, the evidence relied on, and the sanctions imposed, if any. A copy of this record shall be given to the offender within 24 hours. If an offender is found not guilty of a minor violation, all references to that offense shall be removed from his case record. (If the violation for which an offender was found not guilty is part of an incident where other violations were established, expungement is not necessary, but the "not guilty" violation shall be clearly marked.) A copy of all reports, documents, and notifications of the disciplinary process shall be maintained by the disciplinary hearing officer in a central location for six months with a copy placed in the offender's case record. The superintendent or his designee shall review disciplinary hearings and disposition to assure conformity with policy and procedures.

4. Appeals to Disciplinary Committee. An offender who wants to appeal a case heard by the disciplinary hearing officer must appeal to the disciplinary committee. As soon as the sentence is passed, the offender who wants to appeal must clearly say so to the disciplinary hearing officer who will then automatically suspend the sentence and schedule the case for a hearing by the disciplinary committee.

a. The disciplinary committee shall conduct a full hearing of the charge and report its findings in accordance with normal procedure. The disciplinary committee cannot upgrade the sanction imposed by the disciplinary hearing officer. The disciplinary committee may affirm, reverse or otherwise modify the decision. The appeal decision shall be in writing. Decisions rendered by the disciplinary hearing officer and appealed to the disciplinary committee may not be appealed to the superintendent or to the secretary.

D. Major Offense. After the filing of a disciplinary report alleging commission of a major offense, the following steps will be followed.

1. Notice. The accused offender must be given a written copy of the disciplinary report describing the alleged violation against him within 24 hours of the infraction (unless waived by the offender in writing) and service documented on the report. In addition, the offender must be notified of the time and place of the hearing at least 24 hours in advance of the hearing. The disciplinary report is forwarded to the employee's supervisor for review and investigation as he deems appropriate to determine the relevancy and accuracy of the report. The supervisor will forward the disciplinary report to the disciplinary committee.

2. Hearing. Disciplinary committee hearings must be tape recorded in their entirety and the tapes preserved for a minimum of 145 days or as required for judicial review. The offender shall be present during all phases of the hearing (except deliberations) unless he waives his right in writing, through obstructive behavior, or when another juvenile is giving a confidential testimony. Before the hearing can begin, the accused offender(s) must acknowledge that he/they understand their rights (Form JR-6). The disciplinary committee chairman is responsible for ensuring that the rights of offenders are protected. The chairman may reschedule the hearing if necessary to carry out the offender's request to exercise his rights. The offender shall be allowed a staff representative if requested. When it is apparent that the offender is not capable of effectively collecting and presenting evidence in his own behalf, a staff representative shall be appointed by the disciplinary

committee chairman even if one was not requested by the offender. The disciplinary committee chairman shall read the charge to the offender and ask that he plead guilty or not guilty. The offender has the right to present evidence and witnesses in his behalf and to request cross-examination of the accuser, provided such requests are relevant, not repetitious, not unduly burdensome to the institution, or not unduly hazardous to staff or offender safety. (The committee has the option of stipulating expected testimony from witnesses. In such a case, the committee should assign proper weight to such testimony as though the witness had actually appeared.) The accusing employee must be summoned when the report is based solely on information from confidential informants. The offender and/or his representative shall have the opportunity to challenge any documentary or physical evidence presented and may introduce evidence subject to approval of the disciplinary committee. If warranted, the disciplinary committee may order an investigation using Form JR-8.

3. Hearing of Incident Reports. When the report is based solely on information from a confidential informant, or from an offender whose identity is known, it must be corroborated by witnesses (who may be other confidential informants), the record, or other evidence. The only time the accusing employee must be summoned for cross examination is when the report is based solely on information from confidential informants. In order for the accuser to attest to the reliability of the information received from a confidential informant, the informant must not have been unreliable in the past and must have legitimate knowledge of the present incident(s).

4. Decision. The offender shall be notified orally of the decision at the conclusion of the hearing. The decision rendered shall include:

a. a finding of guilty or not guilty;

b. the reason for the decision;

c. a summary of the evidence relied upon; and

d. penalty to be imposed.

The disciplinary committee shall render, and provide to the offender, a written decision including the above information.

5. Record of Findings. The disciplinary committee's decision shall become a part of the offender's case record. The disciplinary committee has full authority to suspend any sentence it imposes, including suspending the sentence pending appeal. If an offender is found not guilty of a violation, major or minor, all references to that offense shall be removed from his case record. (If the violation in which an offender was found not guilty is part of an incident where other violations were established, expungement is not necessary, but the "not guilty" violation shall be clearly marked.) A copy of all reports, documents, and notification of the disciplinary process shall be maintained by the committee chairman in a central location for six months with a copy placed in the offender's case record. The superintendent or his designee shall review disciplinary hearings and dispositions to assure conformity with policy and procedures.

6. Appeals to the Superintendent. An offender who wants to appeal a case heard by the disciplinary committee must, in all cases, appeal to the superintendent. The offender may appeal himself or through the staff representative. In either case, the appeal must be received within 15 days of the hearing. The appeal should be clearly written or typed on Form JR-4. If the form is not available, the appeal may be on plain paper but should contain the information called for on the form. The superintendent will decide all appeals within 30 days of the date of receipt of the appeal and the offender will be promptly notified on Form JR-5 of the results (unless circumstances warrant an extension of that time period and the offender is notified accordingly).

a. Lengthy appeals of disciplinary actions will not be accepted into the appeals process. It is necessary only that the offender provide basic factual information regarding his case. Appeals that are too long will be returned to the offender for summarization. The offender will have five days from receipt to comply with the instructions and resubmit. It is important to remember that our ability to respond to legitimate problems in a timely fashion depends upon everyone's cooperation.

7. Appeals to the Secretary. An offender who wants to appeal the decision of the superintendent to the secretary will indicate that he is "not satisfied" in the appropriate box on the superintendent's "Appeal Decision" (Form JR-5) and submit it to the ARP screening officer. The form must be submitted within five days of its receipt by the offender. No supplement to the appeal will be considered. It is only necessary that the offender check the box indicating "I am not satisfied," date, sign, and forward to the ARP screening officer. The ARP screening officer will provide the offender with an acknowledgement of receipt and date forwarded to the secretary's office. The institution will provide a copy of the offender's original appeal to be attached to the Form JR-5 for submission to the secretary.

a. The secretary will only consider appeals from decisions of the superintendent which resulted in an imposed or suspended sentence of one or more of the following penalties:

i. administrative segregation/confinement for up to five days;

ii. demotion of one level or maximum demotion to the beginning level;

iii. recommendation of transfer to a more restrictive and secure environment (such as a special unit separated from general population);

iv. loss of furlough.

b. In addition, all "restitution" assessments may be appealed to the secretary.

c. The secretary will decide all appeals within 45 days of the date of receipt of the appeal and the offender will be promptly notified in writing of the results (unless

circumstances warrant an extension of that time period and the offender is notified accordingly). Absent unusual circumstances, the secretary will only consider review of the "sentence" of an inmate who pled guilty.

E. Correcting Disciplinary Reports

1. A reviewing employee may change the rule number to fit the description prior to the hearing but should ensure that the accused gets a corrected copy of the report at least 24 hours before the hearing begins. Rule number(s) may be added if the offense is clearly described on the report. An incident may consist of several related events, however, each separate and distinct rule violation should be processed independently in the disciplinary system.

2. Before the hearing begins, the disciplinary hearing officer/committee may change the rule number to match the description of alleged misbehavior, if necessary, and also change the rule number at any point prior to the deliberations, but should offer the accused a continuance to prepare the defense. It is the description of the conduct and not the rule number which determines the offense. The continuance may be waived and does not necessarily need to be for 24 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§789. Sanctions [Formerly §379]

A. Sentences must fit the offense and the offender. An offender with a poor conduct record may receive a more severe sentence than an offender with a good conduct record for the same offense. Even so, serious offenses call for serious penalties. An offender who violates more than one rule or the same rule more than once during an incident may receive a permissible sanction for each violation. After a finding of guilt for a new violation, a previously suspended sentence may be imposed as well as a new sentence. State and federal criminal laws apply to offenders. In addition to being sanctioned by institutional authorities, offenders may also be prosecuted in state or federal court for criminal conduct. Restitution imposed in accordance with Department Regulation Number 30-41 is not a disciplinary penalty and may be assessed in addition to all other permissible penalties.

B. An offender who has established a documented pattern of behavior indicating that he is dangerous to himself or others is a habitual offender. This includes an offender who has been convicted of three major violations or a total of five violations in a six-month period. Major violations are Schedule B offenses and incident reports concerning escape, violence, strong-arming, theft, smuggling of contraband, or threats to security. A habitual offender may receive Schedule B penalties following conviction of a Schedule A offense when he has established a documented pattern of hostile or disruptive behavior as defined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§791. Penalty Schedule—Disciplinary Report (Heard by Disciplinary Officer) [Formerly §381]

A. After a finding of guilt, the disciplinary officer may impose one or two of the penalties below for each violation.

1. Schedule A:

a. reprimand;

b. loss of minor privilege for up to two weeks;

c. additional work assignment that can reasonably be completed in a period of time not to exceed three days or a work assignment change. The additional work assignment shall not interfere with school or other work assignments or scheduled individual and/or group counseling sessions.

2. Minor privileges are:

a. radio/TV/stereo/movies;

b. recreational activities in excess of one hour in each 24-hour period so designated;

c. canteen privileges;

d. telephone privileges (except for emergencies, calls to attorney, one call per month to parent/guardian).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§793. Penalty Schedule—Disciplinary Report (Heard by Disciplinary Committee) [Formerly §383]

A. After a finding of guilt, the disciplinary committee may impose one or two of the penalties below.

1. Schedule B:

a. written reprimand;

b. loss of minor privilege for up to four weeks;

c. administrative segregation/confinement for up to five days;

d. demotion of one level or maximum demotion to the beginning level;

e. recommendation of transfer to a more restrictive and secure environment (such as a special unit separated from general population);

f. additional work assignments that can reasonably be completed in a period of time from three days to three weeks. The additional work assignment must not interfere with school or other scheduled work assignments or scheduled individual and/or group counseling sessions;

g. loss of major privilege as designated below.

2. Loss of major privileges includes:

a. loss of furlough not to exceed three months;

b. loss of off-campus trips unrelated to medical and mental health services not to exceed three months;

c. restriction of visiting privileges, if the violation involves visiting, not to exceed three months;

d. loss of on-campus activities such as movies, parties, special recreational and social events, Girl Scouts and Boy's Club activities, etc.

NOTE: Any sentence or part of a sentence for Schedule B offenses may be suspended for a period not to exceed 30 days. An offender who remains report-free for the duration of the sentence shall not have the sentence imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§795. Disciplinary Rules [Formerly §385]

A. An offender found guilty of violating one or more of the rules defined below will be disciplined according to the penalty schedule designated in the rule. Offenders must also obey the approved posted policies of the institution in which they are confined.

1. Contraband (Schedule B). No offender shall have under his immediate control any drugs (such as, but not limited to, heroin, LSD, amphetamines, barbiturates, marijuana), unauthorized medication, alcoholic beverage, yeast, tattoo machine, or tattoo paraphernalia, syringe, weapon (such as, but not limited to, firearm, knife, iron pipe), or any other item not permitted by institutional posted policy to be received or possessed, or any other item detrimental to the security of the institution; or smuggle or try to smuggle such items into or out of the institution. Currency is contraband in all facilities. No offender shall sell or give away any above defined contraband items. Offenders clearly seen by employees to have contraband in their possession are in violation of this rule. The *area of immediate control* is an offender's person, his locker(s), his cell, his room, his bed, his laundry bag, and his assigned job/school equipment (such as, but not limited to, his desk), or the area under his bed on the floor unless the evidence clearly indicated that it belonged to another offender. Any offender who is tested for and has a positive reading on a urinalysis test will be considered in violation of this rule. Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the institution.

a. Unauthorized Items (Schedule A). This distinguishes between contraband items that are detrimental to the security of the institution and those that are not authorized but clearly not detrimental to the safety and security of the institution.

2. Defiance (Schedule B). No offender shall commit or threaten physically or verbally to commit bodily harm upon an employee. No offender shall curse or insult an employee and/or his family. No offender shall threaten an employee in any manner, including threatening with legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation and does not mean the actual composition or filing of a writ or suit). No offender shall obstruct or resist an employee who is performing his proper duties. No offender shall try to intimidate an employee to make the employee do as the offender wants him to do. Employees shall not be subjected to abusive conversation, correspondence, phone calls, or gestures.

3. Disobedience (Schedule A). Offenders must obey all posted policies of the institution. They must obey signs or other notices of restricted activities in certain areas, safety rules, or other general instructions. The only valid excuse for disobedience is when the immediate result of obedience would be bodily injury (this includes incapacity by virtue of a certified medical reason).

4. Disobedience, Aggravated (Schedule B). Offenders must obey direct verbal orders cooperatively and promptly; not debate, argue, or ignore them before obeying. When orders conflict, the last order received must be obeyed. Even orders the offender believes improper must be obeyed; grievances must be pursued through proper channels. Sentences imposed by the disciplinary officer or the disciplinary committee are to be carried out by the offender. Violations of duty status will apply to this rule as will a violation of an order from the disciplinary committee. The only valid excuse for disobedience or aggravated disobedience is when the immediate result of obedience would be bodily injury (this includes incapacity by virtue of a certified medical reason).

5. Disorderly Conduct (Schedule A). All boisterous behavior is forbidden. This includes, but is not limited to, horseplay, or to disorderly conduct in the mess hall, the visiting room, or during counts. Offenders shall not jump ahead or cut into lines at the store, movie, mess hall, or during group movements of offenders. Visitors shall be treated courteously and not be subjected to disorderly or intrusive conduct. Offenders shall not communicate verbally into or out of cellblocks or other housing areas.

6. Disrespect (Schedule A). Employees shall not be subject to disrespectful conversation, correspondence, or phone calls. Offenders shall address employees by proper title or by "Mr.", "Ms.", "Miss", or "Mrs.", whichever is appropriate.

7. Escape (Schedule B). An escape or an attempt to escape from the grounds of an institution or from the custody of an employee outside an institution, whether successful or not, or the failure to return from a furlough or pass, or being absent from an institution without leave, is a violation. R.S. 15:875(B) and Department Regulation Number 30-41 authorize imposition of restitution for costs related to escape or attempted escape from "any institution of the department." (An intent to escape must be established,

otherwise §385.A.20. Disciplinary Rules, Unauthorized Area (Schedule A) applies.)

8. Favoritism (Schedule B). No offender shall bribe, influence, or coerce anyone to violate institutional policies, procedures, rules, or state or federal laws, or attempt to do so. No offender shall give an employee anything of any value.

9. Fighting (Schedule B). Hostile physical contact or attempted physical contact is not permitted. This includes fist fighting, shoving, wrestling, kicking, and other such behavior.

a. Self-Defense Clarification. Self-defense is a complete defense and can be established to the disciplinary committee by demonstrating that his actions did not exceed those necessary to protect himself from injury.

10. Fighting, Aggravated (Schedule B). Offenders shall not fight with each other using any object as a weapon (including any liquid or solid substances thrown or otherwise projected on or at another person). When two or more offenders attack another offender without using weapons, the attackers are in violation of this rule, as are all participants in a group or "gang" fight. The use of teeth will also be sufficient to constitute a violation of this rule. No offender shall intentionally inflict serious injury or death upon another offender. Contact does not necessarily have to be made for this rule to be violated.

a. Self-Defense Clarification. Self-defense is a complete defense and can be established to the disciplinary committee by demonstrating that his actions did not exceed those necessary to protect himself from injury.

11. Gambling (Schedule B). No offender shall operate or participate in any game of chance involving bets or wages or goods or other valuables. Possession of one or more gambling tickets or stubs for football or any other sport is a violation. No offenders shall operate a book making scheme. Possession of gambling sheets with a list of names or codes, point spreads, how much owed, or how much wagered will be considered a violation.

12. Intoxication (Schedule B). No offender shall be under the influence of any intoxicating substance at an institution or while in physical custody. Returning from a pass, furlough, or off campus activities under the influence of an intoxicating substance is a violation.

13. Malingering (Schedule A)

a. Sick Call. A qualified medical staff person (as defined by the institution's responsible health authority) determines that an offender has made repeated and frequent complaints at sick call having little or no merit.

b. Declaration of Emergency. A qualified medical staff person (as defined by the institution's responsible health authority) determines that an offender has sought emergency medical treatment not during scheduled sick call for a minor ailment that was or could have been properly handled at sick call.

14. Malingering, Aggravated (Schedule B). A qualified medical staff person (as defined by the institution's responsible health authority) determines that an offender has sought emergency medical treatment not during scheduled sick call when there was no ailment, or a doctor determines that it was an obviously minor ailment which could have been, or was, properly handled at sick call.

15. Property Destruction (Schedule B). No offender shall destroy the property of others or of the state. Flooding an area and the shaking of cell or room doors are not permitted. Standing or sitting on face bowls is a violation. Whether or not the offender intended to destroy the property and/or the degree of negligence involved may be utilized in defense of the charge.

16. Radio/Tape Player/Television Abuse (Schedule A). Radios/tape players/televisions must be used in accordance with the posted policies of the institution. Radios/tape players/televisions must be played at a reasonable volume so as not to disturb others. Violations of posted policies regarding radios/tape players/televisions may be processed under this rule. In addition to any sanction that may be imposed by the disciplinary hearing officer or the disciplinary committee, the ranking employee on duty may confiscate the radios/tape players/televisions for a period of up to 30 days. For repeated violations, the radios/tape players/televisions will be confiscated and disposed of in accordance with institutional procedure. The offender will not be permitted to have a similar item sent to him for one year.

17. Self-Mutilation (Schedule B). No offender shall deliberately inflict or attempt to inflict injury upon himself, upon a consenting offender, or consent to have an injury inflicted upon himself. Tattoos, piercing of any parts of the body, and alterations to teeth are specifically included in this rule. Not included are obvious suicide attempts.

a. Self-Mutilation (Special Sanction). Any offender found guilty of an act of self-mutilation which results in a limited school or job assignment in excess of five days will be subject to the loss of one or two major privileges for up to three months.

18. Sex Offenses, Aggravated (Schedule B). Carnal copulation by two or more offenders with each other, or by one or more offenders with an implement or animal(s), is not permitted. Two or more offenders who have obviously been interrupted immediately before or after carnal copulation are in violation. The same applies to one or more offenders with an implement or animal(s). Use of the genital organs of one of the offenders, regardless of sex, is sufficient to constitute the offense. Overt sexual activity in the visiting room is not permitted. No offender shall invade the privacy of an employee with sexual remarks, or threats in conversation, or by correspondence or phone calls. No offender shall deliberately expose the genital organs and/or masturbate in view of an employee or visitor. No offender shall sexually assault a person by force or threat of force.

19. Theft (Schedule B). No offender shall steal from anyone. Forgery, a form of theft is the unauthorized altering

or signing of a document(s) to secure material return and/or special favors or considerations. (The very act of the forgery will constitute proof of the crime. It need not have been successful in its conclusion.) Fraud, a form of theft, is the deliberate misrepresentation of fact to secure material return and/or special favors or considerations. Any offender who knowingly submits obviously false information to any employee within the Department of Public Safety and Corrections is guilty of this violation. Lying to the secretary or superintendent on appeal or in any part of the administrative remedy procedure or in correspondence will also be a violation. Those who file administrative remedy requests that are frivolous or deliberately malicious may be disciplined under this rule. No offender shall have stolen items under his immediate control. No offender shall have institutional property under his immediate control unless he has specific permission; this includes institutional foodstuffs in excess of what a reasonable person might be expected to eat at one sitting. (Refer to §385.A.1. Disciplinary Rules, for the definition of *area of immediate control*.)

20. Unauthorized Area (Schedule A). An offender must be in the area in which he is authorized to be at that particular time and date or he is in an unauthorized area. No offender shall go into any housing unit other than that to which he is assigned; this includes standing in the doorway; unless he has permission.

21. Unauthorized Food (Schedule A). No offender shall have under his immediate control any food not sold by the offender canteen or not otherwise permitted. No offender shall have institutional foodstuffs under his immediate control outside the kitchen without specific permission. No offender shall take extra portions of rationed food items at the serving counter. This rule, not §385.A.19.Theft Schedule B, applies to unauthorized possession of institutional foodstuffs not exceeding that which an inmate could be reasonably expected to eat at one sitting. (Refer to §385.A.1.Disciplinary Rules, for the definition of *area of immediate control*.)

22. Unsanitary Practices (Schedule A). Offenders must not spit or drop litter anywhere but into a proper receptacle. Offenders must maintain themselves, their clothing, and their shoes in as presentable a condition as possible under prevailing circumstances. Each offender is responsible for keeping his bed and bed area reasonably clean, neat, and sanitary. Beds will be made according to the approved posted policy at the institution. Offenders must wear shoes/boots and cannot wear shirts that leave the armpits exposed or shorts into the kitchen, or chew gum in the kitchen.

23. Work Offenses (Schedule A). Offenders must perform their assigned tasks with reasonable speed and efficiency. Though offenders have specific job assignments, it may be required that they do work other than what their job assignments require; this work shall also be done cooperatively and with reasonable speed and efficiency. Being present, but not answering at the proper time at work roll call is a violation. A school assignment is considered to be a work assignment for the purposes of this rule.

24. Work Offenses, Aggravated (Schedule B). An offender who flatly refuses to work or to go out to work, or who asks to go to administrative segregation/confinement rather than work, is in violation of this rule, as is an offender who disobeys repeated instructions as to how to perform his work assignment. Hiding out from work or leaving the work area without permission is a violation. Falling far short of fulfilling reasonable work quotas is not permitted. Being absent or late from work roll call without a valid excuse is a violation, as is not reporting for additional work assignment. Being late to work (includes being late to school assignment) is a violation. A school assignment is considered to be a work assignment for the purposes of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§797. Notice
[Formerly §387]

A. R.S. 15:866.2 provides that any property (including money) which is left within the Department of Public Safety and Corrections for 90 days after release and to which no claim is made shall be considered abandoned and will be disposed of in accordance with the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§798. Lost Property Claims
[Formerly §389]

A. The purpose of this Section is to establish a uniform procedure for handling "Lost Property Claims" filed by individuals in the custody of the Department of Public Safety and Corrections, Corrections Services. All wardens and superintendents are responsible for implementing and advising offenders and affected employees of its contents.

1. When an offender suffers a loss of personal property, he may submit a claim to the warden/superintendent. The claim should be submitted on the attached Form A. The claim must include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item, and any proof of ownership or value of the property available to the offender. All claims for lost personal property must be submitted to the warden/superintendent within 10 days of discovery of the loss.

a. Under no circumstances will an offender be compensated for an unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders.

2. The warden/superintendent, or his designee, will assign an employee to investigate the claim. The investigative officer will investigate the claim fully and will

submit his investigation report and recommendation to the warden/superintendent, or his designee.

3. If a loss of offender's personal property occurs through the negligence of the institution and/or its employees, the offenders claim may be processed in accordance with the following procedures.

a. Monetary

i. The warden/superintendent, or his designee, will recommend a reasonable value for the lost personal property as described on Form A. The maximum liability for certain classes of items is established at $50 per Department Regulation Number 30-22.

ii. Forms B and C (copies attached) will be completed and submitted to the offender for his signature; and

iii. The claim will then be submitted to the Office of the secretary for review and processing.

b. Nonmonetary

i. The offender is entitled only to state issue where state-issued items are available;

ii. the warden/superintendent, or his designee, will review the claim and determine whether or not the institution is responsible;

iii. Form B will be completed and submitted to the offender for his signature; and

iv. Form C will be completed and submitted to the offender for his signature when state issue replacement has been offered.

4. If the warden/superintendent, or his designee, determines that the institution and/or its employees are not responsible for the offender's loss of property, the claim will be denied, and Form B will be submitted to the offender indicating the reason. If the offender is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on Form B and submitting it to the ARP screening officer within five days of receipt.

5. It is only necessary that the offender check the box indicating "I am not satisfied," date, sign, and forward to the ARP screening officer. The ARP screening officer will provide the offender with an acknowledgment of receipt and date forwarded to the secretary's office. The institution will provide a copy of the offender's original Lost Personal Property Claim (Form A) and Lost Personal Property Claim Response (Form B) and other relevant documentation for submission to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

§799. Appendix
[Formerly §391]

A. Duties of Staff Representative (JR-1)

Appendix

JR-1

DUTIES OF STAFF REPRESENTATIVE

As a staff person representing an offender appearing before the Disciplinary Committee, your duties are:

1. To assist the offender in presenting pertinent information in preparing his defense. This will require, in every case, consultation with the offender and familiarity with the Disciplinary Report in question. Confidential or security information must, of course, be protected.
2. To speak with witnesses who might furnish evidence on behalf of the offender, if the offender indicates there are such witnesses whom he wishes to have called.
3. To assist the offender in completing Form JR-7, Request for Calling of Witnesses/Representative, if he plans to call witnesses.
4. To help the offender understand the charges against him and the potential consequences. You should be familiar with the procedures of the Disciplinary Committee Hearing, explain them to the offender in advance, and, if necessary during the hearing, assist the offender in understanding procedural points.
5. To assist the offender, if he so requests, in writing an appeal.

   Exception: Employees who write the Disciplinary Report, who witness the reported incident, who investigate the incident, or conduct the Disciplinary Hearings may not act as Staff Representative for the particular case. If during your representation you encounter difficulties which you believe will prevent you from functioning properly (i.e., biases which would prevent you from being an offender advocate), you should request approval from the disciplinary committee chairman/hearing officer to be disqualified from the case.

B. Disciplinary Report (JR-2)

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
DISCIPLINARY REPORT JR-2

INSTITUTION: _____

1. Name of Offender	2. JIRMS #	3. Date of Incident	4. Time of Incident

5. Place of Incident	6. Job/School Assignment (Offender)	7. Housing Assignment (Offender)

8. Rule Violated	9. Rule Number

10. Description of Incident (Include all relevant information – "unusual offender behavior, staff witnesses, physical evidence & disposition, immediate action including use of force"; use other side, if necessary)

_____

_____

_____

_____

_____

11. Signature of reporting employee	12. Name, Title, Assignment (Print)

13. Date of Report	14. Time of Report	15. Report (copy) given to above offender by:	16. Offender's Signature:

17. Pre-Hearing Confinement (Check One) ☐ Yes ☐ No

18. Plea by Offender: ☐ Not Guilty ☐ Guilty | 19. Verdict: ☐ Not Guilty ☐ Guilty

20. Date of Hearing:	21. Staff Representative:

22. Reasons for Disposition:

☐ Report is clear and precise. ☐ Lack of a credible defense/little or no defense. ☐ Based on his statement.
☐ The employee's version is determined to be more credible than the offender. ☐ Pled guilty/accepted guilty plea.
☐ Only defense is denying contents of report. ☐ The offender presented no evidence to refute the charges.
☐ The investigative officer's testimony was deemed more truthful and accurate than the offender. ☐ Plea bargain.
☐ The offender's demeanor led the committee/hearing officer to believe that the offender's testimony was untrue.
☐ Other _____

23. Motions: _____

_____

24. Reasons for Sentence:

☐ Seriousness of offense. ☐ The need to protect the institution, employees, or other.
☐ Poor Conduct record. A total of _____ rule violation(s). A total of _____ Schedule B violations since _____.
A total of _____ # _____ rule violations since _____.
☐ Other _____

25. Sentence:

Suspended ☐ _____ Days
Imposed ☐

26. Sentence:

Suspended ☐ _____ Days
Imposed ☐

27. DISCIPLINARY COMMITTEE/HEARING OFFICER:

Cost may be imposed for any property loss, damage, or medical expense occasioned through the fault of an offender who in so causing the loss, damage, or medical expenses also is found guilty through the disciplinary process of violating one or more of the rules set out in the Disciplinary Rules and Procedures for Juvenile Offenders.

_____
DISCIPLINARY COMMITTEE CHAIRMAN

_____
MEMBER

C. Incident Report (JR-3)

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
INCIDENT REPORT JR-3

INSTITUTION: _____

1. Name of Offender	2. JIRMS #	3. Date of Incident	4. Time of Incident

5. Place of Incident	6. Job/School Assignment (Offender)	7. Housing Assignment (Offender)

8. Rule Violated	9. Rule Number

10. Description of Incident (Include all relevant information – "unusual offender behavior, staff witnesses, physical evidence & disposition, immediate action including use of force"; use other side, if necessary)

_____

_____

_____

_____

_____

11. Signature of reporting employee	12. Name, Title, Assignment (Print)

13. Date of Report	14. Time of Report	15. Report (copy) given to above offender by:	16. Offender's Signature:

17. Pre-Hearing Confinement (Check One) ☐ Yes ☐ No

18. Plea by Offender: ☐ Not Guilty ☐ Guilty	19. Verdict: ☐ Not Guilty ☐ Guilty

20. Date of Hearing:	21. Staff Representative:

22. Reasons for Disposition:

☐ Report is clear and precise. ☐ Lack of a credible defense/little or no defense. ☐ Based on his statement.
☐ The employee's version is determined to be more credible than the offender. ☐ Pled guilty/accepted guilty plea.
☐ Only defense is denying contents of report. ☐ The offender presented no evidence to refute the charges.
☐ The investigative officer's testimony was deemed more truthful and accurate than the offender. ☐ Plea bargain.
☐ The offender's demeanor led the committee/hearing officer to believe that the offender's testimony was untrue.
☐ Other _____

23. Motions: _____

_____

24. Reasons for Sentence:

☐ Seriousness of offense. ☐ The need to protect the institution, employees, or other.
☐ Poor Conduct record. A total of _____ rule violation(s). A total of _____ Schedule B violations since _____.
A total of _____ # _____ rule violations since _____.
☐ Other _____

25. Sentence:

Suspended ☐ _____ Days
Imposed ☐

26. Sentence:

Suspended ☐ _____ Days
Imposed ☐

27. DISCIPLINARY COMMITTEE/HEARING OFFICER:

Cost may be imposed for any property loss, damage, or medical expense occasioned through the fault of an offender who in so causing the loss, damage, or medical expenses also is found guilty through the disciplinary process of violating one or more of the rules set out in the Disciplinary Rules and Procedures for Juvenile Offenders.

_____
DISCIPLINARY COMMITTEE CHAIRMAN

_____
MEMBER

D Appeal from the Disciplinary Committee

APPEAL FROM THE DISCIPLINARY COMMITTEE

APPELLANT: _____ DATE OF REPORT: _____
ORIGINAL CHARGE: _____ DATE OF HEARING: _____
CHARGE FOUND GUILTY OF: _____ LOCATION OF HEARING: _____
COMMITTEE MEMBERS: _____ SENTENCE IMPOSED: _____
_____ _____
STAFF REPRESENTATIVE: _____
SENTENCE SUSPENDED: YES NO
PLEA: GUILTY NOT GUILTY

****

ISSUES

_____
_____
_____
_____
_____

ARGUMENT

_____
_____
_____
_____
_____
_____

ARGUMENT, CONTINUED

_____
_____
_____
_____
_____
_____
_____
_____

RELIEF DESIRED

_____
_____
_____
_____
_____
_____
_____
_____
_____

DATE OF APPEAL: _____
SUBMITTED BY: _____
NUMBER: _____ LOCATION: _____

E. Appeal Decision/Statement of Offender Rights
(JR-5/JR-6)

JR-5

APPEAL DECISION

DECISION NUMBER: DCA _____

TO: _____
OFFENDER NAME JIRMS #

_____
HOUSING

FROM: WARDEN/SUPERINTENDENT

DATE: _____

RE: DATE OF REPORT _____

DATE OF HEARING _____

ORIGINAL CHARGE _____

PLEA: GUILTY _____ NOT GUILTY _____

CHARGE FOUND GUILTY OF: _____

SENTENCE: IMPOSED ☐ SUSPENDED ☐

_____

_____

_____

_____

_____

_____

☐ I am not satisfied with this decision and wish to appeal to the Secretary in accordance with the conditions set forth in the "Disciplinary Rules and Procedures for Juvenile Offenders - 1st Edition 1993." The Secretary will only consider appeals from decisions which resulted in the imposed or suspended sentences of one or more of the following penalties: 1) Administrative Segregation/Confinement for up to 5 days; 2) Demotion of 1 level or maximum demotion to the beginning level; 3) Recommendation of transfer to a more restrictive and secure environment (such as a special unit separated from general population); 4) Loss of furlough.

DATE: _____ OFFENDER SIGNATURE: _____

Instructions to Offender: Forward to "ARP Screening Officer" within 5 days of your receipt of this decision.

JR-6

STATEMENT OF OFFENDER RIGHTS

_____
(Institution)

As an offender appearing at a Disciplinary Hearing for violating an institutional rule(s) or regulation(s), you have the following rights:

1. The right to have a written copy of the charge(s) against you at least 24 hours prior to appearing before the Disciplinary Committee/Hearing Officer, unless you waive this right in writing.
2. The right to have an individual who is reasonably available to represent you during the Disciplinary Committee Hearing (Representative's name is to be specified on Form JR-7).
3. The right to make a full statement concerning the incident and to present any reasonable evidence in your behalf, including written statements from others.
4. No offender can be compelled to incriminate himself.
5. The right to be present during all phases of the hearing unless you waive your rights in writing, through obstructive behavior, or when another juvenile is giving confidential testimony.
6. The right to be advised of the Disciplinary Hearing Officer's/Committee's decision, with the facts supporting the Officer's disposition in writing; and
7. The right to appeal in accordance with the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Request for Witness/Staff Representative (JR-7)

JR-7

REQUEST FOR WITNESSES/STAFF REPRESENTATIVE

I do ___ do not ___ wish to have a representative at the Disciplinary Committee Hearing.

If so, my Representative's name is: _____.

The witnesses I wish to call to present evidence in my behalf at the Disciplinary Committee Hearing are listed below and a brief statement of what each witness will be able to testify to is included:

Name: _____ Statement: _____

_____

_____

Name: _____ Statement: _____

_____

_____

Name: _____ Statement: _____

_____

_____

I understand that the Disciplinary Committee Chairman will call those persons who are reasonably available, and who are knowledgeable of the circumstances surrounding the charge(s).

_____ / _____

(offender's signature) (date)

NOTE: RETURN THIS FORM TO THE DISCIPLINARY COMMITTEE CHAIRMAN.

G. Investigative Report (JR-8)

JR-8

INVESTIGATIVE REPORT

Offender's Name: _____ **Housing Area:** _____

Referred by: _____ **Referred to:** _____

Date Referred: _____

Statement of Incident:

_____

_____

_____

_____

_____

Other Facts About the Incident:

_____

_____

_____

_____

_____

Investigator's Comments and Conclusions:

_____

_____

_____

_____

_____ / _____ / _____

(Signature of Investigator) **(Title)** **(Date)**

_____ / _____ / _____

(Superintendent's Signature) **(Title)** **(Date)**

H. Lost Personal Property Claim (Form A)

FORM A

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

_____
(Institution)

TO BE COMPLETED BY THE OFFENDER

LOST PERSONAL PROPERTY CLAIM

1. Claimant: _____
(Name, number, and location)

2. Date of Discovery of Loss: _____

3. Circumstances which resulted in the loss of personal property:

_____

_____

_____

_____

4. Items lost (include description): Value:

_____ _____

_____ _____

_____ _____

NOTE: False claims or false representations of lost items' value will subject the claimant to disciplinary action.

5. Attach to this document any proof of ownership or proof of value available to claimant.

6. A claim must be submitted within 10 days of the date of the discovery of loss. The claim is to be submitted to the Warden/Superintendent of the institution.

SUBMITTED BY: _____ DATE SUBMITTED: _____
(Signature of claimant)

I. Lost Personal Property Claim Response (Form B)

FORM B

LOST PERSONAL PROPERTY CLAIM RESPONSE

CLAIM # _____

DATE _____

TO: _____ _____

OFFENDER NAME JIRMS # HOUSING

FROM: _____

Your request for reimbursement/settlement/replacement of your lost personal property has been reviewed with the below recommended actions:

☐ DENIED

_____ Your records were reviewed and no proof of ownership is indicated.

_____ Unallowable item at this institution.

_____ Clothing/items improperly marked according to offender posted policy.

_____ Item illegally obtained.

_____ Investigation reveals loss resulted from barter, gambling, or sale.

_____ Investigation has proved your claim invalid or unsubstantiated.

_____ Loss resulted from irresponsibility on your part to keep personal items secure in footlocker, cell, etc.

_____ Other _____

☐ APPROVED

_____ You are being offered state issue items as replacement for the items reported missing.

_____ Monetary settlement in the amount of $_____ will be processed.

_____ Other _____

Signature of Investigating Officer: _____

_____ _____

Signature of Offender JIRMS # DATE

_____

Warden/Superintendent/or Designee

☐ I am not satisfied with this decision and wish to appeal to the Office of the Secretary.

J. Agreement (Form C)

FORM C

AGREEMENT

I, _____ (Offender's name), _____ (Number), having filed a claim for lost property on _____ _____ do hereby acknowledge receipt of _____

_____

_____

as full settlement, compromise, and discharge of any and all liability which exists or which might exist, and do hereby agree to release and discharge the State of Louisiana (Department of Public Safety and Corrections) and any and all of its agents, representatives, officers, and employees from any and all liability for compensation, damages, and all other amounts, if any, which might be due me by reason of the loss reported on _____ (Date) (whether the liability, if any, be in damages, tort, or otherwise, or whether the liability, if any, be under the laws of the State of Louisiana, or the laws of the United States). I agree to have this claim processed and settled in accordance with the terms set forth in this agreement.

WITNESSES:

_____ _____
Signature of Offender

_____ _____
Date

Warden/Superintendent Approval _____

Secretary's Approval _____
(Necessary only for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Youth Development, LR 20:58 (January 1994).

Chapter 9. Administration of Medications to Children in Detention Facilities

§901. Medication Administration [Formerly §501]

A. Medication shall be administered in a manner consistent with R.S. 15:911 relative to children as described herein.

B. The 2001 Louisiana Legislature authorized the Department of Public Safety and Corrections and the Louisiana State Board of Nursing to jointly promulgate rules which specifically establishes the procedure to be followed for the administration of medication at each detention facility by trained unlicensed juvenile detention center employees in accordance with Act 502 of the 2001 Regular Session. Training requirements shall be set forth in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1782 (August 2002).

§903. Definitions [Formerly §503]

A. Definitions as used in this Part:

Act—Act 502, H. B. No. 107, R.S. 15:911.

Administer or Administration—the giving of either an oral, pre-measured dose inhalant or topical ointment medication to a patient.

Adverse Effects—a harmful, unintended reaction to a drug administered at the prescribed normal dosage.

Assessed the Health Status—an assessment of the juvenile in the detention center by a licensed physician or registered nurse approved by the department to determine the current level of wellness/illness of the juvenile in accordance with the nursing process.

Authorized Prescriber—a person authorized in Louisiana or an adjacent state to prescribe medications.

Board—the Louisiana State Board of Nursing.

Child—a person under 18 years of age who, prior to juvenile proceedings, has not been judicially emancipated under Civil Code Article 385 or emancipated by marriage under Civil Code Articles 379 through 384.

Child Specific—pertains to a particular juvenile.

Child Specific Training—training provided by a qualified registered nurse or physician regarding juveniles to include variations from the usual manner in which a medication is administered and any potential side effects or

reactions that should be watched for with any person receiving the medication.

Competence—the quality or condition of being legally qualified, eligible or admissible.

Conditions—that each of the following requirements of R.S. 15:911 have been met:

a. rules have been jointly promulgated establishing procedures to be followed at each juvenile detention center for the administration of medication;

b. medication not be administered to any child without an order from a person with prescriptive authority in the state of Louisiana or an adjacent state;

c. an assessment of the juvenile's health status has been completed by either the registered nurse or physician and said assessment has determined that the medication can be safely administered by trained unlicensed personnel in the detention center; and

d. the detention facility employees have received documented training and supervision by a registered nurse or physician.

Confidentiality—all information shall be treated as private and not for publication or disclosure without proper authorization.

Container (Includes Blister Pack) that Meets Acceptable Pharmaceutical Standards—the original container having the pharmacy's name, address and telephone number, the pharmacist's last name and initial, and the original label that contains the juvenile's name, prescription number if any, date, frequency, name of the medication, dosage, route and the name of the person who prescribed the medication.

Controlled Substance—a drug regulated by federal law under the Controlled Substance Act of 1970.

Current Date—the last date that the prescription was filled.

Date—the date of the prescription, and when appropriate the refill.

Delegation—the process of assigning tasks to a qualified individual. Effective delegation includes the following guidelines:

a. the identified task is clear and related authority specified;

b. the task demands do not exceed the individuals' job description; and

c. the method of supervision is established in advance.

Department—the Department of Public Safety and Corrections.

Desired Effect—that the drug acts either to cure, relieve, prevent, or diagnose the disease in a manner for which it was prescribed.

Detention Facility—any juvenile detention facility, shelter care facility, or other juvenile detention facility.

Disposal of Medication—the specific method of getting rid of medication, for example, according to federal and state laws.

Document—a written paper bearing the original, official, or legal form of something which can be used to furnish evidence of information.

Documented—recording of the juvenile's name, time, medication, dose, route, date, person administering, and unusual observations and circumstances on the daily medication administration record.

Dosage—the amount of medication to be administered at one time.

Drug—any chemical compound that may be used on or administered to humans as an aid in the diagnosis, treatment, or prevention of disease or other abnormal conditions for the relief of pain or suffering or to control or improve any psychological or pathological condition.

Emergency Medication—the medication administered to save a life.

Error—the failure to do any of the following as ordered:

a. administer a medication to a juvenile;

b. administer medication within the time designated by the prescribing practitioner;

c. administer the specific medication prescribed for a juvenile;

d. administer the correct dosage of medication; administer medication by the proper route;

e. administer the medication according to generally accepted standards of practice.

Exempt—to free from an obligation or duty required of others.

Frequency of the Medication—the number of times during a day that the medication is to be administered.

Guidelines—a statement of policy or procedure.

Individual Health Plan—the mechanism to assess, plan, implement, document and evaluate health care delivered to an individual juvenile.

Inhalant Medication—a drug that is introduced into the respiratory tract with inspired air.

Instructions for Medication—all of the information required to administer the medication safely.

Legal Standards—the Legal Standards of Nursing Practice as defined in the Louisiana Administrative Code, specifically LAC 46:XLVII.3901-3915.

Mastery—having full command of a subject and being capable of performing the skill independently.

Medication—any prescription or nonprescription drug.

Medication Order—the authorization to administer a medication to a juvenile by an authorized prescriber.

Monitoring—the visual observation of the juvenile following the administration of a medication to: ensure compliance; recording medication administration; notifying the authorized prescriber of any side effects or refusal to take the medicine.

Name on the Pharmacy Label—the name of the juvenile for whom the prescription was written, the authorized prescriber's name, and the name of the pharmacist filling the prescription.

Non-Prescription Medication—over-the-counter preparations obtained without a prescription.

Observer—the detention facility employee designated to observe the juvenile for specific reactions as identified by the registered nurse or authorized prescriber.

Oral Medication—a drug given either by mouth or by a gastrostomy tube.

Pharmacology—the science of drug properties, reactions and therapeutics.

Policy—the procedures for the administration of medication in juvenile detention centers that are set forth in this Part.

Prescription—the written order from an authorized prescriber that provides clear instructions, including the name of the juvenile, prescription number, if any, date, frequency, name of medication, dosage, route, and the signature of the authorized prescriber.

Privacy—secluded from sight or isolated from view of others; concealment.

PRN—as circumstances may require.

Professional Staff—the registered nurse or physician employed or contracted by the juvenile detention center.

Protocol—an explicit detailed plan of action.

Qualified Detention Center Personnel—unlicensed personnel who meet the criteria for entering the medication administration course as specified in the policy and who successfully complete both the written and the practical sections of the course examinations.

Qualified Registered Nurse or Physician—the registered nurse(s) or physician(s) who train unlicensed department employees to administer medications.

Require a Detention Center Employee to Administer Medication—to allow or in any way coerce or encourage an employee to administer medication until the conditions of the Act are met.

Route—the prescription indicates that the medication, other than emergency medication, shall be administered by mouth or gastrostomy tube, by inhalation, or by topical application of an ointment, lotion, etc.

Storage of Medication—the appropriate specific method of handling for safe-keeping and efficacy in a locked space.

Supervision—the method of monitoring, coaching, and overseeing delegated tasks. Levels include: immediate, supervisor is physically present; direct, supervision is present and available at the site; indirect, supervisor is available in person or through electronic means.

Topical Ointment—a medication applied to the surface of the body.

Unit Dose—the medication packaged by the pharmacy so that a single dose can be administered without measuring, breaking, or crushing.

Unlicensed Trained Personnel—a detention facility employee who has successfully completed at least six hours of general and child specific training of the administration of medication course and periodic updates.

Witness—another detention facility employee, who may or may not be trained to administer medication who has been requested to be physically present during the administration of medication to the juvenile.

Written Guidelines Established by the Detention Center—the written procedures for the administration of medication to juveniles in detention centers meet the minimum requirements as set forth in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1782 (August 2002).

§905. Role of Governing Bodies [Formerly §505]

A. The Louisiana Legislature enacted R.S. 15:911, Act 502 of 2001.

1. The Nurse Practice Act, R.S. 37:911 et seq., as re-enacted and amended and the administrative rules implementing the Act serve as the legal standards for the practice of registered nurses. The Act creates the board which serves as an arm of the state government to protect the health and welfare of the citizens of the state as far as the practice of the registered nurse is concerned. The board regulates the practice of nurses by licensing qualified individuals as registered nurses. Further, the board investigates complaints relative to the practice of a registered nurse and provides information and direction relative to the legal practice of registered nurses.

2. The department has been directed to perform a variety of tasks related to of R.S. 15:911 including jointly promulgating the rules herein. The department's continuing role will include approval of doctors and registered nurses who are selected by the detention centers to conduct medical assessments and review prescriber's orders in order to determine when the administration of a medication to a particular child housed in a detention center can safely be

delegated and performed by someone other than a licensed health professional.

3. The director of the juvenile detention center provides:

a. an appropriate environment and supplies for training unlicensed personnel to administer medications;

b. for collaboration with the registered nurse regarding the safe and appropriate storage of medications and access to the medications by trained unlicensed personnel relative to:

i. the storage of medications in a locked cabinet, closet, or drawer that is used only for the storage of medications;

ii. medications that must be refrigerated to be stored in locked box in the refrigerator;

iii. the counting and the keeping of accurate records on controlled substances on a daily basis;

iv. a double locked cabinet, box or drawer that is used only for the storage of controlled substances;

c. at least two detention facility employees who have the desire and the potential capability to complete successfully the training, to administer medication in a safe and competent manner;

d. administrative supervision for personnel administering medications and cooperates with the registered nurse or physician in the support, supervision, and evaluation of unlicensed trained personnel;

e. relief from all other duties during the period that the unlicensed trained personnel is administering the medications;

f. essential space, materials, equipment, and other requirements;

g. annual in-service for unlicensed trained personnel to maintain and improve technical skills;

h. a procedure for a witness to the medication procedure upon the unlicensed trained personnel's request;

i. a procedure for the withdrawal of a witness upon written request;

j. the maintenance of records documenting the administration of medication in an appropriate, confidential file;

k. a plan to accommodate timely consultation between the trained unlicensed personnel and the registered nurse or physician regarding complications or problems not addressed in the juvenile's individual health plan;

l. a plan to maintain drug security in the work site and on the person in accord with federal and state requirements;

m. a plan for disposal of hazardous waste material in accord with federal guidelines;

n. a record on each individual who successfully completes the unlicensed employee medication administration course. Records must include:

i. original skills check list scoring;

ii. a copy of the certificate indicating completion of the medication administration course;

iii. documentation of successful completion of the annual in-service and evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1784 (August 2002).

§907. Role/Functions of Unlicensed Trained Employees Administering Medications [Formerly §507]

A. Unlicensed trained employees assume responsibility and accountability for procedures as taught in the course for the administration of medications.

1. Authorized functions of unlicensed trained employees administering medication are to:

a. receive medication and verify that the label on the medication matches the order on file for the juvenile;

b. store the medication in the appropriate designated place;

c. administer oral medications, topical medications, or pre-measured inhalants as prescribed, unless otherwise indicated;

d. document and maintain on the juvenile's medical record:

i. receipt, storage, and disposal of medication;

ii. daily record of administration of medication to the juvenile, including the name, time, medication, dose, route, date, person administering the medication, and observation of desired and adverse effects or unusual occurrences;

iii. appropriate vital signs as indicated by the authorized prescriber and/or knowledge of the drug;

e. report immediately to the registered nurse, physician, or director of the juvenile detention center any discrepancy in the controlled substance drug count;

f. request in writing the desire to have a witness to the procedure(s) or to withdraw the request for a witness;

g. report immediately to the registered nurse, physician, or director of the juvenile detention center any unusual signs, symptoms, or occurrences;

h. seek guidance from the registered nurse or physician when uncertain about medications.

2. Prohibited Functions of Unlicensed Trained Employees Regarding Medication Administration. The unlicensed trained employee shall not:

a. administer medication by intramuscular, intravenous, or subcutaneous route (other than emergency

medication which shall be delineated by the registered nurse in consultation with the physician and the juvenile);

b. administer medication by the oral inhalant aerosol route without additional training, documented competency and supervision;

c. receive or assume responsibility for accepting any written or oral and/or telephone orders from an authorized prescriber or any other person;

d. alter medication dosage as delivered from the pharmacy;

e. administer medication to any person other than the juveniles in the specific detention center for which training has occurred;

f. administer any medication when there is indication that the medication has been inappropriately dispensed by the pharmacist or mishandled by other individuals;

g. refuse once trained and all required conditions as defined in RS 15:911 are met, to administer medication without a written excuse from either the physician or the registered nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002).

§909. Role of the Professional Staff in the Administration of Medications [Formerly §509]

A. Either a registered nurse with a current Louisiana license to practice in accordance with The Nurse Practice Act and the board's rules, specifically LAC 46:XLVII.3701-3703 and 3901-3915, or a physician shall be responsible for the delegation of medication administration by trained unlicensed detention center personnel. The duties of the professional staff regarding the administration of medication, include, but are not limited to the following:

1. the development of policies and procedures regarding administration of medication in detention centers, in consultation with the detention center's director;

2. supervision of the implementation of medication administration policies to ensure the safety, health, and welfare of the juveniles in collaboration with the director and appropriate staff;

3. verification that the following conditions have been met before requiring unlicensed trained personnel to administer a medication to a juvenile:

a. that the health status of the juvenile has been assessed to determined that the administration of medication can be safely delegated;

b. only oral, pre-measured aerosols for inhalation, topical medications, and emergency medications are administered by unlicensed trained personnel;

c. child specific training has been provided;

d. except in life-threatening situations, unlicensed trained employees are not allowed to administer injectable medications;

e. controlled substances are administered only after authorization, and with additional training, supervision and documentation;

4. developing and implementing procedures for:

a. handling, storing, and disposing of medication;

b. missing (stolen) medication;

5. training unlicensed personnel to administer medications. The six hours of general training include at minimum:

a. legal role differentiation in medication delivery;

b. classification of medications and general purposes of each;

c. proper procedures for administration of medication;

d. handling, storage, and disposal of medications;

e. appropriate and correct record keeping;

f. appropriate actions when unusual circumstances occur;

g. appropriate use of resources;

6. child specific training includes at minimum:

a. desired and adverse effects of the medication;

b. recognition and response to an emergency;

c. review of the individual's medication;

d. observation of the juvenile;

e. unique individual requirements for administration of medication;

7. additional training may be required as follows:

a. handling and administering controlled substances;

b. measuring growth, taking vital signs, and other specific procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002), amended LR 29:1820 (September 2003).

§911. Medication Administration Course [Formerly §511]

A. Each person accepted to participate in the medication administration course shall meet at minimum, the following qualifications:

1. be employed by the detention facility;

2. be 18 years of age or older;

3. be free of any known contagious disease, such as Hepatitis B.

B. The following individuals are qualified to serve as instructors in the unlicensed employees medication administration course:

1. registered nurse with a minimum of one year clinical experience, preferably in detention centers or school settings;

2. other professional personnel may assist the registered nurse in training:

a. a pharmacist;

b. a physician;

c. other registered nurses with a minimum of one year clinical experience;

d. competent health care professionals have the ability to teach detention center personnel;

3. competent health care professionals have the ability to monitor untoward side effects of medication;

4. instructors have the knowledge of proper storage of medication in detention centers;

5. instructors have the ability to develop child specific training appropriate to juvenile's individual health plan and the trainee's abilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§913. Unlicensed Training Curriculum for Medication Administration [Formerly §513]

A. The six hours of general training for the medication administration course shall consist at minimum of the following information:

1. legal role differentiation in medication delivery;

2. classification of medications and general purposes of each;

3. proper procedures for administration of medication;

4. handling, storage, and disposal of medications;

5. appropriate and correct record keeping;

6. appropriate actions when emergencies and other unusual circumstances occur;

7. appropriate use of resources.

B. The course and skills demonstration shall be repeated only once upon the recommendation of the instructor.

C. A test score of 85 percent competency shall be required on the written test.

D. A pass/fail grade based on demonstrated competency on the skills checklist shall apply to the practical portion of the course. A registered nurse shall administer the examination. The applicant shall demonstrate competency in the following areas:

1. hand washing;

2. preparation and administration of:

a. oral medications including liquids;

b. topical medications;

3. documentation.

E. Child specific training includes at minimum:

1. reason for the medication;

2. desired and adverse effects of the individual's medication;

3. recognition and response to an emergency;

4. observation of the individual;

5. unique individual requirements for administration of medication;

6. additional training such as the following may be required:

a. administration of pre-measured dose inhalants;

b. handling and administering controlled substances;

c. measuring growth, taking vital signs and other specific procedures as required;

d. using emergency medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§915. Unlicensed Trained Employee Administering Medication Certificate [Formerly §515]

A. A certificate of completion of the six hour general training course shall be issued by the detention facility to those employees who successfully complete the course within the specified time lines. The certificate shall include at least the following information:

1. name of the unlicensed employee;

2. date of completion of the training and renewal date;

3. name of the juvenile detention center;

4. number of course hours;

5. signature of the instructor and the director of the detention center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and

Department of Health and Hospitals, Board of Nursing, LR 28:1786 (August 2002).

§917. Continuing Requirements [Formerly §517]

A. To ensure competency of unlicensed trained personnel the detention facility shall provide ongoing in-service training conducted by a qualified registered nurse or physician with the minimum qualifications defined above.

1. In-service training shall be provided to unlicensed trained employees relative to medication administration as needed, at least annually, through a review of the following areas:

a. handling, storage, and disposal of medications and hazardous waste;

b. documentation and record keeping;

c. reporting and documenting medication errors;

d. response to and documentation of emergencies;

e. updates to drug changes and interactions;

f. detention facility policy and guidelines for administration of medication;

g. appropriate use of resources.

2. Evaluation includes at a minimum:

a. annual competency testing using a skills check list and other evaluative criteria as indicated;

b. annual observation of child specific medication pass for competency;

c. review of child specific medication including precautions, desired and adverse effects.

3. An unlicensed employee trained to administer medication but has not worked directly with medication administration in a detention center for three months or more shall repeat the course curriculum and competency testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

§919. Removal of an Unlicensed Trained Employee from Responsibilities to Administer Medication [Formerly §519]

A. The removal of an unlicensed trained employee to administer medication shall occur under any of the following circumstances:

1. falsifies record(s);

2. found guilty of abuse/neglect and/or misappropriation of a juvenile's medication or equipment;

3. fails to participate in annual in-service;

4. Performs unsatisfactorily with said performance documented and reported by the course instructor tot he director. The course instructor has the option either to provide in-service training, to require that the medication administration course be repeated, or to relieve the employee of the responsibility to administer medication following due process procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

§921. Limitation [Formerly §521]

A. An unlicensed trained employee's authority to administer medications is not delegable.

B. There are no grandfathering provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

§923. Exclusion [Formerly §523]

A. Nothing herein shall prohibit a registered nurse from administering medications in juvenile detention centers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1787 (August 2002).

Chapter 11. Prison Enterprises

§1101. Responsibilities and Functions

A. Purpose—to clarify and further establish and outline the functions and responsibilities of the Division of Prison Enterprises.

B. Applicability—deputy secretary, chief of operations, undersecretary, assistant secretary, regional wardens, wardens, Director of Prison Enterprises and Director of Probation and Parole. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy

1. It is the secretary's policy that the Division of Prison Enterprises is responsible for developing and implementing policy and procedures for agricultural, aquacultural, silvicultural and marketing programs, industrial enterprises, livestock operations and service industries that will utilize the department's resources to lower the cost of incarceration. Additionally, Prison Enterprises shall provide training and work opportunities for offenders in order to enhance the department’s reentry initiatives, and provide products and services to state and local agencies, other political subdivisions, open market customers and other targeted customers.

D. Definitions

Advertising—the use of Prison Enterprises' resources to call to the attention of existing or potential customers the products or services offered by Prison Enterprises through media sources, including but not limited to print, television, radio, signage, sponsorships, tradeshows and other electronic media.

Agricultural—of or relating to cultivation of soil, production of crops, raising of livestock and management of natural resources.

Aquacultural—of or relating to cultivation of natural produce of water such as fish and shellfish and their by-products.

Crop Commodities—food and fiber products that cover a broad range of goods from both processed and unprocessed bulk commodities. This includes but is not limited to soybeans, corn, wheat, rice, cotton, vegetables, grasses and their by-products.

Governmental Agencies—including but not limited to foreign, federal, state and local governmental bodies as well as non-profit organizations, both within and outside the state of Louisiana.

Industrial Enterprise—a manufacturing, distribution, production, assembly or warehousing operation that accommodates the direct or indirect exchange of goods.

Livestock—animals reared in an agricultural setting to make or produce food or to be used for labor and their by-products. This includes but is not limited to cattle, bulls, pigs, horses and birds.

Marketing—the process or technique of promoting, selling and distributing a product or service. This includes but is not limited to restricted marketing to a targeted buyer or group of buyers.

Meat and Food Products—including but not limited to all processed and/or unprocessed bulk beef, poultry, pork, seafood and other food products used for production or resale.

Open Market—the area of economic activity in which buyers and sellers come together and the forces of supply and demand affect prices, including agreements entered into by private treaty.

Opportunity Purchases—single bids for non-contract items specifically requested by a customer or recommended by Prison Enterprises.

Private Treaty—a sale of property on terms determined by conference of the seller and buyer.

Promotional Items—items having no substantial resale value including but not limited to calendars, pens, hats, and t-shirts bearing information relative to Prison Enterprises.

Public Employee—person employed at any level in any capacity by a governmental agency in any branch of government, including a retiree.

Row Crop Contracts—contracts with grain elevators or others based on the Chicago Board of Trade commodity future prices.

Samples—any Prison Enterprises' products or services provided to a potential or existing customer or placed in a highly visible location or otherwise utilized to further enhance sales to existing or potential customers. This includes but is not limited to items provided to governmental agencies or organizations affiliated with potential customers to use at their discretion.

Service Industry—any labor-intensive endeavor that utilizes inmate labor or Prison Enterprises' resources to accommodate customer requests. This includes but is not limited to janitorial work, bulk mailings and assembly.

Silvicultural—of or relating to controlling the establishment, growth, composition, health and quality of forests and woodlands and their by-products through management, harvest and planting.

Timber—includes all natural and planned growth of trees used for building and other purposes, and all by-products of trees including but not limited to pine straw, firewood and bark.

E. General

1. The director of Prison Enterprises shall be responsible for the following:

a. Establishment and operation of all agricultural, aquacultural, silvicultural and marketing programs, industrial enterprises, livestock operations and service industries, including the Private Sector/Prison Industry Enhancement (PS/PIE) program within the Department of Public Safety and Corrections.

b. development of budgets and plans of operation for all Prison Enterprises programs within the state;

c. procurement of all raw goods, supplies, commodities, breeding livestock, inventories, services, studies or experimental work in accordance with the Louisiana Procurement Code, Procurement of Services Rules and Regulations, executive orders, rules established by administrative law and all other applicable state and federal law;

d. purchase of commodities, including but not limited to agriculture commodities, prison industry commodities, and other commodities available from other state, federal and foreign governmental agencies in accordance with R.S. 15:1157(C).

2. Prison enterprises may purchase without bid both finished and unfinished goods and processed and unprocessed raw materials from other governmental agencies for further processing or sale. Purchases of this type shall only be made to accommodate or take advantage of delivery terms, consistency in product quality/specifications, manufacturing capabilities and price.

3. All funds received from the sale of products and services shall be deposited immediately upon receipt into the state treasury.

4. Functional supervision at the field level relative to interface with unit activities and security requirements shall be under the jurisdiction of the warden in accordance with ACA Standard 4-4006.

F. Marketing and Promotion

1. Prison Enterprises can market and promote activities or incur expenses to promote its products and services to existing or potential customers. Marketing and promotional activities include but are not limited to providing samples and promotional items, participating in advertising, and attending conferences and/or conventions.

G. Sales

1. General

a. All Prison Enterprises products, commodities, livestock, and services may be sold through appropriate venues including but not limited to direct sales to governmental agencies, non-profit entities, private entities, public employees, and other targeted customers, as well as open market sales, sealed bids, auctions and sales of bulk-purchased items via central warehousing operations in accordance with R.S. 15:1157(C).

b. Sales to governmental agencies shall be priced based on response to bid requests, direct sales of Prison Enterprises contract products and by direct negotiation between Prison Enterprises and the governmental agency.

c. Prison Enterprises can sell manufactured, processed, agricultural and other commodity products to a full-time, part-time or retired public employee who resides within the state of Louisiana provided that the employee certifies that the product shall not be resold or transferred outside the state. Pricing shall be determined based on current Prison Enterprises contract prices or established Prison Enterprises pricing methodology.

d. Prison Enterprises shall not sell any product or service for the purposes of promoting political candidates or any other political activity.

2. Sale of Bulk Meat and Food

a. Meat and food products offered for sale by Prison Enterprises and their corresponding prices shall be listed on the state contract published by the Office of State Purchasing. Prices will be updated at intervals as deemed necessary by Prison Enterprises.

b. Opportunity purchases shall be bid as necessary and sold at a price determined by Prison Enterprises.

c. Pricing for meat and food products shall be based on purchase price, market conditions and sales history. The director of Prison Enterprises or his designee shall approve all prices.

3. Sale of Timber

a. The Louisiana State University (LSU) School of Forestry or a professional timber consultant shall be retained to formulate a multi-year timber management plan. If a professional timber consultant is hired, he shall be a member of a professional timber management association and must provide sufficient references. The timber management plan submitted shall include best management practices for all woodlands located on property controlled by the department. The timber management plan shall be presented to the agriculture manager who shall make recommendations for harvest and sale of timber to the director of Prison Enterprises or his designee.

b. Large quantities of timber shall be sold on the open market by bid in accordance with recommendations made by either the LSU School of Forestry or the professional timber consultant. Smaller quantities of timber (i.e. damaged trees cut for salvage) and timber by-products shall be sold on the open market at current market rates or by private treaty at the recommendation of the LSU School of Forestry or the professional timber consultant to the agriculture manager. All sales of timber require the approval of the director of Prison Enterprises or his designee.

4. Sale of Services

a. Prison Enterprises' management and the potential customer shall negotiate terms of agreement to include pricing and a detailed description of services to be rendered. Prison Enterprises may also respond to bid requests by governmental agencies and other entities to provide services.

5. Sale of Cattle

a. Approvals

i. The agriculture manager shall provide information regarding the cattle to be sold to include such items as type of cattle, quantity, estimated weight, location, etc. to the director or his designee.

ii. This information shall then be utilized to grant approval prior to the sale or advertisement.

b. Direct Sales

i. Prison Enterprises can sell cattle by private treaty with the approval of the director of Prison Enterprises or his designee. This method of sale shall be used if it is the agriculture manager’s determination that it is financially or operationally advantageous to use this method. The director’s approval shall be based on criteria such as current market data, current needs of Prison Enterprises and other circumstances.

ii. The agriculture manager shall review market data to determine the reasonableness of the price offered by the potential buyer. The agriculture manager, upon consultation with the Director of Prison Enterprises or his designee, shall agree to a price that is determined to be fair considering all circumstances listed above.

c. Advertised Bids

i. Advertisements for bids when selling cattle shall be published for at least one day in the state journal and

in at least one printing of the official journal of the parish the livestock is located in. A copy of the bid package shall also be sent to a list of persons/companies comprised of previous bidders and known major cattle buyers that purchase cattle in the southern United States. A copy of the bid package shall also be provided to the LSU Agricultural Center Beef Specialist for informational purposes and for distribution to the LSU Cooperative Extension office of each parish.

ii. Photographs of livestock shall be provided to prospective bidders upon requests made to the agriculture manager at the phone number listed in the advertisement. Livestock shall be available for viewing by prospective bidders during the advertisement period by contacting the agriculture manager at the phone number listed in the advertisement.

iii. Vendors shall be allowed to submit bids until the bid opening date and time specified in the bid opening package. The bid package shall specify the latest date and time that bids will be accepted either by fax, mail or hand delivery.

iv. The agriculture manager shall review market data regularly during the bid period to determine highs and lows in prices and shall use this information to determine the reasonableness of bids received. The agriculture manager, upon consultation with the Director of Prison Enterprises or his designee, shall notify the department's procurement director of his decision to award or cancel the bid.

v. The successful vendor shall pick up livestock on or before the date stated in the bid. Livestock shall be sorted and penned in accordance with provisions of the bid. The successful vendor is responsible for all necessary transportation equipment and other expenses related to the pickup, unless otherwise stated in the bid. Prison Enterprises shall make necessary accommodations for the pick up unless extraordinary circumstances (severe weather, security events, etc.) prohibit pick up on the stated date.

d. Auctions

i. Cattle sold at auction, whether stockyards or video auctions, are exempt from the above procedures.

6. Sale of Other Livestock

a. Horses for Law Enforcement

i. Horses bred and raised for law enforcement purposes shall be sold to local, state and out of state governmental agencies, or non-profit organizations affiliated with law enforcement without bid at a price agreed upon by Prison Enterprises and the customer.

b. Other Livestock

i. All other livestock including but not limited to non-law enforcement horses, swine, birds, fish and crawfish shall be sold at established market price or through other customary means, or by private treaty, bid or auction by adhering to the procedures listed above for cattle.

7. Sale of Crop Commodities

a. Pursuant to the sale of grain products, the agriculture manager and sales coordinator shall routinely research available market information and follow the futures prices of grains at the Chicago Board of Trade. The sales coordinator, at the direction of the agriculture manager and with the approval of the Director of Prison Enterprises or his designee, shall obtain price quotes from local grain elevators and enter into row crop contracts that are at prices determined to be advantageous to Prison Enterprises and are consistent with anticipated production levels. Contracts for the sale of grain shall be for one of the following:

i. cash price;

ii. basis only with futures price to be called for at a later date; or

iii. futures only with basis determined before delivery.

b. Pursuant to the sale of cotton, Prison Enterprises shall bid a contract to gin the harvested cotton. According to the specifications of the contract, the ginner shall submit a report to the agriculture manager that shall specify yield and quality. Prison Enterprises shall use the information from the ginner to either sell the cotton by bid or by private treaty.

c. The sale of grasses for hay and other crop by-products shall be made by bid or by private treaty. Bidding shall be accomplished by obtaining, at a minimum, telephone quotes from at least three bona fide bidders. The bid shall be awarded to the highest responsible bidder. Private treaty prices shall be set by the agriculture manager at or near current market prices for each particular product. Type, quality, location, responsibility for transportation, etc. of hay and other crop by-products shall factor into the pricing. All sales of this type shall require the approval of the Director of Prison Enterprises or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1156.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 33:855 (May 2007), amended by the Department of Public Safety and Corrections, Correction Services, LR 34:2642 (December 2008).

Chapter 13. Residential Referral

Subchapter A. General Provisions

§1301. Judicial Agency Referral Residential Facilities

A. Purpose—to state the secretary's rules relative to the housing or temporary residence of individuals who have been arrested for the commission of a crime and are referred by any judicial agency to a certified residential facility and to provide for the construction, standards of operation and services provided by such residential facilities. Further, certified judicial agency referral residential facilities shall also be available for use by the Division of Probation and Parole to house offenders under supervision by the Division of Probation and Parole. Such offenders who are probationers shall be accountable to the applicable court and those who are parolees shall be accountable to the Committee on Parole.

B. Applicability—deputy secretary, undersecretary, chief of operations, assistant secretary, director of probation and parole, chairman of the Committee on Parole and administrators of housing or temporary residential facilities. The chief of operations is responsible for the overall implementation, compliance and review of this regulation. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. No facility not otherwise required to be licensed by the Department of Health and Hospitals or Department of Children and Family Services, shall provide housing or temporary residence to any individual referred by a judicial agency, the court or the Committee on Parole except in accordance with this regulation. Referrals to such facilities by a judicial agency, the court or the Committee on Parole may only be made after the facility has been inspected by the Department of Public Safety and Corrections and certified to be in compliance with the standard operating procedures established pursuant to this regulation.

D. Procedures

1. The facility shall comply with all building codes, local zoning requirements and ordinances with regard to permits and licenses.

2. The state fire marshal and state health officer shall determine rated bed capacity and approval for occupancy.

3. The facility shall comply with the standard operating procedures (SOP) for judicial agency referral residential facilities. Revisions to the SOP shall be accomplished through this regulation under the signature of the secretary.

4. The facility shall be accredited by the American Correctional Association within 24 months of opening and shall maintain accreditation at all times thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2851 and 2852.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 33:666 (April 2007), amended LR 37:1408 (May 2011), LR 38:2932 (November 2012).

Subchapter B. Standard Operating Procedures for Judicial Agency Referral Residential Facilities

§1303. Standard Operating Procedures

A. American Correctional Association (ACA)

1. All judicial agency referral residential facilities shall be operated in accordance with R.S. 40:2852 and must maintain accreditation by the American Correctional Association Standards for Adult Community Residential Services. Facilities shall be accredited by the American Correctional Association (ACA) within 24 months of opening as a judicial agency referral residential facility.

2. Written policies and procedures that reflect compliance with ACA and the standard operating procedures for judicial agency referral residential facilities, as well as facility rules for resident behavior must be submitted to and approved by the secretary of the Department of Public Safety and Corrections prior to beginning operations or implementation. Any proposed revisions to policies, procedures or facility rules must be submitted for approval prior to implementation.

B. Administration

1. The facility shall have a written document describing the facility's organization. The description shall include an organizational chart that groups similar functions, services and activities in administrative subunits. The chart is reviewed at least annually and updated, if needed.

2. Regular meetings between the facility administrator and all department heads shall be held monthly and there is formal documentation that such meetings occurred.

3. Written policy, procedure and practice shall provide for an independent financial audit of the facility at least annually or as stipulated by statute or regulation, but at least every three years.

4. Each facility shall have insurance coverage that includes, at a minimum, property insurance and comprehensive general liability insurance. Such insurance is provided either through private companies or self insurance.

5. Residents' personal funds held by the facility are controlled by accounting procedures and in accordance with Subsection K of this Section.

6. Staffing requirements for the facility shall ensure there is 24 hour on site staff monitoring and coordinating of the facility's life safety and communications systems and also to respond to resident needs.

7. Standard of Conduct for Employees of Judicial Agency Referral Residential Programs

a. Employees are expected to conduct themselves in a manner that will not bring discredit upon their facility.

b. Each employee shall be advised of the location of the facility manual that specifies the operating and maintenance requirements of the facility. The location of the manual shall be accessible to all employees.

c. The facility shall provide adequate staff at the facility 24 hours a day to control the movement and location at all times of all residents assigned to the facility and to respond to their needs. However, when both female and male residents are housed in the same facility, at least one male and one female staff member are on duty at all times.

d. There shall be a method of staff identification so that they can be readily identified by visitors through utilization of name tags, identification cards, etc.

e. There shall be written job descriptions and job qualifications for all positions in the facility. Each job description includes at a minimum:

i. job title;

ii. responsibilities of the position;

iii. required minimum experience; and

iv. education.

f. All full-time employees must receive 40 hours of orientation training prior to undertaking their assignments (administrators, managers, professional and careworkers) and must participate in 40 hours of training their first year of employment and each year thereafter. Clerical/support staff shall be provided with 16 hours of training in addition to orientation during their first year and 16 hours of training each year thereafter. All training curriculum shall be in accordance with the applicable ACA standards.

8. A training procedure shall be in place which shall include orientation for all new employees (appropriate to their job) prior to assuming a position.

9. Case records shall be maintained for each resident housed at the facility.

10.a. Written records or logs shall be maintained at the facility which continuously documents the following information:

i. personnel on duty;

ii. resident population;

iii. admission and release of residents;

iv. shift activities;

v. entry/exit of all visitors including legal/medical;

vi. unusual occurrences (including but not limited to major and minor disturbances, fires, escapes, deaths, serious illness or injury and assaults or other acts of violence).

b. Shift reports are also prepared after the completion of each shift.

C. Physical Plant

1. The facility shall comply with the requirements of the state fire marshal and shall have a specific plan for addressing deficiencies, if any, that is approved by the state fire marshal. The state fire marshal shall approve any variances, exception or equivalencies.

2. The facility shall comply with the requirements of the state health officer and shall have a specific plan for addressing deficiencies, if any, that is approved by the state health officer.

3. The number of residents present at the facility shall not exceed the rated bed capacity as determined by the state fire marshal and state health officer. The state fire marshal shall determine a capacity based upon exiting capabilities. The state health officer shall determine a capacity based upon the ratio of plumbing fixtures to residents and square footage. The rated capacity shall be the lower of these two figures.

4. Residents shall have access to toilets and hand washing facilities 24 hours per day and shall have access to operable showers on a reasonable schedule.

5. The facility shall have sanitary areas for the storage of all foods that comply with applicable state and/or federal guidelines.

6. The facility shall have a method to ensure the control of vermin and pests.

7. Toilet and hand basin facilities are available to food service personnel in proximity to the food preparation area.

8. The facility shall have exits that are properly positioned, clear, distinct and permanently marked to ensure the timely evacuation of residents and staff in the event of fire or other emergency.

9. The facility shall comply with all building codes, local zoning requirements and ordinances with regard to permits and licenses.

10. The facility shall have a written emergency plan, which includes an evacuation plan, to be used in the event of a fire or major emergency. Evacuation drills shall be conducted at least quarterly on each shift when the majority of the residents are present. Facility staff shall be trained in the implementation of written emergency plans and the plans shall be disseminated to appropriate local authorities, including the Department of Public Safety and Corrections.

11. A qualified person conducts fire inspections at least quarterly and equipment is tested as specified by the manufacturer or the fire authority, whichever is more frequent. All furnishings shall comply with fire safety performance requirements.

12. All flammable materials shall be handled and stored safety. The use of toxic and caustic materials shall be controlled.

D. Facility Operations

1. The facility shall have a system for physically counting residents that includes strict accountability for residents assigned to the program. This shall include residents who are absent from the program for work, education or other temporary absence.

2. A current master list shall be maintained at all times of all residents assigned to the facility. This list is to be updated immediately whenever the facility receives, releases or removes a resident from the facility.

3. There are several forms of control that must be considered around the facility. Physical control of the residents assures that all are accounted for at all times. When a count is conducted and it is found that a resident who is not physically present in the facility has not signed out on the log in accordance with the appropriate procedure or has signed out but has failed to return to the facility on time in accordance with appropriate procedures, the facility shall take immediate action to locate the resident. If the resident cannot be located a report must be filed by the next working day with the referring judicial authority.

4. When a resident leaves the facility for any reason, he shall sign out in the facility resident log. Each entry shall include:

a. resident's name;

b. destination;

c. phone number at destination;

d. address of destination;

e. time out;

f. anticipated time of return;

g. actual time of return; and

h. the initials of the appropriate staff member charged with monitoring the log book.

5. Facility staff shall ensure that resident work schedules are verified prior to the resident signing out for work.

6. Alcohol/drug testing shall be conducted both randomly and for probable cause. Drug testing shall be conducted monthly on a minimum of 10 percent of the residents. Costs associated with testing shall be the responsibility of the facility. However, restitution in the amount of the actual cost of the drug testing may be obtained from the resident when the test results are positive.

7. The facility itself shall remain staffed 24 hours a day in such a manner that no person can enter or exit the facility without the knowledge of the on-duty staff.

8. The facility shall have a written emergency plan that is disseminated to the local authorities including but not limited to the local police and fire department.

9. The facility shall have disciplinary rules and procedures available to the resident population.

10. Program access and administrative decisions shall be made without regard to resident's race, religion, national origin or sex. The facility shall have written policy, procedure and practice to protect residents from personal abuse, corporal punishment, personal injury, disease, property damage and harassment.

11. Possession and use of weapons is prohibited in the facility except in the event of an emergency.

12. A written report shall be prepared following all uses of force detailing all circumstances, listing all involved, including witnesses and describing medical services provided. Such reports shall be submitted to the facility administrator and maintained on file.

E. Facility Services

1. Written policy, procedure and practice shall require that dietary allowances are reviewed at least annually by a qualified nutritionist, dietician or physician to ensure that they meet the nationally recommended allowances for basic nutrition for the type of residents housed at the facility. Records shall be maintained for all meals served. Three meals shall be provided at regular meal times during each 24 hour period for residents present in the facility at such meal time. Variations may be allowed based on weekend and holiday food service demands provided basic nutritional goals are met. Residents shall be provided an ample opportunity to eat.

2. The denial of food as a disciplinary measure is prohibited. Special diets as prescribed by appropriate medical or dental personnel shall be provided.

3. The facility shall have a written housekeeping and maintenance plan that provides for the ongoing cleanliness and sanitation of the facility, including a plan for the control of vermin and pests.

4. The facility has an obligation to ensure that the resident has adequate clothing appropriate to the season and the resident's work status, including adequate changes of clothing to allow for regular laundering.

5. The facility shall provide adequate bedding and linens including two sheets, pillow and pillowcase, one mattress and sufficient blankets to provide comfort under existing temperature controls. Residents shall have access to personal hygiene articles including soap, towels, toothbrush, toothpaste, comb, toilet paper, shaving gear and/or feminine hygiene articles.

6. The facility shall have written policy, procedure and practice for the delivery of health care services, including medical, dental and mental health services under the control of a designated health care authority that may be a physician, a licensed or registered health care provider or health agency. Access to these services are available 24 hours per day in case of emergency and should be unimpeded in the sense that non-medical staff should not approve or disapprove residents requests for services in accordance with the facility's health care plan.

7. Anyone providing health care services to residents shall be licensed, registered or certified as appropriate to their respective professional disciplines. Such personnel may only practice as authorized by their license, registration or certification. Standing or direct orders may be used in the treatment of residents only when authorized in writing by a physician or dentist.

8. Personnel who do not have health care licenses may only provide limited health care services as authorized by the designated health care authority and in accordance with appropriate training and job description. This would typically involve the administration of medication, the following of standing orders as authorized by the designated health care authority and the administration of first aid/CPR.

9. The facility shall provide access to 24 hour emergency medical services. This requirement may be met by agreement with a local hospital, on-call qualified health care personnel or on-duty qualified health care personnel.

10. All residents entering the program shall receive a health screening. The purpose of the health screening is to protect newly admitting residents who pose a health safety

threat to themselves or others from not receiving adequate medical attention.

11. The facility shall have a method in place for the proper management of pharmaceuticals. Residents are provided medication as ordered by the prescribing physician.

12. First aid kits shall be available in areas of the facility as designated by the health care authority. Contents and locations are approved by the health authority.

13. Sick call shall be conducted by a physician and/or other qualified health care personnel who are licensed, registered or certified as appropriate to their respective professional disciplinary and who practice only as authorized by their license, registration or certification.

14. There is a written suicide prevention and intervention program that is approved by a medical or mental health professional who meets the educational and license/certification criteria specified by his/her respective professional discipline. All staff with responsibility for resident supervision are trained in the implementation of the program.

15. Written policy, procedure and practice shall specify and govern the actions to be taken in the event of a resident's death.

16. Residents shall not participate in medical, pharmaceutical or cosmetic experiments. This does not preclude individual treatment of a resident based on the need for a specific medical procedure that is not generally available.

F. Resident Programs

1. Educational programming shall be available from acceptable internal or external sources which shall include, at a minimum, assistance in obtaining individualized program instruction at a variety of levels.

2. Written policy, procedure and practice shall govern resident correspondence. Such policy shall include provisions for inspection of mail for contraband or deterrence of material that interferes with legitimate facility objectives. Written policy, procedure and practice govern resident access to publications and packages from outside sources. Staff members shall have access to policies concerning resident correspondence.

3. Written policy, procedure and practice govern visiting. The only time an approved visitor can be denied a visit is where there is substantial evidence that the visitor poses a threat to the safety of the resident or the security of the program.

4. Reading materials shall be available to residents on a reasonable basis.

5. Residents shall have an opportunity for religious practice.

6. Recreation and leisure time activities are available to meet the need of the residents.

7. Substance abuse services through community referrals shall be provided, along with adequate monitoring, for residents identified through assessment who have alcohol and/or drug abuse problems.

8. The facility shall have a grievance procedure with at least one level of appeal. However, if the resident is not satisfied with the outcome of the facility's internal decision they shall be allowed to appeal to the referring judicial agency.

G. Employment

1. There need be no general restriction on the types of jobs for which a resident may be considered. Each job offer shall be investigated to determine if it is bona fide and consistent with program policies. The expectation is that the job selected shall be that which best fulfills the purpose of the program. Good employment placement shall give preference to jobs that are related to prior training and are suitable for continued employment. All employment plans must be consistent with state statutes. Concern for public safety shall guide employment decisions at all times. No resident is to work for or on the premises of a school, day care facility or other business or agency whose primary objective is in the service of juveniles, or who provide housing, care and/or treatment of juveniles.

2. Other than noted above, there are no general restrictions on the types of jobs residents may be considered for except those relative to juveniles; however, common sense and logic must prevail. At all times, concern for public safety shall guide the decision. Residents shall not be employed in a bar, lounge or tavern as a bartender, waiter or janitor. Employment in a hotel, motel or restaurant where a lounge is a part of the establishment may be acceptable if the employment is verified by the facility and is determined to be appropriate.

3. No resident shall be employed in a position which would necessitate his/her departure from the state of Louisiana without the express consent of the probation and parole officer, district attorney and/or the court, whichever is applicable.

4. Every reasonable effort shall be made by the facility to provide residents with the highest paying job possible. Within reason, convenience of job location, as it pertains to the facility providing transportation, should not be a deciding factor as to where residents are employed.

5. Residents shall be assisted by facility staff in obtaining gainful employment. The facility shall be responsible for maintaining liaison with sources of information on available jobs and with potential employers, and will provide transportation for job interviews.

6. All employers must sign the Employer's Work Agreement Form which indicates the terms and rules of the resident's employment, prior to the resident reporting to work for the employer. The facility must explain the requirements contained in the Employer's Work Agreement to all approved employers. A copy of the signed form shall be kept on file for the duration of the resident's stay at the

facility. The employer agrees to report any attendance irregularities to the facility immediately and record same.

7. The employer must agree to provide a work situation where he or his designee, preferably a supervisor, shall be present with the resident or at the work site at all times. Employment that does not provide for proper supervision of the resident and/or is deemed unsuitable by the facility director may be terminated.

8. The employer's responsibility to provide proper supervision for the resident extends from the time the employer receives the resident from facility personnel, either by picking him up at the facility or by having facility personnel transport the resident to the employer, and terminates when he returns the resident back to the facility personnel, either at the facility or to facility provided transportation. The ideal situation is for no resident to be unsupervised during the transportation process to or from an employment location. However, there may be a reasonable time (defined as less than an hour) allowed before work (when a resident is dropped off) and after work (when the resident is picked up) that he may be unsupervised.

9. Should the occasion arise and a resident is not picked up in a reasonable period of time, it must be noted on the transportation log with the reason why.

10. The facility is required to keep a list, which is updated weekly, of every employer who provides work for residents assigned to that facility. This list shall include but not be limited to the name and address of the employer, a brief description of the nature of the business, relevant telephone number(s) and whether or not work is performed at a stationary location or if the resident will be required to move during the course of the day.

11. If the resident's estimated time of return changes for any reason, this change must be verified by facility staff with the employer and noted in the permanent log.

H. Community Involvement

1. Community involvement and volunteers can be an important contribution to any program by providing a number of services to residents, as well as serving as a link between the facility and the community. Community resources should be obtained through referrals or by contract to provide residents with services to meet their needs.

2. Policies and procedures regarding citizen involvement shall be developed and volunteers shall be subject to approval by the facility administrator.

3. The facility shall have an advisory board that is representative of the community in which it is located that meets at least annually. The local Department of Public Safety and Corrections Probation and Parole Office, shall designate a staff person to serve on this board.

I. Resident Activities

1. Permanent Log

a. A permanent log shall be maintained which shall indicate when residents report to and leave work and shall list events, messages, telephone calls, unusual incidents, counts, meals, etc. This permanent log shall be maintained continuously by the careworker staff. All resident work schedules shall be verified by facility staff prior to the resident being logged out for work.

2. Resident Log

a. A daily resident log shall be maintained which shall indicate when residents leave and return to the facility for any reason. The resident shall sign out in the facility log book. Each entry shall include: residents' name; destination; phone number at destination; address at destination; time out; anticipated time of return; actual time of return; and the resident's signature upon return. The employee on duty shall initial each entry when the resident leaves the facility and when he returns. A clock with the correct time shall be visible to both the resident and the employee and shall serve as the official timepiece. This daily resident log will begin at 12 midnight and cover a 24 hour period. Resident logs shall be kept on file for at least three years.

b. Random pat searches shall be conducted in such a manner so as to discourage the introduction of contraband into the facility. Random pat searches and alcohol breath tests shall be administered by a staff member to the resident population each day as they return to the facility. All searches and breath tests shall be entered on the permanent log.

J. Resident Discipline

1. Residents assigned to the program shall comply with all rules and procedures set forth by the facility. Each resident shall receive a copy of the facility handbook and any other rules and regulations of the facility's program, including disciplinary procedures available to the staff, which the resident is required to read. The resident shall sign and date a statement acknowledging this, which is placed in his file.

2. All of the above shall be provided to the resident prior to his voluntary entry into the program.

3. The facility's disciplinary process shall be defined and provide appropriate procedural safeguards as outlined in the applicable ACA standards. The facility shall have a process for informal resolution of minor infractions of facility rules. Residents charged with major rule violations shall receive a written statement of the alleged violation(s), including a description of the incident and specific rules violated. The facility is responsible for ensuring that disciplinary reports are completed accurately and staff completing reports shall receive training on report writing. A supervisor shall review disciplinary reports prior to submission making certain essential elements (who, what, when, where, etc.) are covered with clarity. It is essential that reports be accurate as residents are subject to removal from the facility program for serious violations.

4. Restriction of Privileges

a. When residents are found guilty of a rule violation and are assessed penalties which restrict their

privileges, the privileges which are restricted and the amount of time imposed shall be posted in a conspicuous place so that all staff members are aware of the restrictions. Under no circumstances shall privileges be restricted without a proper disciplinary report, a due process hearing and a finding of guilty. The denial of food shall not be used as a disciplinary measure.

b. The resident shall be allowed to appeal the disciplinary process. If they are not satisfied with the outcome of the appeal, they shall be allowed to appeal to the referring judicial agency.

K. Resident's Personal Funds

1. General

a. In keeping with the goals and objectives of the residential program, the facility shall ensure as much of the resident's earned net wages as possible are maintained and available to the resident immediately upon release.

b. Funds held on behalf of the resident shall be properly accounted for. The collection and disbursement of the residents' wages shall be in accordance with the provisions of R.S. 15:1111. The methods used for the receipt, safeguarding, disbursement and recording of funds shall comply with generally accepted accounting principles.

c. A ledger shall be maintained reflecting the financial status of each resident in the facility, and there shall be adequate documentation to support the receipt/expenditure of resident funds in each resident's official file.

d. Each facility shall engage in an independent financial audit of all funds received and held on behalf of residents at least every three years. The DPSC monitoring team visits or audits conducted by the DPSC Internal Audit Division shall not be considered an independent audit for this purpose. The cost of the independent financial audit shall not be paid from the resident trust account.

e. The resident trust account is subject to review or audit by the DPSC and/or the Office of the Governor, Division of Administration auditor at any time.

2. Management of Resident Funds

a. Bonding

i. The facility shall provide the department with certificates of bonding documenting coverage sufficient to safeguard the maximum amount of resident funds staff may be responsible for handling.

b. Resident Trust Fund Account Management

i. The balance in the resident trust account shall represent only the funds owed to the residents. Resident funds shall not be used for other purposes (i.e., pay operational expenses) or be commingled with other bank accounts. Likewise, the trust account shall not be used to maintain other monies, such as for resident organizations, seized contraband, investments or a "slush" fund.

(a). Start up costs for each new resident shall not be paid from the resident trust account. These costs shall be paid from the facility's operating fund account, to be reimbursed by the resident once the resident begins receiving wages.

(b). The resident trust account cash balance shall be maintained at the appropriate balance to cover each resident's account balance.

(c). Signers on the resident trust account shall be an employee or other legal stakeholders of the facility. The number of signers on the account shall not exceed three people.

(d). The resident trust account shall not be a "sweep account" or used in conjunction with "sweep accounts."

(e). On a monthly basis the following actions must occur:

(i). transfer out any interest earned on the Trust account. The interest earnings are property of the facility. Such interest earnings may be used to help defray administrative costs and to provide for other expenditures which will benefit the resident population;

(ii). transfer out amounts owed by residents for the daily room and board per diem;

(iii). transfer out amounts owed by residents to vendors to be paid from the operating account or pay the resident's expenses directly from the trust account;

(iv). reimburse trust account for expenses for bank service charges/fees (including fees for check orders) from the facility's operating fund account;

(v). reimburse trust account from the facility's operating fund account for any negative resident balances being paid with trust fund money. Residents who are allowed to spend more money than their current balance cannot use trust account funds to pay their debts; therefore, it becomes an operational expense;

(vi) provide a detailed statement of account balance to the resident in a confidential manner;

(vii) reconcile the trust account after receipt of the monthly bank statement:

[a]. add all deposits and deduct all withdrawals to each individual ledger to determine each resident's current balance;

[b]. total current month's positive balances for all resident ledgers, including balances carried forward from previous months which have had no transactions in the current month;

[c]. compare this total to the reconciled bank balance;

[d]. investigate and resolve any discrepancies between the bank and the resident ledger.

3. Income and Wages Received

a. The facility shall ensure employers adhere to the signed employer's work agreement by verifying rates of pay, hours worked and pay received by the resident for each pay period worked.

b. The facility shall ensure that the resident is paid by the employer by either a manual check sent directly to the facility or direct deposit to the resident trust account at the facility.

c. Residents shall not be allowed to receive payment from the employer via a pay card (pre-paid credit and/or ATM card) issued to the resident.

d. The facility shall process all personal funds received on behalf of the residents, issue pre-numbered receipts for funds and post receipts to the resident's account indicating receipt number.

e. Funds received shall be deposited daily (within 24 hours with the exception of weekends and holidays) into a fiduciary account held in trust for the residents and designated specifically as "Resident Trust Account." Credits shall be posted to the resident ledger within two business days.

f. Sensitive banking transactions involving the facility banking information and resident shall be handled directly between the facility and the employer, not between the resident and the employer.

4. Expenses and Withdrawals

a. All withdrawals or expenditures by a resident shall be documented by a withdrawal request form, signed and dated by the resident and document approval or denial of request by facility personnel. Withdrawals/expenditures shall be posted to the resident ledgers at least weekly with an adequate description relating to all transactions.

b. As one of the goals of a judicial agency referral residential program is to provide residents with the opportunity to accumulate savings as they prepare for reentry, facility managers have a fiduciary responsibility to set limitations on spending to maximize the potential savings of a resident.

c. Facilities shall develop procedures that set limitations and/or spending limits on resident purchases from canteen/commissary operations that encourage the resident to maximize on the opportunity to accumulate savings prior to release from the program.

5. Deductions

a. Residents shall be charged a daily rate not to exceed $62.50 per day for services provided by the facility which includes room and board, transportation, education and all other necessary services. Medical and mental health services may be the responsibility of the resident. However, a lack of funds shall not interfere with the resident receiving these services. The resident shall not be charged for any additional costs other than those authorized in this document. Documentation of all deductions shall be maintained in each resident's file.

6. Other Deductions Allowed

a. Allowance. The facility shall develop procedures to determine the weekly allowance needed for incidental personal expenses in accordance with provisions in this Chapter. Residents should be encouraged to refrain from unnecessary purchases in order that they may be able to accrue savings to be available to them upon completion of the program.

b. Support of the Resident's Dependents. The resident and facility shall mutually agree upon the amount to be sent to dependents. This agreement and authorization shall be in writing.

c. Legal Judgments. If there is a legal judgment of support, that judgment shall suffice as written authorization to disburse the money.

d. Payment of the Resident's Obligations. Debts acknowledged by the resident shall be in writing or reduced to judgment (including victim restitution) and shall reflect the schedule by which the resident wishes the debt to be repaid. The facility shall ensure that payment of this type debt is legitimate.

e. Canteen/commissary items shall be priced at a reasonable cost to residents. Contractors that operate a canteen shall provide to the facility administrator a list of canteen items sold and the price list of the cost of the item to the resident.

L. Sexual Assault and Sexual Misconduct

1. Prohibited Conduct—Sexual Contact between Staff, Civilians and Residents

a. There is no consensual sex in a custodial or supervisory relationship. Any sexual assault, sexual misconduct or sexual coercion between staff, civilians and residents is inconsistent with professional, ethical principles and department regulations. Acts of sexual assault, sexual misconduct or sexual coercion by staff or civilians against residents under their supervision is a violation of R.S. 14:134 et seq., subject to criminal prosecution. Retaliation against individuals because of their involvement in the reporting or investigation of sexual assault, sexual misconduct or sexual coercion is strictly prohibited.

2. Facility Policy

a. The facility shall have written policies and procedures for the prevention, detection, response, reporting and investigating of alleged and substantiated sexual assaults. Facility investigative reports of such allegations shall be submitted to the judicial agency which referred the resident to the facility.

M. Department of Public Safety and Corrections Facility Access

1. Compliance Monitoring

a. In accordance with R.S. 40:2852, all judicial agency referral residential facilities shall be regulated by rules adopted and enforced by the Department of Public

Safety and Corrections for the operation of such facilities. In order to fulfill this mission, the department must have the ability to inspect the facility on a scheduled or random basis. The inspections shall include but not be limited to: review of ACA files; review of log books; resident employment status; quality of life issues; resident financial information and any information necessary to ensure compliance with both ACA standards and the standard operating procedures for judicial agency referral residential facilities.

2. Access to DPSC Staff

a. The Division of Probation and Parole shall have access as necessary to any residents on probation in the program to ensure compliance with conditions of probation. This includes the need for regular contacts, random drug screening and any other duties necessary to determine that the resident is abiding by the conditions of their probation.

b. The DPSC shall have access to the facility at any time.

N. Probation and Parole Referrals

1. All judicial agency referral residential facilities receiving offenders referred by the Division of Probation and Parole shall be accountable to the judicial courts for probationers and the Committee on Parole for parolees. At the time of referral, the facility shall be provided with the information necessary to ensure the offender is advised of the required conditions of supervision, including monetary obligations to which the facility will be held accountable. The facility shall aid in providing the services necessary for the offender to continue the conditions of supervision and to ensure the monetary obligations are followed and met. The facility shall also be provided with the offender's medical summary (including the date of the offender's last TB test), if available. The facility's health care administrator shall review the summary and determine if the offender is medically suitable for participation in the program.

2. Should the facility be unable to provide the offender with adequate support necessary for the offender to fulfill the required conditions of supervision ordered by the court/Committee on Parole and the monetary obligations to the facility, the facility shall notify the appropriate probation and parole district office immediately and in writing, detailing the issues relating to either the inability on the part of the offender or the facility to fulfill the conditions of supervision. Probation and parole shall notify the court/Committee on Parole in order that a decision can be made regarding the offender’s compliance with the ordered conditions and continuation in the program.

3. The appropriate probation and parole district office shall monitor the progress of offenders in the facility to ensure their safety and well being. Probation and parole staff shall be allowed to have access to the facility in order to interview offenders at all times, including nights and weekends. All such visits shall be logged in a logbook dedicated specifically for probation and parole monitoring visits and shall include the date, time in, time out and the offenders interviewed. Any specific concerns discovered during the contact should be discussed with the facility director.

4. Within 14 days of admission, the facility shall provide the appropriate probation and parole district office with each offender’s personalized program plan, which shall address all conditions of probation or parole. The facility shall also provide the appropriate probation and parole district office with any changes or updates to the offender's personalized program plan. The facility shall ensure that an estimated date for completion of the program is included in all personalized program plans. Additionally, the facility shall provide written documentation of an offender’s progress with their personalized program plan to the appropriate probation and parole district office every 30 days or upon request.

5. In reference to employment, all probationers and parolees must maintain employment while in the program. Probationers and parolees must be employed as soon as possible. Should an offender remain unemployed longer than 45 days of entering the program or be terminated by their employer, the appropriate probation and parole district office shall be notified. Probation and parole staff shall have the ability to speak with employers regarding offender progress and also meet with offenders at their job site if necessary. However, the visit should be unobtrusive to the work flow of the employer's operations.

6. No probationer or parolee shall be allowed to travel out of the state of Louisiana without the written consent of the offender’s probation and parole officer. Offenders residing off facility grounds shall be contacted by facility staff daily. The contact must be face-to-face and be conducted at the location where the offender is residing.

7. The facility is responsible for all travel by an offender to and from the facility. All offenders shall be required to make all court appearances as ordered by the court/Committee on Parole. Appropriate written notification of such appearances shall be furnished to the facility within two weeks of the scheduled appearance or when the probation and parole officer becomes aware of the hearing. The facility shall be responsible for transporting the offender for court/Committee on Parole appearances.

8. The maximum amount of time a parolee can reside in a facility is six months, unless a longer period is approved by the Committee on Parole. The maximum amount of time a probationer can reside in a facility is one year, unless a longer period is approved by the court. These time periods shall begin the first day the offender physically arrives at the facility.

9. The appropriate probation and parole district office shall be notified immediately of any unusual incident involving a probationer or parolee, including but not limited to, an arrest, an escape, an injury or removal from the program for rule violations. In addition, the appropriate law enforcement agency shall be notified immediately of any escapes or other criminal activity by an offender under probation and parole’s supervision.

10. Prior to an offender being released, the appropriate probation and parole district office shall be notified of the release date in writing. The facility shall advise the offender to report to the assigned probation and parole officer within 48 hours after release. The facility must obtain an updated address and telephone number from the offender prior to release and provide this current information to the probation and parole officer. The offender should never be released without an address. If the offender should be unable to give a current residence address, the appropriate probation and parole district office shall be notified immediately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2851 and 2852.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 37:1408 (May 2011), amended LR 38:2933 (November 2012).

Chapter 21. Medical Reimbursement Plan

§2101. Medical Reimbursement Plan

A. Purpose—to provide for the implementation and administration of an offender co-payment program.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, and the sheriff or administrator of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that medical co-payments must comply with the provisions of R.S. 15:831(B)(1).

D. Procedures

1. Offenders Housed in State Institutions

a. Procedures concerning medical co-payments shall be followed in accordance with procedures established by the department's medical/mental health director.

b. Offenders shall file a claim with a private medical or health care insurer (or any public medical assistance program under which the offender is covered and from which the offender may make a claim), for payment or reimbursement of the cost of any such medical treatment. Upon receipt of the claim proceeds, the offender shall reimburse the department for the cost of medical services provided.

2. State Offenders Housed in Local Jail Facilities

a. Any plan for reimbursement of medical and dental expenses incurred by a state offender housed in a local jail facility shall be approved by the secretary prior to implementation of the plan. The plan shall contain language that stipulates that no offender will be denied medical care because of an inability to pay reimbursement or co-payments.

b. The facility shall require that the offender file a claim with a private medical or health care insurer (or any public medical assistance program under which the offender is covered and from which the offender may make a claim), for payment or reimbursement of the cost of any such medical treatment. Upon receipt of the claim proceeds, the offender shall reimburse the facility for the cost of medical services provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services LR 26:331 (February 2000), amended LR 36:1784 (August 2010).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 1. Privacy and Security Regulation

Chapter 1. Preface

§101. Preface

A. These regulations governing the privacy and security of criminal history record information in the state of Louisiana are effective after November 30, 1977. Full implementation is required by December 31, 1977.

B. The regulations were drafted by the Privacy and Security Steering Committee of the Louisiana Criminal Justice Information System (LCJIS) Advisory Board and members of the LCJIS staff in accordance with a federal and state executive mandate to the Louisiana Commission on Law Enforcement. The commission approved the regulations on October 26, 1977.

C. A separate set of guidelines and implementation instructions has also been published. These should provide significant assistance in understanding and adapting the regulations to local needs and peculiarities. Questions concerning the regulations or guidelines may be addressed to Louisiana Criminal Justice Information System, Office of Management and Planning, 1885 Wooddale Boulevard, Suite 502, Baton Rouge, Louisiana 70802, Telephone: (225) 389-7411.

[EDITOR'S NOTE: The Louisiana Criminal Justice Information System, formerly a division of the Louisiana Commission on Law Enforcement, no longer exists. Questions concerning the regulations or guidelines may be addressed to the:

Louisiana Commission on Law Enforcement
Box 3133
Baton Rouge, LA 70821
Telephone Number is 225-342-1500.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:447 (November 1977), amended LR 4:503 (December 1978).

Chapter 3. Introductory Information

§301. Purpose and Scope}

A. In keeping with congressional findings that the privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information;

B. recognizing that to the extent that the maintenance of personal information is necessary for the efficient functioning of the government, it is the moral and legal obligation of the government to assure that the personal information maintained is, to the maximum extent feasible, complete and accurate;

C. being convinced that it is of utmost importance that the integrity of personal information records be zealously protected;

D. recognizing that the increasing use of computers and sophisticated information technology, while essential to the operations of government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

E. realizing that opportunities for an individual to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

F. acknowledging that the right to privacy is a personal and fundamental right protected by the constitution of the United States;

G. responding to the authority granted in 42 United States Code 3701, et seq.; 28 United States Code 534; 28 Code of Federal Regulations, Chapter 1, Section 20; R.S. 15:575 et seq.; 49:951 et seq.; and Executive Designation dated November 14,1975; and

H. acting with the intent of protecting and furthering the interests of the citizens of the state of Louisiana, the Privacy and Security Committee of the Criminal Justice Information System Division of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE) does hereby issue these privacy and security regulations for the following purposes, and with the following scope and limitations:

I. it is the purpose of these regulations to provide safeguards for an individual against an invasion of his personal privacy, and to promote, to the maximum extent feasible, the adoption of procedures to ensure the completeness, accuracy, and integrity of criminal history record information collected, maintained, and disseminated by criminal justice agencies. This will be accomplished by requiring those agencies affected to permit an individual to determine what criminal history record information pertaining to him is collected, maintained, used, or disseminated by such agencies; permit an individual to gain access to criminal history record information pertaining to him in the records of affected agencies, to have a copy made of all or any portion thereof, and to correct or amend such records; and collect, maintain, use, or disseminate any record of criminal history information in a manner that assures that such action is for a lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent the misuse or unauthorized alteration or destruction of such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:447 (November 1977), amended LR 4:503 (December 1978).

§303. Application of Rules

A. These regulations apply to all criminal justice agencies organized under the constitution or laws of the state of Louisiana which were awarded Law Enforcement Assistance Administration (LEAA) monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information. The regulations do not directly apply to agencies which have received LEAA funds for general purposes other than the collection, storage, or dissemination of criminal history record information. For example, an agency receiving funds to implement and operate automated noncriminal history record information systems (e.g., personnel, resource allocation, performance evaluation) would not by such funding be included under these regulations.

B. These regulations apply to all criminal justice agencies organized under the constitution or laws of the state of Louisiana which are or become signatories to a user's agreement. In such instances, the user's agreement shall control the extent to which these regulations are applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:503 (December 1978).

§305. Existing Rights

A. Nothing contained in any of these privacy and security regulations shall be construed to reduce, eliminate, or otherwise adversely affect any rights which individuals may have under any existing Louisiana law, court decision, or administrative rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:503 (December 1978).

§307. Criminal History Record

A. These regulations apply to criminal history record information, as defined in §317. The following types of record information that might contain or otherwise be included within the definition of criminal history record information are specifically excluded:

1. posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

2. original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or longstanding custom to be made public, if such records are accessed solely on a chronological basis;

3. court records of public judicial proceedings;

4. published court or administrative opinions;

5. public judicial, administrative, or legislative proceedings;

6. records of traffic offenses maintained by state departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses;

7. announcements of executive clemency;

8. juvenile records;

9. any other specific exemptions as may from time to time be provided by federal regulations, state statute or which may be particularly specified in any of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:503 (December 1978).

§309. Effective Date

A. These regulations shall be effective after November 30, 1977.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:504 (December 1978).

§311. Penalties for Violation

A. Under federal law, an affected agency which willfully and knowingly violates these regulations may be subject to termination of funds made available by the Law Enforcement Assistance Administration, and a $10,000 fine. Additionally, future eligibility for receipt of Law Enforcement Assistance Administration funds may be suspended until the violating agency furnishes proof of compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:504 (December 1978).

§313. Fines

A. Under Louisiana Law (R.S. 15:575 et seq.) an officer or official of a criminal justice agency may be subject to a fine between $50 and $500 for violating any rules or regulations issued by the Louisiana Criminal Justice Information System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:579, R.S. 15:596, R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:504 (December 1978).

§315. Violating Agency

A. A violating agency may be barred from receiving information from the central state repository until such agency furnishes proof of compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:504 (December 1978).

§317. Definitions

Administration of Criminal Justice—performance of any of the following activities: detention, detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

Affected Agency—

1. any criminal justice agency which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information;

2. any criminal justice agency which is or becomes a signatory to a user's agreement;

3. any noncriminal justice agency which is or becomes a signatory to a user's agreement.

Central State Repository—that collection of criminal history record information within the Louisiana Department of Public Safety, which is jointly collected, stored, and managed pursuant to mutual agreement between the Division of State Police, Bureau of Criminal Identification and the Louisiana Commission on Law Enforcement, Criminal Justice Information System Division.

Criminal History Record Information—information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

Criminal History Record Information System—a system including the equipment, facilities, procedures, agreements, and organizations, thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

Criminal Justice Agency—only those public agencies at all levels of government which perform as their primary function activities relating to:

1. the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders;

2. the collection and analysis of crime statistics pursuant to statutory authority;

3. the collection, storage, processing, dissemination, or usage of information originating from agencies described in this Chapter.

Direct Access—having the authority to access the criminal history record data base, whether by manual or automated methods.

Direct Access—individual access to personal criminal history record information contained in the manual or automated files of an affected criminal justice agency, excepting the central state repository, when such access is sought under the provisions of §705, and the individual requesting access or his personal representative is physically present at the place where the records are kept or at the office of the custodian of the record sought.

Disposition—proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed. Dispositions shall include, but not be limited to: acquittal, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, placed on probation, paroled, or released from correctional supervision.

Dissemination—the release by transmission of criminal history record information by an agency to another agency or individual by oral, written, or electronic methods.

Dissemination Log—an automated or manual record of information relating to the individual or agency to which criminal history record information has been disseminated. This record should contain the following data elements: a tracking, serial, or identification number, the agency or individual to whom criminal history record information is released, the address of the agency or individual, the date of release or notification, the individual to whom the information relates, the items of information released and how finished, the original entry or correction, and the name of the releasing official.

Eligible Noncriminal Justice Agency—a noncriminal justice agency, individual, or individuals having:

1. official authority, pursuant to a statute, executive order, administrative rule, or court order;

2. formal authority, pursuant to a written agreement with a criminal justice agency, to perform a service or function within the scope of the legitimate activities of a criminal justice agency.

Executive Order—an order of the president of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

Personal Representative—any person, including, but not limited to legal counsel, who possesses a sworn authorization empowering him to represent an individual in the viewing or challenging of the authorizing individual's criminal history record information.

Primarily Affected Agency—any criminal justice agency organized under the constitution or laws of the state of Louisiana which was awarded Law Enforcement Assistance Administration monies after July 1,1973, for manual or automated systems which collect, store, or disseminate criminal history record information.

Secondarily Affected Agency—

1. any criminal justice agency organized under the constitution or laws of the state of Louisiana which is or becomes a signatory to a user's agreement;

2. any noncriminal agency which is or becomes a signatory to a user's agreement.

State—any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Statute—an act of Congress or state legislature or a provision of the constitution of the United States or of a state.

User's Agreement—a written agreement entered into by a certified criminal justice agency and/or a requesting noncriminal justice agency and/or a criminal justice agency that has not received LEAA funds for system support since July 1, 1973. The agreement shall specify the basis of eligibility for receipt of criminal history records, and an acknowledgment by the recipient agency that it is subject to the terms and conditions of the Commission on Law Enforcement Privacy and Security regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:448 (November 1977), amended LR 4:504 (December 1978).

Chapter 5. User's Agreement

§501. Purpose

A. It is the purpose of this regulation to insure statewide compliance with privacy and security regulations by requiring all recipients of criminal history record information from primarily affected agencies to sign user's agreements, and to provide for the minimum terms and conditions of such user's agreements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:449 (November 1977), amended LR 4:505 (December 1978).

§503. Signers and Signatories

A. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to any criminal justice agency which is not otherwise bound by the Louisiana privacy and security regulations, require such an agency to sign a user's agreement, provided that upon presentation of proof that it is already a signatory to a valid user's agreement, the information requesting agency may not be required to sign an additional user's agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:449 (November 1977), amended LR 4:505 (December 1978).

§505. Signers

A. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to an eligible noncriminal justice agency which is not otherwise bound by the Louisiana privacy and security regulations, require such an agency to sign a user's agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§507. Eligible Noncriminal Justice Agency

A. An eligible noncriminal justice agency, for purposes of this Part, shall constitute every noncriminal justice agency receiving access to criminal history records on a regular and recurring basis or on any basis other than the established procedures under the Louisiana Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§509. Forwarding Copies

A. Whenever a primarily affected agency, excluding official custodians of court records, signs a user's agreement with an otherwise non affected agency, the primarily affected agency shall immediately forward a copy of the signed user's agreement to the Privacy and Security Committee. Copies of all user's agreements shall be kept on file by the signatory agencies, and shall be made available for public inspection upon demand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§511. Privacy and Security Form Number 7

A. Every primarily affected agency or secondarily affected agency, excluding courts, which enters into an agreement permitting an eligible agency access to criminal history record information shall employ LCLE-Privacy and Security Form No. 7 for the purpose of fulfilling the obligation imposed by this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

Chapter 7. Individual Rights of Access to Automated and Manual Criminal History Record Information

§701. Purpose

A. It is the purpose of this regulation to extend individual rights of access to personal criminal history records beyond the rights currently provided by the Louisiana Public Record Act, as required by federal regulations, and to provide a mechanism for the implementation of those rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§703. Record Viewing

A. Each individual shall have the right to view the automated or manual criminal history record information which specifically relates to him, provided that only individual criminal history record information contained in the records of affected criminal justice agencies organized under the constitution of laws of the state of Louisiana shall be accessible under this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§705. Granting Access

A. Any individual electing to seek direct access to his automated or manual personal criminal history record under this Chapter shall be granted such access upon fulfillment of the following conditions:

1. the request for access must be in writing, and must be presented to an affected criminal justice agency;

2. the request for access must be in writing, and must be presented to an affected criminal justice agency;

3. the request for access must be presented during the regular office or working hours of the agency which has custody or control of the record;

4. the request for access must be specific enough to enable the person charged with the care or custody of the record to reasonably ascertain the identity of the precise record sought. Specificity requirements may include fingerprints and such personal identifiers as may be essential to the location and retrieval of the record sought.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§707. Time for Viewing Records

A. Individuals or their personal representatives seeking access under this Subpart shall be allowed to view the desired individual criminal history record within a reasonable time, not to exceed three days, provided that where fingerprint classification is an essential prerequisite to the location and retrieval of the record sought, the time period within which viewing must be made possible may be extended by an additional 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§709. Viewing Procedure (Central State Repository)

A. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the records of the central state repository shall be granted the right to view such records upon:

1. submitting a written and signed request for viewing to an affected criminal justice agency, other than the central state repository, as outlined in §715;

2. submitting to fingerprinting for the purpose of positively establishing the identity of the requesting individual; and

3. paying a $10 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§711. Viewing Procedure (Other than Central State Repository)

A. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the file of any affected criminal

justice agency, other than the central state repository or the agency to which the request is submitted, may gain access to such information by:

1. presenting a written and signed request for viewing to any affected agency, other than the central state repository, as outlined in §715. Such request shall describe with reasonable particularity the records of which viewing is sought, and shall at a minimum state the places where it is believed such records may be kept, and the approximate date of occurrence of the incidents which form the subject of the records requested. Individuals or personal representatives seeking to query criminal justice agencies which maintain criminal history files accessible solely by fingerprint classification numbers must provide the querying agency with a set of fingerprints of the individual seeking access. LCLE-Privacy and Security Form Number 1 shall be used for this purpose;

2. submitting any required positive identifiers, including fingerprints, for the purposes of establishing both the identity of the requesting individual and correctly locating the records sought;

3. paying a $5 fee for each affected criminal justice agency to be queried. An additional $5 fee may be levied by the querying agency for each query forwarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:505 (December 1978).

§713. Personal Representative; Positive Proof

A. When criminal history record information is requested by a personal representative under §705 through §711, the representative must present positive proof of the identity of the individual actually involved as well as a sworn authorization from the involved individual. Positive proof of identity in this Section shall be understood to mean fingerprints. Upon presentation on the authorization and positive identifier, the representative shall be permitted to request, examine, and/or challenge the criminal history record information specifically relating to the involved individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:506 (December 1978).

§715. Queries

A. Queries directed to any criminal justice agency shall be launched from any affected sheriff's office or police department. In the parish of Orleans, individuals shall initiate queries through the New Orleans Police Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:506 (December 1978).

§717. Information from Central State Repository

A. If the information requested by the individual must be obtained from the Central State Repository (CSR), the CSR shall forward the information to the requesting agency within 45 days of receipt of the request, and the requesting agency shall permit the viewing of the information within a reasonable time after receipt. The viewing individual may make a written summary of the information viewed, and may take with him such a summary. A copy of the record obtained from the central state repository shall be furnished to the individual upon request. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 United States Code Section 3771.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:450 (November 1977), amended LR 4:506 (December 1978).

§719. Posting Public Notice

A. Every affected criminal justice agency shall post a public notice informing individuals of their right to access and to administratively challenge the completeness or accuracy of their individual criminal history records. Additionally, every individual seeking to avail himself of the querying procedures set forth in this regulation shall be provided with a list of all affected agencies, and informed of the significance of querying a nonaffected agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§721. Cooperation

A. Every affected criminal justice agency which has custody of, control over, or access to automated or manual individual criminal history record information shall make available facilities and personnel necessary for such viewing, and shall in all respects maintain a cooperative attitude toward individuals requesting viewing. Viewing shall occur only within the facilities of a criminal justice agency, and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§723. Diligence

A. Every affected criminal justice agency shall, in every instance, diligently seek to provide the information requested. Every out-of-parish criminal justice agency listed on the request for viewing shall be contacted by mail,

communication device, or personally within seven days of receipt of the request for viewing. Five dollars shall be assessed for each agency queried by the agency to which the individual submits his request, and shall be forwarded to each queried agency along with the request for viewing. An additional $5 fee may be levied by the querying agency for every query forwarded. Querying agencies shall provide positive identifiers in accordance with §711.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§725. Time for Reply

A. Every affected criminal justice agency which receives a request for information must make every effort to locate the information requested, and shall in any event forward a reply to the requesting agency within seven normal working days of receipt of the request, except as provided for requests to the central state repository. In such instances where the responding agency maintains criminal history record files accessible solely by fingerprint classification numbers, the response time may be extended up to a maximum of 30 days to allow for the classification of the fingerprints accompanying the query. Such classification may be performed by the responding agency or by the central state repository.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§727. Fingerprints

A. Every affected sheriff's office or police department shall fingerprint individuals requesting that the central state repository be queried. In such instances where an authorized representative is presenting a query to the central state repository on behalf of an individual, the representative shall supply at least two sets of the represented individuals' fingerprints on standard fingerprint cards. The fee charged for querying the central state repository and supplying a copy of the results of such query shall be $10. Five dollars of this amount shall be forwarded to the central state repository along with the query, and the remaining $5 shall be placed in the treasury of the criminal justice agency to which the individual submits the request for viewing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§729. Viewing Hours

A. Individual viewing may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§731. Privacy and Security Form Number 2

A. A record of each individual viewing shall be maintained by each affected criminal justice agency by the completion and preservation of LCLE-Privacy and Security Form Number 2. Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be required to certify by his signature that he has viewed the criminal history record information requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

Chapter 9. Individual Right to Administrative Review of the Content, Completeness or Accuracy of Individual Criminal History Record Information

§901. Purpose

A. It is the purpose of this regulation to provide a means for administrative challenge, and ultimate correction of incomplete or inaccurate individual criminal history records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§903. Challenge; Correction

A. Each viewing individual shall have the right to challenge and request correction of the content, completeness, or accuracy of his individual criminal history record. Each individual shall be informed at the time of viewing of his rights of challenge under this regulation. Individuals shall have a right of administrative appeal under this regulation to seek redress for the denial of rights granted by any of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§905. Initial Challenge

A. This regulation provides the exclusive means for initial challenge of the content, completeness, or accuracy of individual criminal history record information, provided that

where the individual criminal history record information under challenge originated from any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings, this regulation shall not be applicable. In the instance last provided for, the sole formal means of challenge or correction shall be a civil suit filed in a state or federal district court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§907. Privacy and Security Form Number 3

A. If after viewing his individual criminal history record, the individual wishes to challenge or request correction of such record, he may do so by submitting to the criminal justice agency which originated the challenged entries LCLE-Privacy and Security Form Number 3, a complaint which shall contain particularized written exceptions to the criminal history record's contents, completeness, or accuracy. The complaint shall include an affirmance, signed by the individual or his legal representative, that the exceptions are made in good faith and are true to the best of the affiant's knowledge, information, and belief. A copy of the complaint shall be forwarded to the LCLE Privacy and Security Committee. If, subsequent to viewing, an individual who was not previously fingerprinted wishes to challenge or correct his record, he must submit to fingerprinting so that it can be absolutely assured that the challenging individual is the subject of the record which he seeks to challenge or correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§909. Privacy and Security Form Number 4

A. Within each affected criminal justice agency, a review officer shall be designated as the person responsible for receiving and processing complaints received under §907 above. Upon receipt of such complaints, each review officer shall, within 45 days, conduct an audit of the individual's criminal history record to determine the validity of the exceptions. The privacy and security committee and the challenging individual or his legal representative shall be informed in writing of the results of the audit within 15 days after such results are final. LCLE-Privacy and Security Form Number 4 shall be used for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:451 (November 1977), amended LR 4:506 (December 1978).

§911. Alterations

A. Should the audit referred to in §909 disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to LCLE, the individual involved, and to any other criminal justice agencies or private organizations to which that individual's criminal history record information has been disseminated within the previous 90 days, and in every instance the central state repository shall be notified of the substance of the alteration or addition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§913. Appeal

A. If the criminal justice agency declines to modify or supplement the individual's criminal history record in whole or in part, the individual or his legal representative may require review of the criminal justice agency's decision by perfecting, within 30 days of the mailing of the audit results, an appeal to the LCLE Privacy and Security Committee. The privacy and security committee shall appoint hearing officers to hear such appeals. Failure to timely perfect an appeal shall bar subsequent challenges of that portion of the individual criminal history record in controversy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§915. Privacy and Security Form Number 5

A. Appeals shall be perfected upon actual delivery to the privacy and security committee of a petition for review. The petition for review shall be signed and in writing and shall include a concise statement of the alleged deficiencies or inaccuracies of the individual's criminal history record, shall state the date and result of any review by the criminal justice agency, and shall be accompanied by a sworn verification of the facts alleged in the petition for review. LCLE-Privacy and Security Form Number 5 may be used for perfecting the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§917. Review Process

A. Upon receipt of the petition for review, the hearing officer shall docket the case and notify the criminal justice agency and the individual or his legal representative of the time, place, and nature of the hearing; the legal authority and

jurisdiction under which the hearing is to be held; the particular statutes, rules, and regulations involved; the nature of the matters asserted in the petition for appeal. Both the individual and the criminal justice agency shall have adequate opportunity to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§919. Louisiana Administrative Procedure Act

A. Rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, confidential privileged information, examination of evidence by agency, decisions and orders, rehearings, ex parte consultations and recusations, judicial review and other such matters shall be governed by the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204, R.S. 15:1207 and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§921. Record

A. A record of all proceedings shall be preserved and provided as required by R.S. 49:955(E) and (F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204, R.S. 15:1207 and R.S. 49:955.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§923. Privacy and Security Form Number 6

A. Parties shall be entitled to notice of the final decision of the hearing officer, LCLE-Privacy and Security Form Number 6 may be used by the hearing officer to direct such notice to the parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§925. Petition; Bond; Timing

A. If, after receiving notice of the decision or order of the hearing office, the individual or the involved criminal justice agency is reasonably convinced that grounds exist in the record for reversal or modification of the hearing officer's decision or order, a petition for review accompanied by a bond (set by the hearing officer) sufficient to pay the cost of transcribing the record, may be submitted within 30 days to the privacy and security committee. Failure to so petition shall bar subsequent challenges of that portion of the individual criminal history record contested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§927. Petition and Argument

A. If the petition for review, accompanied by adequate bond for transcription costs, is timely submitted to the privacy and security committee, copies of the petition for review shall be sent to three members of the privacy and security committee, such members being selected on a rotating basis. Within 14 days of submission of the petition for review, the same three members shall decide by personal or telephonic vote whether full review is denied, the petitioning part may pursue rights of judicial review granted under R.S. 49:964. If full review is granted, the record shall be transcribed and circulated among at least seven members of the privacy and security committee. A time and date, within 30 days of transcription of the record, shall be set for the presentation of written or oral argument to a quorum of at least five of the seven privacy and security members who have read the transcribed record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204, R.S. 15:1207 and R.S. 49:964.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§929. Decisions, Orders, Rehearings, Appeals

A. Decisions, orders, rehearings, and appeals from decisions or orders of the privacy and security committee shall be in accordance with §919 and §923.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§931. Writs

A. The privacy and security committee is hereby authorized to seek writs of mandamus or injunction to enforce final, nonappealable orders and decisions of the committee and the hearing officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§933. Challenges; Accuracy

A. Individual criminal history records challenged under the provisions of this regulation shall be deemed to be accurate, complete, and valid until otherwise ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by thee Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§935. Dissemination of Information

A. Upon final determination that the content of an individual criminal history record is inaccurate or incomplete, the affected agency which originated the inaccurate or incomplete entry shall provide the individual or his legal representative with a list of the noncriminal justice agencies to which the inaccurate or incomplete criminal history record information has been disseminated within a 90 day period immediately preceding the final disposition of the challenge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

Chapter 11. Completeness and Accuracy

§1101. Purpose

A. It is the purpose of this regulation to establish minimum standards for reporting criminal dispositions and updating criminal history records to include such dispositions. It is intended that this regulation supplement and reinforce the LCJIS Complete Disposition Reporting System. Because inaccurate or incomplete criminal history record information presents a serious danger to individual rights of privacy and due process, every criminal justice agency should strive to maintain accurate, up-to-date criminal history records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§1103. Reporting Dispositions

A. Every affected agency shall report dispositions (as defined in §317) which occur as a result of a transaction initiated by such agency within 90 days of the occurrence of the disposition. Dispositions shall be reported as required by the Louisiana Criminal Justice Information System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§1105. Louisiana Criminal Justice Information System

A. Every affected agency shall establish procedures for updating criminal history records using disposition data which shall be distributed by the Louisiana Criminal Justice Information System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:452 (November 1977), amended LR 4:507 (December 1978).

§1107. Minimal External Search

A. Every affected agency shall establish procedures providing for a minimal external search for a disposition prior to disseminating criminal history record information relative to a specific arrest or charge when it appears from the nature of the arrest or charge that a disposition should have occurred, and none is noted in the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:507 (December 1978).

Chapter 13. Dissemination and Correction of Records and the Maintenance of Logs

§1301. Purpose

A. It is the purpose of this regulation to provide direction and guidance concerning the control of dissemination and correction of criminal history record information (CHRI) to individuals or agencies as required by the federal regulations (Title 28), through the maintenance of certain logs, and to provide a vehicle for correcting erroneous information. Since dissemination records are viewed by the regulations as a key restraint on erroneous dissemination, a deterrent to the illegal use of information disseminated and a supporting document to quality assurance audit trails (Chapter 15), the maintenance of logs is mandatory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:507 (December 1978).

§1303. Dissemination of Criminal History Record Information

A. These regulations impose no restrictions on the dissemination of CHRI where the court transactions or dispositions have included a conviction or convictions. However, where CHRI contains nonconviction data, i.e., where records contain arrest data, citation, summons, or bill(s) of information which have not resulted in a conviction or guilty plea, and acquittals; dismissals; information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed; and records of arrest unaccompanied by disposition that are more than one year old and in which no prosecution is actively pending, these

regulations now impose restrictions against dissemination of that portion of CHRI containing nonconviction data to noncriminal justice agencies not otherwise permitted access to such information by state statute. (§1305.B and §1309)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1305. Nonconviction Data

A. Nonconviction data may only be disseminated to:

1. criminal justice agencies for criminal justice activity and employment;

2. public and private agencies authorized by state and federal statute, executive order, local ordinance or court decision (see §1309);

3. individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services (e.g., consultants);

4. individuals and agencies engaged in research, evaluative or statistical activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1307. Access, Review, Challenge, Appeal

A. Nothing in this regulation abrogates the right of individuals (or their authorized representatives) to access, review, challenge, or appeal criminal history information about themselves as provided for in Chapter 7 and Chapter 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1309. Copies

A. Upon application, the central state repository (Bureau of Criminal Identification) may furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the bureau has a record or any other necessary information to any federal, state, or local government regulatory, investigative, licensing, or bonding agencies which may require fingerprinting, in connection with their authorized duties, functions and powers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1311. Logging; Privacy and Security Form Number 8

A. In order to maintain accountability over the full scale of collection, storage, and dissemination of CHRI, dissemination transactions records in the form of a log shall be kept by each criminal justice agency. The logging is required both to support the audit process and as a means of correcting erroneous dissemination. Logs may be kept as shown on LCLE Privacy and Security Form Number 8 but must, as a minimum, contain the following data elements:

1. a tracking, serial, or identification number in order to provide positive identification linkage between CHRI disseminated and the record from which extracted;

2. agency or individual to which or whom CHRI released;

3. address of agency or individual;

4. date of release or notification;

5. individual to whom information relates;

6. items of information released and how furnished (i.e., copy provided, written out by hand, mailed, teletype or computer terminal printout);

7. original entry or correction (indicate "O" or "C" as appropriate);

8. releasing official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1313. Correction Record and the Dissemination Log

A. Since identification of agencies or individuals receiving erroneous CHRI is possible from the dissemination log and since federal regulations require notification of each recipient of inaccurate or erroneous CHRI (unless it falls outside of the 90 day limit specified in §911) a corrections record will also be kept using the dissemination log. The minimum data elements for a correction entry are essentially similar to those specified for a dissemination entry. The tracking or serial number will be identical to the identification number provided for the original information on the dissemination log. The log page number of the original entry will be placed next to the "C" in the "Original or Correction" column of the log in order to maintain audit trail continuity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1315. Log Period; Verification

A. All logs are to be preserved for a period of not less than one year from the earliest date of release of information or notification of correction. Logs will be made available for

audit and verification of compliance with the regulations by the commission, the privacy and security committee or their designated staff members at such time as they may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1317. No Record; No Logging

A. When a response to an inquiry is "No Record" or essentially negative, no logging of the response is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1319. Transmission of Hardcopy

A. Corrections to records shall be forwarded in hardcopy form such as letter, teletype, or computer terminal printout within 14 days after determining erroneous information has been disseminated. If the original dissemination is older than 90 days and the 90 day record maintenance notification has been imposed, and a correction is indicated, the correction should be made but need not be transmitted, except to the central state repository.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

Chapter 15. Audits and Quality Control

§1501. Purpose

A. It is the purpose of this regulation to interpret the requirements of the federal regulations as they pertain to:

1. the quality of the information the criminal justice agencies collect, store, and disseminate; and

2. the systematic and annual audits to be performed in order to verify adherence to the privacy and security regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1503. Quality Information

A. The quality of information which the criminal justice agencies collect and use is an important privacy consideration. Quality information issues usually fall into one or both of two categories; namely, completeness and/or accuracy. Achieving high quality record information is largely a matter of good procedures; it requires a rigorous, systematic approach to record-keeping and a high degree of cooperation among the participating agencies. Agencies shall therefore, institute procedures which implement these requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1505. Written Procedures

A. Agencies shall likewise develop written procedures which comply with the basic provisions of Chapter 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1507. Quality Assurance Audits

A. There are basically two types of quality assurance audits required periodically. The systematic audit is required of an agency which collects, maintains and disseminates CHRI as a means of minimizing errors or omissions in the completeness and accuracy of the records. This audit is actually a quality control mechanism and will usually be performed on a periodic and regular basis by the agency itself. In contrast, the annual audit is an examination by an outside agency of the extent to which an agency is complying with the regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1509. Systematic Audit; Privacy and Security Form Number 9

A. The systematic audit refers to a combination of systems and procedures employed both to ensure, to the extent possible, completeness and to verify accuracy. The systematic audit is also an internal procedure which basically provides for a comparison between CHRI and source documents or reporting forms, as appropriate, in order to check accuracy and completeness. In addition, this audit provides for an inspection of an agency's systematic record keeping practices. Accordingly, agencies shall implement a systematic audit procedure in accordance with the guidelines furnished by the Louisiana Criminal Justice Information System (LCJIS) staff and utilizing LCLE-Privacy and Security Form Number 9 (Agency Systematic Audit Checkoff List).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:508 (December 1978).

§1511. Random Sampling

A. The annual audit will be performed on a random sample of all affected agencies in the state. All affected agencies must fully cooperate in the conduct of the annual audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:509 (December 1978).

§1513. Procedures

A. LCJIS shall audit, on a periodic basis, a random sampling of agencies to provide statistically significant examinations of the accuracy and completeness of data maintained and to verify adherence to the regulations. Sampling and detailed audit procedures will be as indicated in LCJIS furnished guidelines and implementing directives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:509 (December 1978).

§1515. Annual Audit

A. The annual audit will be performed by members of the LCJIS staff who are familiar with the agencies and the requirements of the regulations. Agencies to be audited will be given a minimum of 30 days written notice prior to an annual audit being conducted. On conclusion of the annual audit, the staff will give the agency an oral debriefing and subsequently, within 30 days, a written, formal critique highlighting deficiencies and recommending corrective action. Field agents making regular, subsequent visits will verify corrective action taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:453 (November 1977), amended LR 4:509 (December 1978).

§1517. Documentation

A. At the time of the audit, the audited agency will have ready to present to the audit team such documentation as may be required by LCJIS, including but not limited to:

1. evidence of procedural compliance including security;
2. copies of systematic audits performed;
3. source records as may be requested;
4. dissemination logs;
5. rights of access, appeals, and certification forms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1519. Correction of Deficiencies

A. Audited agencies with serious deficiencies as indicated in the formal critique must correct these deficiencies and will render written, corrective action reports to LCJIS monthly until the deficiency is eliminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

Chapter 17. Security of Criminal History Information

§1701. Purpose

A. It is the purpose of this regulation to establish minimum standards governing the achievement and maintenance of physical security, personnel security and programming security within agencies maintaining criminal history records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1703. Environmental Hazards

A. Affected agencies shall institute procedures for the protection of criminal history record from environmental hazards including fire, flood, and power failure. Appropriate measures may include: adequate fire detection and quenching systems, protection against water and smoke damage, fire resistant materials on walls and floors, air conditioning systems, emergency power sources, and backup files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1705. Security Procedures

A. Affected agencies shall adopt security procedures which limit access to criminal history files. These procedures may include use of guards, badges, keys, passwords, sign-in logs or similar controls. Facilities housing criminal history record shall be so designed and constructed as to reduce the possibility of physical damage to the records. Appropriate measures may include physical damage to the records. Appropriate measures may include physical limitations on access, security storage for information media, adequate lighting, detection and warning devices, perimeter barriers, heavy-duty, nonexposed walls and closed circuit television.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1707. Investigation of Applicants

A. Applicants for employment and those presently employed in the maintenance of criminal history records shall consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation, and honesty. Giving false information shall disqualify an applicant from employment and subject a present employee to dismissal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1709. Investigations

A. Investigations should be conducted in such a manner as to provide sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a preemployment basis and the resulting reports used as a personnel selection device.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1711. Security Clearances

A. Systems personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1713. Security Manual

A. Each affected agency should prepare a security manual which delineates procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. Each person working with or having access to this information should know the contents of the manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1715. Sanctions

A. The management of each affected agency should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce these standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1717. Disciplinary Measures

A. Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by the imposition of appropriate disciplinary measures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1719. Willful or Repeated Violation

A. Where any affected agency is found by the Louisiana privacy and security committee to have willfully or repeatedly violated the requirements of this standard, the committee may prohibit the dissemination of criminal history record information to that agency for such periods and such conditions as the committee deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1721. Terminal Use

A. There shall be a terminal identification code number for each remote terminal as a precondition for entering the files. Within each agency, terminal use shall be assigned to a limited and identified group of individuals. Each individual terminal user shall identify himself by a personal identification number or authorization code. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for 12 months. (See Chapter 13.) Each remote terminal user shall establish a computerized or written log of terminal use, which shall be audited periodically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1723. Data Control

A. Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data automatically whenever purging is required by these regulations. Duplicate computer files shall be created as a countermeasure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for backup.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1725. Data Center

A. Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying these forms after the data is entered in the computer. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1727. Monitor Program

A. A monitor program shall be developed to report attempts to violate the system security software or files. Edit programs shall be created to periodically audit record alteration transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

Chapter 19. Segregation of Computerized Files and Their Linkage to Intelligence Files

§1901. Purpose

A. It is the purpose of this regulation to establish minimum standards governing the maintenance of the security and integrity of computerized criminal history record information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1903. Supervision of Data Files and Programs

A. Data files and programs used by the criminal justice system for the collection, maintenance or dissemination of criminal history record information shall be under the management control of a criminal justice agency and shall be supervised and maintained in the following manner.

1. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by noncriminal justice terminals.

2. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

3. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all accesses and all attempts to penetrate and all accesses of any criminal offender record information system, program, or file. This program shall be available only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.

4. Nonterminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:454 (November 1977), amended LR 4:509 (December 1978).

§1905. Intelligence Inquiry

A. Criminal history record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

§1907. Response Information

A. A criminal history record inquiry response shall not include information which indicates that an intelligence file exists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

Chapter 21. Training of System Personnel

§2101. Purpose

A. It is the purpose of this regulation to establish a training program whereby all personnel working with or having access to criminal history record information are made familiar with the substance and intent of the Louisiana privacy and security regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

§2103. Louisiana Criminal Justice Information System

A. The Louisiana Criminal Justice Information System shall be primarily responsible for planning, coordinating, presenting, and approving the privacy and security training programs. The objective of the training program shall be to instruct key employees of affected agencies as to the substance and intent of the Louisiana privacy and security regulations. Every affected agency shall, to the maximum extent possible, avail itself of such training as may be provided by LCJIS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

§2105. Internal Training Program

A. Every affected agency shall institute an internal training program to familiarize personnel with the proper use and control of criminal history record information. Each such program must contain provisions for specific instructional sessions on Louisiana privacy and security regulation Chapter 17 which establishes minimum security standards for criminal history record information. This training program would be primarily directed to employees who work with or have access to criminal history record information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

§2107. Record of Training Procedures

A. Each affected agency shall maintain a written record describing the training procedures employed by the agency and indicating the number of training meetings per year. This record shall be made available to LCJIS staff audit personnel during scheduled annual audits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:455 (November 1977), amended LR 4:510 (December 1978).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 2. Minimum Jail Standards

Chapter 25. Introductory Information

§2501. Adoption

A. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice has adopted jail standards for the state of Louisiana at a meeting held Wednesday, September 24, 1980.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2503. Introduction

A. The purpose of these standards is to provide a reasonable guideline for use by persons responsible for the planning, administration and construction of parish jails in Louisiana. They are intended to reflect the minimum requirements which comply with court orders and protect the guaranteed rights of inmates in custody. The criteria were derived from court decisions, Louisiana state statutes, codes and regulations, and standards developed by organizations in the criminal justice field. The items generally avoid specific numerical absolutes so as to be useful to jails of all sizes and populations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

Chapter 27. Minimum Jail Standards

§2701. Management

A. The administrator shall formulate a written statement of institution goals and purposes.

B. The administrator shall develop a written manual describing institution policies and procedures.

C. Inmates shall not be subject to discrimination on basis of race, religion, sex, nationality or handicap, and shall receive equal treatment under all policies and procedures of the institution.

D. The administrator shall formulate a written statement of policy regulating communications with the news media and promoting positive public relations with the community.

E. Space and equipment shall be designated for all necessary administrative functions.

F. Space and equipment shall be designated for all heads of the security staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2703. Fiscal

A. A fiscal system shall be established to record all income and expenditures in accordance with commonly accepted professional accounting practice.

B. An annual budget shall be prepared which projects the operating needs of the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2705. Records

A. A record system shall be established to provide continuous, accurate, and current information on the location and legal status of all inmates.

B. A record system shall be established to account for inmate money and personal property with disbursement only upon authorization of the inmate owner.

C. A record system shall be established to provide statistical information required by legitimate law enforcement and correctional interests at the federal, state and local level.

D. A record system shall be established for all routine activities occurring on each shift and for all emergency situations.

E. A record system shall be established for all management functions of the institution, including administration, personnel operations and physical plant.

F. A log shall be kept of all persons entering or leaving the jail.

G. All record systems shall specify method and frequency of supervisory review, and such reviews shall be made as indicated.

H. Inmates shall be forbidden to handle any management, personnel, inmate, fiscal or other institutional records.

I. Secure space shall be provided for the use of current records and the storage of other records required in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2707. Personnel and Training

A. Employees shall be given a written manual describing all personnel policies and procedures, including grievance and appeal mechanisms.

B. Employees and job applicants shall have the protection of equal employment opportunities.

C. Duties and qualifications for each employee position shall be described in writing by the administrator.

D. Employee records shall be maintained in individual files, but employees shall have the right to view and challenge their file information.

E. Employees shall receive preservice orientation and shall participate in regular inservice and staff development programs.

F. Space and equipment shall be provided for all training and staff development programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2709. Community

A. The administrator shall develop a program of community resources to assist inmates during incarceration and facilitate their reentry after release.

B. Civilian volunteers shall not work in the institution until they have completed orientation appropriate to their assignments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

Chapter 29. Inmate Support

§2901. Inmate Housing

A. Separation shall be provided between areas housing male and female inmates and between adults and juveniles.

B. Renovation of existing space or new construction shall provide a minimum of 48 square feet of floor space for each inmate confined for more than 72 hours.

C. New construction shall provide a view of daylight from each housing area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980), amended LR 17:661 (July 1991).

§2903. Food Service

A. Food service areas, equipment and operations shall meet all state and local health laws and regulations.

B. Inmates shall receive at least three meals every 24 hour period with no more than 14 hours between any two meals. At least two of these meals shall be hot.

C. Nutrition, food service plan, and daily menus shall be approved by a licensed physician, certified dietician or nutritionist.

D. Inmates shall be provided with special diets as ordered by the physician and approved by the administrator.

E. Inmates assigned to food service jobs shall be medically screened and certified free from disease prior to starting work.

F. Space shall be provided for all food preparation and service activities.

G. Inmates who are not segregated because of security, safety or discipline shall not be fed in their cells.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:598 (October 1980).

§2905. Clothing and Bedding

A. Indigent inmates shall be provided with all needed clothing at institution expense.

B. Inmates shall be provided with any clothing required for special jobs or work assignments at institution expense.

C. Inmates shall be provided with a minimum of two changes of clean clothing per week.

D. Inmates shall be provided with a complete set of clean linen and bedding on admission to the institution, and at least once a week thereafter.

E. Sanitary storage areas shall be provided for all inmate clothing, linen and bedding.

F. Arrangements shall be made for laundry and distribution of clean clothing and bedding to inmates.

G. Arrangements shall be made for disinfecting mattresses, pillows and mattress covers prior to issuance to inmates.

H. All clothing and bedding distributed by the institution shall be in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

§2907. Personal Hygiene

A. Inmates shall have access to a shower on a daily basis and shall be required to bathe no less than twice a week.

B. Inmates shall be given all necessary personal health care items upon admission, and these items shall be replenished as needed.

C. Inmates shall be able to shave and receive haircuts on a regular basis.

D. Inmates assigned to food service or other work details shall shower and receive a complete change of appropriate clothing daily.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated. by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

§2909. Medical and Health Care

A. A licensed physician shall be responsible for the health care program and for the practice of medicine in the institution, and no restrictions shall be placed on the medical judgment of the physician.

B. All health care shall be provided in accordance with written policies and procedures developed by the physician in charge and endorsed by the administrator.

C. Dental care shall be provided under the direction, supervision and written procedures of a licensed dentist.

D. Treatment given by other than a licensed physician shall be made by trained personnel according to written, standing or direct orders of the physician in charge.

E. Inmates shall have continuous access to emergency health care by trained personnel and professional medical attention whenever required.

F. Inmates shall have access to routine health care by a physician within 48 hours after making such request.

G. At least one employee on each shift shall be qualified to administer basic first aid and cardiopulmonary resuscitation.

H. Arrestees will be asked at the time of booking about their current state of health and medications being taken, and health problems will be referred immediately to the physician.

I. New inmates shall receive a medical examination within 72 hours of admission to the institution.

J. Inmates shall receive a medical examination at least every 12 months while incarcerated.

K. New inmates shall be instructed in the procedure for obtaining routine and emergency medical attention at the time they are admitted to the institution.

L. Inmates shall be able to report illness or health complaints daily and all reports shall be recorded together with complaint disposition.

M. Pharmaceuticals shall be controlled and dispensed only under written orders and procedures prepared by the physician in charge, and shall be filled at institution expense as prescribed within 24 hours.

N. Inmates shall not participate in experimental testing programs for medical or pharmaceutical purposes unless specifically ordered to provide therapy for individual conditions.

O. An area shall be provided for inmates requiring isolation for reasons of physical or mental illness.

P. Space, equipment, supplies and material shall be provided for all health services delivered in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

Chapter 31. Inmate Service

§3101. Court Access

A. Inmates may receive visits from attorneys or attorney-delegates at any reasonable time between wake-up and lights-out.

B. Inmate communications, with attorneys by telephone or personal visit shall be entirely confidential.

C. Inmate correspondence with attorneys shall be entirely confidential and shall not be delayed, read, nor interfered with in any manner.

D. Paralegals may be required to show evidence of their employment by an attorney before being admitted to visit with an inmate.

E. Inmates shall be permitted to present any issue to the courts at any time without restrictions, reprisal or penalty.

F. Inmates shall be able to obtain paper, postage, forms, notarial services, technical information and specific legal materials needed to insure their rights to court access.

G. Inmates shall be transported to any scheduled court appearance at the designated time at institution expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

§3103. Visiting

A. Inmates shall have maximum freedom and duration for visiting consistent with the security and management needs of the institution.

B. Each inmate shall be permitted a minimum of one personal visiting period per week.

C. Visitors shall be notified by posted signs that they and their possessions are subject to search at any time within the security perimeter of the institution.

D. Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search, or for any violation of posted institutional rules.

E. Inmate visits shall be conducted under visual surveillance of security staff, but conversations with visitors shall not be monitored.

F. Space shall be provided for all activities required by the visiting program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

§3105. Mail

A. Outgoing letters from inmates will be submitted unsealed and may be inspected and censored by the institutions.

B. An outgoing letter from an inmate may be disapproved if it falls into any of the following categories:

1. it contains threats of physical harm against any person or threats of criminal activity;

2. it threatens blackmail or extortion;

3. it concerns transport of contraband in or out of the institution;

4. it contains plans for escape;

5. it concerns plans for activities which violate institution rules;

6. it concerns plans for criminal activities;

7. it is in code and its contents are not understood by the reader;

8. it solicits gifts or goods or money from other than family;

9. it contains information which if communicated would create clear and present danger of violence or physical harm to a human being.

C. If an inmate is prohibited from sending a letter, he will be given back the letter with a written and signed notice citing the specific reason for disapproval and indicating the portion or portions of the latter involved.

D. Incoming letters to inmates may be inspected and censored by the institution in accordance with procedures in this Section.

E. An incoming letter may be disapproved only for reasons listed in Subsections A and B above.

F. If an inmate is prohibited from receiving a letter, the letter will be returned to the sender with a written notice citing the specific reason for the refusal, and the inmate will be notified of the rejection, the reason, and the name of the sender.

G. Outgoing letters to courts, recognized attorneys at law, governmental agencies and elected officials shall not be opened or read unless for security reasons, and will be submitted sealed by the inmate with the title or position of the addressee clearly marked on the envelope.

H. Incoming letters from courts, recognized attorneys at law, governmental agencies and elected officials may be opened for inspection, but only in the presence of the inmate recipient and without being read for content.

I. The administration shall establish a written procedure for inmate grievances involving mail, including method for written compliant, formal hearing, and written notice of complaint disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:599 (October 1980).

§3107. Telephone

A. Inmates shall have reasonable access to telephones on a regular schedule.

B. Inmates shall be permitted to complete two local telephone calls at institution expense immediately after arrest, or two collect long distance calls if they are not local residents.

C. Inmates shall have maximum freedom and duration of telephone privileges consistent with the security and management needs of the institution.

D. Inmate telephone calls shall be confidential and shall not be monitored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3109. Religion

A. Inmates shall be permitted to attend religious services of their own denominations.

B. Inmates shall not be sanctioned or rewarded for attendance at religious services or be required to be present during any service.

C. Inmates in all conditions of detention shall have access to confidential consultation with religious advisors at any reasonable time.

D. Space shall be provided for religious services and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3111. Recreation

A. Inmates shall have active outdoor recreation at least one hour per day three days per week where possible.

B. Inmates shall be provided with some form of indoor recreational activity on a daily basis.

C. Space and equipment and supplies for recreation shall be furnished by the institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3113. Work Programs

A. Inmate work assignments shall be made impartially according to a plan and subject to the number and type of work opportunities available.

B. Unsentenced inmates shall be required to do only personal housekeeping.

C. Sentenced inmates shall be required to do only personal housekeeping and such other tasks as necessary for facility maintenance.

D. Inmates may receive pay and/or diminution of sentence for work performed, as permitted by statute.

E. Inmate work income shall be considered personal property of inmate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3115. Education

A. Sentenced inmates who wish to advance their general education through the high school level shall be provided the means to do so.

B. Sentenced inmates who wish to take correspondence or special courses at their own expense shall be permitted to do so if no specific security problems are involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3117. Commissary

A. Inmates shall have access to commissary or canteen services where they can purchase approved items not furnished by the institution.

B. Commissary items shall not cost more than standard community retail prices, and all sales records shall be audited regularly by an approved agency.

C. Sufficient and appropriate space shall be provided for commissary services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

Chapter 33. Inmate Management

§3301. Intake Reception

A. No person who is unconscious, seriously injured, or violently disturbed shall be received for booking without written authorization from a licensed physician.

B. New arrivals shall be processed according to written intake procedures and shall be held separate from the inmate population until completion of these procedures.

C. New arrivals shall be given a written itemized receipt for all personal property taken from them at time of admission.

D. Inmates shall be provided an opportunity to consult with bailbonding and pretrial release agencies as soon as the booking process is completed.

E. New arrivals shall receive written and oral information about facility rules, procedures, programs and policies, and shall have access to a translator if English is not understood.

F. New arrivals may be housed in individual intake holding cells for a maximum of 48 hours before being classified and transferred to an appropriate housing area.

G. Special holding provisions shall be made for persons requiring detoxification, additional safety measures and isolation.

H. New and renovated holding cells shall house no more than eight inmates and provide a minimum of 30 square feet of floor space per person.

I. Single occupancy intake holding cells shall have a floor area of at least 50 square feet.

J. Space shall be provided for all booking and intake areas and functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3303. Classification

A. Inmate housing, programs, work assignments and transfers shall be made on the basis of impartial written classifications procedures, and inmates shall be informed of the reasons for these decisions.

B. Classification shall separate males from females, adults from juveniles, and inmates with special problems of health, behavior or vulnerability from the general population.

C. Initial classification assignments shall be completed according to the written schedule within 48 hours of admission.

D. The classification process shall be completed within 72 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3305. Supervision and Control

A. Inmate supervision shall be conducted by trained correctional officers, and inmates shall never be placed in positions of control or supervision over other inmates.

B. Supervision of inmates by opposite sex staff shall be conducted according to written procedures. Supervision of female inmates in their housing areas shall be done by female officers at all times.

C. Inmates shall be logged in and out when they enter or leave the security perimeter of the institution for any reason.

D. Inmates shall be accounted for by roll call at least once every shift and by head count at various times during each shift.

E. Inmates may be involuntarily confined in their cells a maximum of 12 hours in any 24 hour period except as required for security reasons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3307. Inmate Safety

A. Inmates shall have continuous access to communications from their housing areas to a manned control station containing emergency and alarm capability.

B. New inmates shall be instructed how to obtain immediate assistance in case of illness, assault, or other personal emergency.

C. Secure housing arrangements shall be provided for inmates requiring protective custody under conditions equivalent to those of the general inmate population.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:600 (October 1980).

§3309. Discipline

A. New inmates shall be given written rules of conduct specifying prohibited acts and penalties which may be imposed for both major and minor rule violations, and this information shall also be posted in the institution.

B. Inmates shall not be subjected to corporal punishment or personal abuse, or confined in instruments of restraint as punishment.

C. Inmates shall not be deprived of food, clothing or personal hygiene items as punishment.

D. Inmates shall have impartial access to formal hearing and appeals procedures for any disciplinary action.

E. Inmates who must be isolated for disciplinary reasons shall be held in conditions of confinement equivalent to those of the general population.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3311. Grievance and Appeal

A. Inmates shall have the right to report grievances verbally or in writing to any official of state or local government without fear of reprisal.

B. Inmates shall be informed of a formal written procedure for reporting and referring grievances and making appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3313. Transportation

A. Vehicles used to transport prisoners shall meet state and local safety standards and shall be operated only by properly licensed personnel.

B. Inmates shall be transported only in accordance with written procedures and only by officers who have received special training in this duty.

C. Female inmates shall be accompanied by a female officer during transport.

D. A secure area shall be provided for transfer of prisoners and goods between the institution and transporting vehicles.

E. Inmates shall not be restrained during transport more than necessary to insure security, and shall never be shackled to a vehicle or left unattended in a vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3315. Release

A. Inmates shall not be released from the institution until legal authority and positive identification have been verified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

Chapter 35. Security and Control

§3501. Keys

A. Written policy and procedure shall govern the regular inspection and maintenance of locks and keys.

B. Written policy and procedure shall govern the issue, use, control, loss and replacement of all keys.

C. A locked secure area shall be provided for all keys not in use and for a full set of duplicate keys to all parts of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3503. Control Center

A. Every institution shall provide a control center manned 24 hours, to monitor and control communications, emergency systems and security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3505. Contraband

A. Items legally defined as contraband shall be identified in a list to be made available to all inmates, employees and visitors, together with regulations for disposal.

B. A list of articles approved for inmates will be identified and all other items will be considered unacceptable and disposed of according to written procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3507. Emergencies

A. The institution shall comply with all provisions of state and local fire, safety and other applicable codes and regulations.

B. The institution shall develop written emergency procedures to cover escapes, riots, fires, passive resistance, other disturbances and disasters, and emergency evacuation of inmates.

C. Officers who work in direct contact with inmates shall have access at all times to an emergency communication system link with central control.

D. Diagrams shall be posted throughout the building showing evacuation routes, and instructions for use of emergency equipment shall be posted near the equipment.

E. All employees shall be instructed in emergency procedures, and senior watch officers shall have access to complete emergency plans at all times.

F. Hardware systems must permit the release of all inmates from a housing area within a maximum of five minutes in an emergency.

G. Emergency exit keys shall be marked to insure ready identification under conditions of smoke, poor visibility or other crisis situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3509. Searches

A. Searches of inmate living areas shall be conducted according to written policies and procedures, avoiding damage or destruction to personal property.

B. Contraband items removed during area searches shall be logged, and a receipt shall be given to the inmate if requested.

C. Body searches shall be conducted only when an inmate has traveled or has had contact with persons outside the security perimeter of the institution, or when probable cause can be documented.

D. Visual body searches shall be conducted by trained personnel of the same sex as the inmate and shall avoid force, undue embarrassment or indignity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3511. Hardware

A. Each area within the facility shall be designated for a certain level of security, and appropriate hardware shall be provided to insure that level.

B. Each opening in the exterior security perimeter of the facility shall contain hardware appropriate to contain safely the inmate population, and to permit controlled access by legitimate public and law enforcement personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

Chapter 37. Building and Construction

§3701. Planning and Site

A. All jail facilities shall conform to state and local codes and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3703. Sanitation and Maintenance

A. The institution shall comply with the health and sanitation codes of the state and with all local laws and regulations.

B. The institution shall maintain records of all authorized inspections made by regulatory agencies, and of all actions taken as a result of these inspections.

C. The institution shall develop and implement a plan for the maintenance and housekeeping of the entire physical plant.

D. The institution shall provide for control of vermin and pests by a specialist and shall remove inmates from areas during treatment if requested by the physician in charge.

E. Sanitation and housekeeping shall be the responsibility of the institution even when inmates are assigned to housekeeping and maintenance tasks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3705. Institution Storage

A. Storage shall be provided for all equipment and supplies for the functions of the institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3707. Climate Control

A. Temperature and humidity ranges in the institution shall be checked and approved by the state health officer.

B. All equipment used for heating, ventilating and air-conditioning shall comply with state and local codes and regulations.

C. Ventilation systems shall be designed for kitchens, toilets, showers and laundry rooms and for the removal of chemical agents where they may be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:601 (October 1980).

§3709. Lighting and Power

A. All electrical wiring shall comply with state and local codes and regulations.

B. Facilities shall have two independent sources of power, each sufficient to maintain minimum vital services during an emergency.

C. Illumination in housing areas shall be sufficient to permit reading, and shall be reduced to a level to permit normal sleep during night hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:602 (October 1980).

§3711. Mechanical and Plumbing

A. All water supply, sewerage and plumbing installations shall comply with state and local codes and regulations.

B. Inmate housing areas shall have hot and cold potable water supplied to each lavatory and shower fixture.

C. Water supplies to kitchen and laundry equipment shall meet the temperature and volume recommended by state and local codes and regulations.

D. All inmate occupied areas shall be provided with positive floor drainage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 6:602 (October 1980).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 3. General Subgrant Guidelines

Chapter 41. Procedures

§4101. Applicability

A. These rules apply to all subgrants available from the Louisiana Commission on Law Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:79 (January 2006).

§4103. Definitions

A. Definitions

Federal Guidance—refers to all published federal regulations, rules, and guidance with general applicability or specific applicability to a particular block or formula grant program.

Subgrant—a grant issued pursuant to a federal or state block grant or formula program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:79 (January 2006).

§4105. General Provisions

A. All subgrants must comply with applicable federal laws, regulations and guidance, as well as all applicable state laws, regulations and rules.

B. No subgrant award will be issued until all applicable certifications and assurances have been signed by the responsible authority.

C. All applications must be received by LCLE by the deadline established for the commission meeting for which they are being submitted. Any application received after that time will not be presented until the commission meeting following the meeting for which it was originally scheduled, unless specifically approved by the executive director and chairman of the commission for lay out.

D. No subgrant will be considered by the commission until reviewed by the appropriate advisory board unless said subgrant is not part of a program subject to such review.

E. The Louisiana Commission on Law Enforcement must approve all subgrants before any award will be made.

F. All subgrant progress reports must be submitted in a timely fashion or draw down of funds may be suspended.

G. All subgrants are subject to audit and monitoring by the responsible authority. Subgrantees are required to cooperate fully with any such inquiry or all unexpended funds may be frozen.

H. Emergency Meetings

1. An emergency meeting of the Priorities Committee can be called when:

a. a disaster, crisis, or some other unforeseen event affecting all or part of the state of Louisiana, and the Louisiana Commission on Law Enforcement is unable to meet at its regularly scheduled time; or

b. a regular commission meeting has been cancelled by order of the chairman; or

c. action is needed by the commission between regularly scheduled meetings to ensure that all federal and state funds are used within the proper timeframe and provide for necessary matters attendant to the proper administration of agency programs; or

d. for any other emergency so deemed by the chairman of the commission. When an emergency meeting is called, the Priorities Committee will have the power to act as (for) the commission.

2. These provisions are applicable to the award of state or federal grants, increases to state or federal grants, allocation of state or federal funds, approval of federal sole source contracts, federal grant adjustments or any other situation where the subgrantee and the state of Louisiana will lose all or part of available federal or state funds unless awarded or contracted by a specific date that falls prior to the next regularly scheduled commission meeting.

3. Process for Calling an Emergency Meeting

a. The executive director notifies the chairman of the Louisiana Commission on Law Enforcement of the need for an emergency meeting.

b. The chairman of the Louisiana Commission on Law Enforcement, or in his absence, the executive director, calls an emergency meeting of the priorities committee by notifying the membership of the committee no less than 24 hours in advance of the called meeting time and date

c. The executive director develops a list of grants, subgrants, allocations, increases and/or contracts requiring approval by the Priorities Committee at the emergency meeting. This list shall serve as the complete agenda for the emergency meeting.

d. All matters approved by the Priorities Committee at an emergency meeting will be reported to the commission at their next regularly scheduled meeting. Decisions of the priorities committee while in the emergency meeting shall have the same force and effect as a decision of the Louisiana Commission on Law Enforcement.

e. Three of five priority committee members shall constitute a quorum for purposes of emergency meetings. The chairman of the commission shall be considered a committee member for purposes of establishing a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:79 (January 2006), amended LR 35:1235 (July 2009).

Chapter 43. Appeals Procedure

§4301. Appeals Procedure

A. When an application for funding is rejected by the commission, or when an approved subgrant is discontinued, the applicant or subgrantees may appeal the decision of the commission by filing a written notice of appeal with the Louisiana Commission on Law Enforcement at the recognized business address. The notice of appeal must be sent via certified mail and must be filed no later than 15 business days after receipt of the notice of denial by the applicant or subgrantee.

B. Upon receipt of the notice of appeal by the LCLE, the executive director will notify the commission that an appeal hearing will be held on the date of the next regularly scheduled commission meeting. The priorities committee will hear the appeal and make recommendations to the commission. The executive director shall designate the time and place of the meeting, and a copy of the notice shall be sent to the applicant or subgrantee.

C. On the date of the next regularly scheduled commission meeting, the priorities committee shall meet and hear evidence by the applicant or subgrantee relative to reasons the appeal should be granted. The applicant or subgrantee may present as many witnesses as may be necessary to support his appeal, except that the committee chairman may limit the number or time allotted to the witnesses where necessary. The secretary to the commission shall take minutes of the appeal hearing and the entire hearing shall be recorded. The committee may also request other evidence relating to the application or project.

D. At the conclusion of the hearing, the committee shall present its findings and make recommendations to the commission.

E. A vote shall then be taken on the appeal.

F. In the event the appeal is denied, the applicant or subgrantee may, within 15 days of the date of denial, file with the Office of the Governor and the Louisiana Commission on Law Enforcement, a notice of appeal to the governor. The notice of appeal must be by certified mail.

G. Upon receipt of the notice of appeal to the governor, the Louisiana Commission on Law Enforcement shall have 15 days to provide the applicant or subgrantee and the governor with the minutes of the appeal hearing and a copy of the vote of the commission. The recorded tapes shall also be made available to the governor at his request.

H. The results of the appeal to the governor shall be communicated to the Louisiana Commission on Law Enforcement within 20 days.

I. Nothing herein shall preclude the resubmission of an application through the use of regular Louisiana Commission on Law Enforcement procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 8:64 (February 1982), amended LR 11:252 (March 1985), amended LR 45:657 (May 2019)

Chapter 45. Guidelines

§4501. Limitations

A. Anything in this guidance that is in conflict with applicable federal law, regulation or guidance, or with applicable state law shall not prevail.

B. All funding received by an agency, department, or organization may be subject to budget reductions as applied against LCLE by the funding authority under which the subgrant is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:79 (January 2006), amended LR 45:658 (May 2019).

§4503. Eligibility

A. Eligibility to apply or receive funding under any subgrant subject to this Subpart shall be governed by the applicable federal law, rules and guidance, or state law and operational policies of the commission.

B. By a two-thirds vote, the commission may waive any restrictions on eligibility made pursuant to the commission's operational policies, provided such waiver does not violate federal law, rules, or guidance, or, in the case of state funded grant programs, state law or rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 8:64 (February 1982), amended LR 11:253 (March 1985), LR 32:79 (January 2006).

§4505. Indirect Costs

A. Indirect costs are ineligible expenditures under any state grant program, unless specifically permitted by the law creating such program.

B. Indirect costs on federal subgrants are subject to federal guidance and may be limited further by the

respective advisory boards. Indirect costs are not to exceed 10 percent of modified total direct costs. A current Indirect Cost Rate or Allocation Plan previously approved by the cognizant federal agency must be on file with LCLE before submittal of applications to the respective advisory boards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 8:63 (February 1982), amended LR 11:253 (March 1985), LR 32:80 (January 2006), amended LR 45:658 (May 2019).

§4507. Regional Planning Units and Criminal Justice Coordinating Councils

A. No subgrant funds may be used for the expenses of Regional Planning Units (RPU's) or Criminal Justice Coordinating Councils (CJCC's). This provision does not prohibit the award of a subgrant to a RPU or CJCC for specific purposes not related to the normal operations of those offices.

B. The commission may make direct grants of administrative funds to RPU's or CJCC's. Any such grants are subject to reduction based on reductions received by LCLE from the responsible funding authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 8:63 (February 1982), amended LR 11:253 (March 1985), LR 32:80 (January 2006), amended LR 45:658 (May 2019).

§4509. Funding Restrictions

A. No traffic-related subgrants will be eligible, with the exception of driving while intoxicated (DWI) and substance abuse related projects.

B. There is a general prohibition on the funding of the following items:

1. vehicles (automobiles, vans, airplanes, boats, etc.), gasoline, tires, vehicle repair, maintenance, or insurance;

2. automobile accessories except radio and information technology equipment;

3. uniforms;

4. recreational equipment;

5. real property;

6. lobbying activities or the design, development, publishing or distribution of politically oriented material.

C. There are specific restrictions limiting the funding of the following items.

1. Renovations are limited to a maximum of $25,000, and then will be allowable only on agency-owned or long-term lease (five years or more) facilities.

2. Consultants are limited to planning, evaluation, research, development and training programs. Consultant services that are available as no-cost technical assistance through a federal or state program are not eligible for funding. Consultant contracts and agreements must receive approval from LCLE, prior to the release of funds.

D. There are special requirements relative to the following:

1. Private, Non-Profit Agencies, Private, non-profit agencies, with the exception of an RPU or CJCC, will be required to have a current surety bond equal to the amount of the subgrant.

2. Confidential Funds. The use of confidential funds is subject to special operational policies and regulations of the LCLE and federal guidelines.

3. Information Reporting. State and local criminal justice agencies must comply with all requests for information mandated by LCLE. This requirement includes full participation in the Uniform Crime Reporting Program for those agencies eligible to report, including participation in the Louisiana Incident Based Crime Reporting System when appropriate.

4. Travel Expenses. All travel expenses will be based on state travel regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 8:64 (February 1982), amended LR 11:252 (March l985), LR 32:80 (January 2006), amended LR 45:658 (May 2019).

§4511. Operational Policies

A. The various program advisory boards may recommend to the commission, or the commission may adopt on its own motion, specific operational policies relative to the funding of specific project types, eligibility for funding, or additional restrictions and/or limitations on funding, as well as monitoring, evaluation, or reporting requirements as deemed prudent in the administration of specific grant funds. Such regulations shall be in conformity and not inconsistent with these general guidelines, or with applicable state or federal law, regulation, or rules. Such operational guidelines shall be reviewed by the commission at least once every four years and adopted by a two-thirds vote. The commission may waive such operational policies provided the potential subgrantee has made written request for such a waiver and the waiver granted by a two-thirds vote of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:80 (January 2006).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4701. Definitions

A. The following terms, as used in these regulations, shall have the following meanings.

Governmental Entity—any board, authority, commission, department, office, division, or agency of the state or any of its local political subdivisions.

Law Enforcement Training Course—a basic or advanced course of study certified by the Council on Peace Officer Standards and Training (POST), for the purpose of educating and training persons in the skills and techniques of a peace officer in the discharge of his duties.

Peace Officer—any full-time, reserve, or part-time employee of the state, a municipality, a sheriff or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of detection of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, highway laws of this state, but not including any elected or appointed head of a law enforcement department. Peace officer also includes those sheriff's deputies whose duties include the care, custody, and control of inmates, police officers within the military department, state of Louisiana, and security personnel employed by the Supreme Court of Louisiana.

Training Center—any POST accredited school, academy, institute, or any place of learning whatsoever, which offers or conducts a law enforcement or corrections training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice LR 25:662 (April l999), amended LR 31:2007 (August 2005), LR 35:2755 (December 2009), LR 44:1007 (June 2018).

§4703. Basic Certification

A. All peace officers, as defined in R.S. 40:2403, shall complete a basic training course as prescribed and certified by the Council on Peace Officers Standards and Training (POST Council) within one year of employment as a peace officer. Reserve or part-time officers or military police officers stationed in Louisiana are eligible for certification if they successfully complete a basic training course prescribed for peace officers and pass the POST statewide examination. There are three levels of POST certification.

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. The student will complete a basic training course with the minimum number of training hours specified by the council for full certification. Level 1 certification requires that the student meet the POST requirements for firearm certification.

b. The curriculum for the basic law enforcement training course of Level 1 peace officers shall be developed and approved by the POST council. Curriculum updates shall be authorized and implemented by the council as needed.

c. The POST Basic Training Curriculum (utilizing the Adult Learning Model) is required for any basic Level 1 training class that begins at an accredited academy after July 1, 2018.

d. The council shall conduct a statewide job task analysis (JTA) at least once every five years to ensure that mandated standards remain valid and reflect current law enforcement practices. Results of the analysis shall be used to update the basic curriculum as needed.

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with the minimum number of training hours specified by the council and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of corrections core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is required (effective March 26, 2001).

b. Correctional peace officers with Level 2 certification must meet the POST firearms requirements for annual requalification as outlined in §4721.B and §4721.C.

c. The curriculum for the basic training course for Level 2 correctional officers shall be developed and approved by the POST Council. Curriculum updates shall be authorized and implemented by the council as needed.

3. Level 3 Certification for Jailer Training Officers

a. The student will complete a training course with the minimum number of training hours specified by the council and is limited to those correctional officers whose duties are the care, custody, and control of inmates. This course consists of the core correctional officer curriculum.

POST firearm certification for level 3 students is not required.

B. Students shall adhere to all standards, rules and regulations established by the accredited training center. Certification will not be awarded to students who are physically unable to complete every aspect of the basic training course. A student may not be certified for successful completion if:

1. the student's excused absences exceed 10 percent of the total hours of instruction;

2. the student fails to achieve a passing grade of 70 percent or higher on each block of instruction;

3. the student fails to achieve a grade of 80 percent or higher on the requirements for firearm certification;

4. all aspects of the training course have not been successfully completed.

C.1. Students shall be required to pass the POST statewide written examination for peace officers as prescribed by state law. Seventy percent shall constitute a passing score. The time limit for completing the statewide written examination is 90 minutes unless specifically modified by the council.

2. In the event a student fails the written examination, one retest may be administered if the agency head requests it. However, the student must wait a minimum of 15 working days before the retest can be administered with a maximum time limit of 30 working days. If the respective student fails the retest, the student shall be required to complete another basic training course and satisfy all POST requirements to obtain certification.

3. Oral testing on the statewide examination is prohibited.

D. When a basic student injures themselves during a basic training course, the student must have the nature of the injury immediately documented. Should the injury later prevent the student from being tested on a basic training course requirement, then upon written request of the agency head, the student will have eight weeks from the time of the medical release to take and pass those course requirements, unless the time between the academy graduation and medical release exceeds a one year period. In that case, the student will be required to complete another basic training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999), LR 27:49 (January 2001), LR 28:475 (March 2002), LR 31:2008 (August 2005), LR 35:1235 (July 2009), LR 36:992 (May 2010), LR 37:1606 (June 2011), LR 42:274 (February 2016), LR 44:1007 (June 2018), LR 46:693 (May 2020).

§4705. Registration

A. Full Time Grandfathered Peace Officers

1. Registration may be granted in lieu of certification to those full-time peace officers who:

a. were hired prior to January 1, 1986

b. did not attend a POST-certified training; and

c. are currently performing the duties of a peace officer.

2. *Registration* simply means that the officer is registered with POST and he/she is not required to comply with the mandates for basic POST certification.

3. Full-time peace officers hired prior to January 1, 1986, may be eligible to receive POST registration by completing the following requirements.

a. Submit a letter to the POST Council from the agency head requesting the officer be registered with the state.

b. Supporting documentation shall accompany the letter regarding initial employment date along with a chronological narrative of the officer's law enforcement service on a form prescribed by POST.

B. Part-Time/ Reserve Grandfathered Peace Officers

1. Registration may be granted in lieu of certification to those part time/reserve peace officers who:

a. were hired prior to January 1, 2022;

b. did not attend POST-certified basic training; and

c. are currently performing the duties of a peace officer.

2. *Registration* simply means that the officer is registered with POST and he/she is not required to comply with the mandates for basic POST certification.

3. Part-time/reserve peace officers hired prior to January 1, 2022, may be eligible to receive POST registration by completing the following requirements:

a. submit a letter to the POST Council from the agency head requesting the officer be registered with the state;

b. supporting documentation shall accompany the letter regarding initial employment date along with a chronological narrative of the officer's law enforcement service on a form prescribed by POST.

4. Registered part-time/reserve peace officers who are "grandfathered in" are exempt from the basic training course requirement but must comply with all other POST mandates to maintain grandfathership including POST inservice training.

C. Officers hired prior to January 1, 1986, may be eligible to receive POST registration by completing the following requirements.

1. Submit a letter to the POST Council from the agency head requesting the officer be registered with the state.

2. Supporting documentation shall accompany the letter regarding initial employment date along with a chronological narrative of the officer's law enforcement service on a form prescribed by POST.

D. Registered officers who are "grandfathered in" are exempt from the basic training course requirement but must comply with all other POST mandates to maintain grandfathership including in service training.

E. Registration/grandfathership shall become invalid if officer experiences a five year or more break in law enforcement service and has less than five years of full time experience.

F. Officers, who were hired prior to January 1, l986, and who experience a five year or more break in law enforcement, and had at least five years of full-time service, can reinstate their grandfathership by successfully completing:

1. the firearms section of the Louisiana Law Enforcement Basic Training Manual;

2. the legal aspects of the Louisiana Law Enforcement Basic Training Manual; and

3. the necessary requirements for POST registration in accordance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April l999), LR 31:3159 (December 2005), LR 37:319 (January 2011), LR 44:1008 (June 2018), LR 47:1304 (September 2021).

§4707. Out-of-State Transfers

A. Out-of-state-transfers shall be eligible for certification by meeting the following criteria at an accredited training center:

1. present a currently valid out-of-state POST certificate. Training applicants transferring from out-of-state who are not certified will not be recognized by POST;

2. must be a full-time employed peace officer and not a part-time, reserve, or auxiliary officer;

3. successfully complete "Legal Aspects" Section of the *Louisiana Law Enforcement Basic Training Manual*, (40 minimum hours);

4. successfully complete "Firearms" Section of the *Louisiana Law Enforcement Training Manual*, (40 minimum hours);

5. pass the statewide examination for peace officers with a minimum score of 70 percent; if failed, the student must complete a full basic training course.

B. Out of state transfers with less than the minimum basic training course hours or a cumulative training equivalent (as determined by the Council) are required to complete an entire POST basic training course.

C. Out-of-state transfers who have attended "pre-service" training in another state shall be required to meet the same POST requirements as basic recruit officers.

D. Out of state corrections training courses are not accepted toward certification of Basic Corrections Peace Officer (Level 2) or Jailer Training Officers (Level 3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999), LR 35:1236 (July 2009).

§4709. Interruption of Service

A. Any grandfathered peace officer who interrupts his full-time continuous law enforcement employment for a period in excess of five years ("break in service") and is subsequently rehired, shall be required to meet the basic training requirement for new peace officers unless the officer had:

1. at least a minimum of five years' experience, then the officer must meet the requirement of §4705.C;

2. already completed a POST certified basic training course, he/shall then be required to complete the legal aspects and firearms portion of the course, qualify on the POST firearms qualification course, and pass the statewide examination, at an accredited training center. Proof of basic training will be required. If the student fails the statewide examination, the student must complete a full basic training course.

B. Any certified peace officer who interrupts his/her law enforcement service for a period of not to exceed five years, must qualify with his/her firearms to reinstate their certification. If the officer had interrupted his/her law enforcement services for a period of five years, and is thereafter rehired, then the officer must meet the requirement outlined in §4709.A.2.

C. Extended medical leave does not constitute an interruption of full-time service/employment ("break in service").

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April l999), LR 31:3159 (December 2005), LR 34:1927 (September 2008), LR 37:319 (January 2011), LR 44:1008 (June 2018), LR 47:1304 (September 2021).

§4715. Instructor Qualifications

A. Full-time academy instructors must meet the following qualifications:

1. shall possess at least 60 semester hours college or may substitute practical experience in law enforcement and/or corrections as listed in Paragraph A.2;

2. each two years full-time experience may be substituted for each 30 semester hours of college. Any combination of above will be acceptable;

3. shall have completed the instructor development course conducted by the council.

4. shall have completed at least two years full-time practical experience in law enforcement and/or corrections field, which must be over and above any experience used as a substitute for college.

B. Specialized instructors for defensive tactics, firearms, and corrections shall meet the following qualification:

1. shall be a full-time employee of a public criminal justice agency with at least two years full-time continuous, practical law enforcement experience, and pertain to firearms, defensive tactics, and corrections instructors;

2. shall have recommendation of an academy director or agency head;

3. shall successfully complete all aspects of adult learning model training (except for Defensive Tactics instructors)

4. shall attend POST-sponsored instructor retrainers as required by POST. Update workshops for corrections instructors shall be held annually (effective July 1, 2005).

C. Special guest instructors shall meet the following qualifications:

1. shall have advanced knowledge or expertise in the area in which they are instructing;

2. shall not certify students in defensive tactics, firearms or corrections fields.

D. POST Firearms Instructors

1. Eligibility

a. All applicants must be a Level 1 basic peace officer that is full time and must have two years of full time practical law enforcement experience and be POST certified or grandfathered in under the current POST law.

b. If an instructor changes full time employment status (retires, part time or reserve), he/she is no longer a current POST certified firearms instructor. Only full time officers are eligible to be current POST certified firearms instructors. Only POST firearms instructors can teach, score targets and sign any paperwork.

2. Qualification Day for POST Firearms Instructor School

a. Each agency is allowed to submit two names for consideration. The nomination form must be signed by the academy director or agency head (sheriff/chief).

b.i. The three courses of fire are:

(a). bullseye (80 percent);

(b). FBI Tactical Revolver Course (80 percent); and

(c). POST Qualification Course (90 percent).

ii. These courses must be shot with an approved duty weapon.

c. A written exam will be administered on that day which will include basic firearms, safety, etc., as taught in basic training.

d. A minimum score of 80 percent is acceptable on the written exam, Bullseye and FBI Tactical Revolver Course.

e. A minimum score of 90 percent is acceptable for the POST Qualification Course. Only one attempt at qualifying at each course and the written test is acceptable. Pre-qualifications scores (on qualification day) are for admission purposes only and are not counted toward grade point average in the school.

3. POST Firearms Instructor School:

a. Students will be required to attend all sessions of training and must qualify on all courses of fire.

b. There will be a written exam each Friday with 80 percent constituting a passing grade.

c. All students must maintain at least an 80 percent grade point average throughout the course in order to successfully complete the course and graduate.

d.i. Grade points will be divided among the various segments of the school:

(a). written exams;

(b). oral and written presentations; and

(c). range qualifications.

ii. It is not possible for a student to fail both written examinations and still pass the course.

E. Retrainers for POST Firearms Instructors

1. Attendance at the firearms retrainers is required to maintain POST firearms instructor certification. This class is mandatory.

2. If for any reason instructor misses a retrainer two years in a row, their POST firearms instructor certification is revoked. The instructor must attend another firearms instructor school (classroom portion only—40 hrs.) to reactivate their certification.

3. The firearms retrainer is held at least twice every year at different locations.

4. If a POST firearms instructor misses the first retrainer, the instructor must be requalified with 90 percent (at least 108) within 90 days by a POST staff member or the POST firearm instructor designee.

5. If a POST firearms instructor is medically excused from the retrainer qualification, the instructor must requalify with 90 percent (at least 108) within 90 days by a POST staff member or the POST designee after released from their physician. This instructor must attend the classroom portion of the retrainer if physically able.

6. Any POST firearms instructor who fails to qualify the first time at the retrainer must shoot again and average the two scores. If the instructor fails to qualify with 90 percent (at least 108) with the averaged two scores, the instructor will be suspended for 90 days and allowed one opportunity to requalify by a POST staff member or the POST designee upon completion of suspension.

F. POST Corrections Instructors

1.a. Eligibility for Level 1 Corrections Instructors

i. All applicants must be both a Level 1 and Level 3 peace officer or be a Level 2 peace officer under the current law; and

ii. have two years minimum full time experience in supervising inmates in a jail or correctional facility; and

iii. Successfully complete the POST/ Corrections Instructors Course.

b. No out-of-state transfers are allowed for corrections instructor certification.

2.a. Eligibility for Level 2 Master Corrections Instructors

i. The applicant shall be a POST Corrections Instructor for at least two years; and

ii. be recommended by the head of the agency/department; and

iii. successfully complete the POST Master Corrections Instructor course.

b. The Level 2 Master Corrections Instructor can train and certify new Level 1 POST Corrections Instructors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April l999), LR 31:2008 (August 2005), LR 32:1043 (June 2006), LR 44:1008 (June 2018).

§4717. POST Instructor Development Course

A. Eligibility

1. Only full-time peace officers who have a minimum of two years full-time service are eligible to attend an Instructor Development Course (IDC).

2. Instructor Development Course (IDC) is offered to instructors assigned full-time at an accredited POST academy or for general peace officer instructors.

B. Course Requirements

1. Full-time employees of a POST accredited training academy must attend and successfully complete IDC within one year of his/her employment at that academy.

C. Registration

1. Each agency is allowed to submit two names for consideration. On the registration form, the agency head should mark 1st Priority or 2nd Priority. If there are vacancies after the deadline, vacancies will be filled using the 2nd Priority names.

2. There is a registration deadline for each course offered. The registration form must be completed, signed by the agency head or academy director and transmitted to POST office before the announced deadline.

D. Attendance

1. Attendance each day of the course is mandatory. Class hours are 8 a.m. until 5 p.m., Monday through Friday. Casual attire is acceptable most days except for Thursday when the student will present a prepared lesson plan.

2. If student is unable to attend a course, the student must notify POST no later than the Friday before the class begins on Monday. If POST is not notified and the student does not attend the class, the student's department could lose the privilege of sending another student to IDC for an entire year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:793(April 2004), amended LR 44:1008 (June 2018).

§4721. Firearms Qualification

A. Pre-Academy Firearms Training

1. Any person employed or commissioned as a peace officer, or reserve or part-time peace officer must successfully complete a pre-academy firearms training program as prescribed by the council within thirty (30) days of employment if that person will be performing the duties of a peace officer before attending a basic or refresher law enforcement training course.

B. Pre-Academy and Basic Firearms Qualification

1. Students shall qualify with an approved service weapon on the POST-approved Firearms Qualification Course and all scoring will be computed and recorded by a firearms instructor certified by the POST Council.

a. During a pre-academy training program, a student who fails may be given retests. Any person who fails shall be prohibited from exercising the authority of a peace officer until they have successfully completed the course. However, such persons shall not be prohibited from performing administrative duties.

b. During a basic law enforcement training course, it shall be left to the discretion of the training center director whether a student who fails to qualify on the POST Qualification Course will be given retests. However, if retests are given, the scores will be averaged in accordance with POST regulations and must be completed before the academy class graduates.

2. On a 25-yard range equipped with POST-approved P-1 targets, the student will fire the POST firearms qualification course at least four times. Scores must be averaged and the student must:

a. fire all courses in the required stage time;

b. use the correct body position for each course of fire;

c. fire the entire course using double action only, except in the case of single action only semi-automatic pistols;

d. fire no more than the specified number of rounds per stage;

e. fire each course at a distance no appreciably less nor greater than that specified;

f. achieve an average score of not less than 96 out of a possible 120 which is 80 percent or above. The score shall be computed as follows: Score 1 + Score 2 + Score 3 + Score 4 = Qualifying Score (divided by) the number of attempts;

g. all stages of fire must be fired in the manner specified.

3. All targets will be graded and final scores computed by a POST-certified firearms instructor.

C. Annual Requalification

1. The POST firearms requirements for annual requalification are the same as for basic qualification with one exception. If the POST Fire-arms qualification course must be fired more than once, the scores shall be averaged as designated in basic firearms qualification.

2. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:435 (August 1987), amended LR 25:664 (April 1999), LR 35:1236 (July 2009), LR 43:316 (February 2017), LR 45:1068 (August 2019).

§4723. POST Firearms Qualification Course

A. Official Post Course

Stage I	*25 yards	6 rounds standing, strong side barricade, strong hand 6 rounds standing, barricade, strong hand or support hand, off-side (60 seconds)
*NOTE: Movement to barricade required, maximum distance 5 yards.		
Stage II	*15 yards	3 rounds right side kneeling position** 3 rounds left side kneeling position** (35 seconds – movement time included) (30 seconds for indoor range)
*NOTE: Movement to kneeling position from 25-yard line to 15-yard line. **NOTE: Shooter will "simulate" the usage of a low barricade if no barricade is available.		
Stage III	7 yards	Phase I 6 rounds strong hand only from the holster. Ready gun after rounds are fired. (10 seconds)
		Phase II 6 rounds support hand only from ready gun (10 seconds)
		Phase III 6 rounds standing 6 rounds kneeling – reload while kneeling* (25 seconds)
*NOTE: Mandatory reloading for all weapons during Phase III.		
Stage IV	4 yards	Phase I **Headshots mandatory** 2 rounds body, 1 round head, step right, hold cover (3seconds) 2 rounds body, 1 round head, step left (3 seconds) scan and holster
		Phase II **Headshots mandatory** 2 rounds body, 1 round head, step left, hold cover (3seconds) 2 rounds body, 1 round head, step right (3 seconds) scan and holster
Stage V	2 yards	2 rounds, one or two hands (2 seconds) Close quarter shooting position from holster with one full step to the rear. Repeat twice

Target:	**LA P-1**
Possible Points:	120
Qualification:	96 (80 percent overall)
Scoring:	Inside ring = 2 points Outside ring = 1 point

POST Course is fired using a "HOT LINE"!

B. Scoring of Target

I. INTRODUCTION

The following guidelines are published to provide a standard target and scoring system for the POST Qualification Course. The POST Qualification Target will be used for the course.

II. SCORING OF THE POST TARGET

A. Each hit in the silhouette, outside of the scoring ring, will be scored as one point.

B. Each hit in the scoring ring will be scored as two points. This includes the head and neck inside the ring.

C. A hit will not be recorded in the next higher scoring ring unless it breaks the line.

III. QUALIFICATION REQUIREMENTS

A. Shooter must shoot 80% of possible 120 = 96 minimum score

5 shot – 50 rounds worth 2 points each = 100 scoring points

80% of possible 100 = 80 minimum score on 5 shot

B. Basic academy qualification shooter will fire course 4 consecutive times and must average 80% minimum.

C. For Annual Re-Qualification, POST Course must be fired once annually with 80% minimum score.

D. For qualification course, basic or annual, certified POST Firearms Instructor must score the target.

For basic academy and Annual Re-Qualification, qualification course MUST be fired in order listed.

C. The effective date for implementation of this POST qualification course is January 1, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of

Criminal Justice, LR 13:434 (August 1987), amended LR 25:665 (April l999), LR 32:1043 (June 2006), LR 35:238 (February 2009), LR 45:1068 (August 2019).

§4725. POST Approved Shotgun Course

A. Slug Phase

1. Option One (50 yards - Option One will always be used where a 50-yard shooting position is available) Time Limit: 25 seconds

a. The shooter will assembly load one rifled slug and take aim.

b. On command, the shooter will fire one round from the shoulder in the standing position, kneel, combat load one round in the kneeling position and fire from the kneeling position.

2. Option Two (25 yards) Time Limit: 25 seconds

a. The shooter will assembly load one rifled slug and take aim.

b. On command, the shooter will fire one round from the shoulder in the standing position, kneel, combat load one round in the kneeling position and fire from the kneeling position.

B. Transition Phase*: 4 Yards (no shotgun rounds / 2 handgun rounds) Total time: 4 seconds

a. Upon instruction operate the slide/action several times to ensure empty.

b. On command dry fire empty shotgun, transition and fire two rounds center mass of target.

C. Buckshot Phase:(Recommend use of 9-pellet "OO" Buckshot - may be fired with any buckshot.)

1. 15 Yards (5 rounds Buckshot) Total time: 35 seconds

a. On command assembly load two rounds of buckshot and come to "ready gun position". Shooter will have three additional rounds of buckshot on his/her person.

b. On command, Shooter will fire two rounds from the shoulder (standing), then combat load three rounds and fire three rounds from the shoulder (kneeling).

2. 25 Yards (5 rounds Buckshot) Total time: 35 seconds

a. On command assembly load two rounds of buckshot and come to "ready gun position". Shooter will have three additional rounds of buckshot on his/her person.

b. On command, Shooter will fire two rounds from the shoulder (standing), then combat load three rounds and fire three rounds from the shoulder (kneeling).

Target: **POST qualification (LA P-1)**
Possible Score:
Transition / Slug / Buckshot: 102 point possible*
Slug / Buckshot: 100 point possible
Scoring:
Slug: Five points for hit on green of P-1 target.
Transition: One point for hit on green of P-1 target
Buckshot: One 1 point for hit on green of P-1 target
Total score should equal 80 per cent

*NOTE: The transition phase is not required for Level 3 and Non-POST Certified shooters. Without the transition phase scoring will be a 100pt. course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:435 (March 2004), amended LR 31:2009 (August 2005), LR 45:1068 (August 2019).

§4727. POST Approved Low Light/Modified Light Course

A. Low Light/Modified Light Course

Stage I	*25 yards	(*with light*) (25 yard stage is not mandatory) 6 rounds standing, strong side barricade, strong hand 6 rounds standing, barricade, strong hand or support hand, off-side (60 seconds)
*NOTE: Movement to barricade required, maximum distance 5 yards.		
Stage II	*15 yards	(*with light*) 3 rounds right side kneeling position** 4 rounds if 25yd not used 3 rounds left side kneeling position** 4 rounds if 25yd not used (35 seconds – movement time included) (30 seconds for indoor range)
*NOTE: Movement to kneeling position from 25-yard line to 15-yard line. **NOTE: Shooter will "simulate" the usage of a low barricade if no barricade is available.		
Stage III	7 yards	Phase I *(with light)* 6 rounds strong hand only from the holster (10 seconds)
		Phase II *(with or without light)* 6 rounds support hand only from ready gun (10 seconds)
		Phase III *(with light)* 6 rounds standing 6 rounds kneeling – reload while kneeling* (25 seconds)
*NOTE: Mandatory reloading for all weapons during Phase III.		
Stage IV	4 yards	Phase I - Headshots mandatory *(with light)* 2 rounds body, 1 round head, step right, hold cover (3seconds) 2 rounds body, 1 round head, step left (3 seconds) scan and holster
		Phase II - Headshots mandatory *(with light)* 2 rounds body, 1 round head, step left, hold cover (3seconds) 2 rounds body, 1 round head, step right (3 seconds) scan and holster
Stage V	2 yards	*(with or without light)* 2 rounds, one or two hands (2 seconds) Close quarter shooting position from holster with one full step to the rear. Repeat twice.

(Using all stages)
Target: **LA P-1**
Possible Points: 120
Qualification: 96 (80% overall)
Scoring: Inside ring = 2 points

Outside ring = 1 point

(Deleting Stage I adding 2rds to Stage II)
Target: **LA P-1**
Possible Points: 100
Qualification: 80 (80% overall)
Scoring: Inside Ring = 2 points
Outside ring= 1 point
POST Course is fired using a "HOT LINE"!
(Course approved 12/6/18)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 45:1069 (August 2019).

§4731. Revocation of Certification

A. All law enforcement agencies and correctional agencies and institutions within the state of Louisiana shall immediately report the conviction of any POST certified full time, reserve, or part-time or grandfathered peace officer to the council.

B. The P.O.S.T. certification of any qualified peace officer, whether employed full-time, part-time, or reserve, shall be revoked upon the occurrence of any of the following conditions:

1. a conviction of malfeasance in office;

2. a conviction of an offense which results in the individual peace officer's restriction of his constitutional right to bear arms.

C. The P.O.S.T. council may conduct a revocation hearing to determine whether the certification of any qualified peace officer, whether employed full-time, part-time, or reserve, shall be revoked if the officer:

1. was involuntarily terminated by his employing law enforcement agency for disciplinary reasons involving civil rights violations and the officer had exhausted all administrative remedies.

2. was convicted of a misdemeanor involving domestic abuse battery as provided in R.S. 14:35.3 or a felony in any court in the U.S.

3. failed to complete additional training as required/prescribed by the council.

4. voluntarily surrenders his certification.

5. Has a judicial disposition in a criminal case that results in revocation.

D. Any hearings conducted by the council or appeal by an officer are conducted by rules and regulations established by the council.

1. An officer subject to a revocation hearing shall be duly notified at least 30 days in advance of the hearing by the council.

2. The council may take testimony and evidence during the hearing, and make findings of fact and conclusions of law.

3. The council shall forward its decision via certified U.S. mail to the peace officer and the officer's employing agency.

E. Revocation hearings conducted by the P.O.S.T. can be conducted during a regularly scheduled meeting.

F. Any peace officer whose certification has been revoked may file an appeal to the decision under the provisions of the Administrative Procedure Act under R.S. 49:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 25:665 (April 1999), amended LR 34:1927 (September 2008), LR 44:1008 (June 2018).

§4733. Suspension of Certification

A. The POST Council may consider the suspension of a peace officer's certification when an incident involving the officer has been referred to it for review.

B. A *referred incident* is an incident:

1. which has been investigated; and

2. where the investigation has resulted in evidence of misconduct or violation of law; and

3. where either:

a. the law enforcement agency head has referred the incident to the POST Council for review; or

b. a district attorney, or the attorney general has referred the incident to the POST Council for review; or

c. an official acting in their elected/appointed capacity, such as a judge or mayor, has referred the incident to the POST Council for review.

C. Referred Incidents Subject to Review

1. The POST Council may conduct a suspension hearing to review referred incidents involving misconduct, as found by a court or law enforcement agency, which includes:

a. violation of any statute or ordinance; or

b. use of excessive force; or

c. dishonesty or deception in violation of statute, ordinance, or policy of the employing law enforcement agency; or

d. biased or prejudicial misconduct against one or more individuals based on the individual's race, color, sex, pregnancy, age, religion, national origin, disability, sexual orientation, or gender identity; or

e. failure to perform duties and/or willful neglect of duties; or

f. misuse of authority.

2. The POST Council shall conduct a suspension hearing to review referred incidents involving misconduct,

as found by a court or law enforcement agency, which includes:

a. conviction of violation of any statute or ordinance; or

b. resignation from an employing agency in lieu of termination or while under investigation; or

c. involuntarily terminated from an employing agency for cause; or

d. failure to meet annual POST in-service training requirements.

3. The POST Council may not suspend or revoke the certification of a peace officer for a violation of statute or ordinance, or a violation of the employing law enforcement agency's policies, that does not include misconduct listed in Paragraphs 1 or 2 above.

4. Due process requirements by law shall be afforded to the peace officer whose misconduct is under review.

D. Emergency Suspensions

1. Upon arrest or indictment of a peace officer for any crime which is punishable as a felony, the chairman of the POST Council may order the emergency suspension of the peace officer's POST certification, upon their determination that the suspension is in the best interest of the health, safety, or welfare of the public.

2. The order of emergency suspension shall be made in writing, and specify the basis for the chairman's determination. The emergency suspension order of the chairman shall continue in effect until issuance of a final decision of the POST Council or when such order is withdrawn by the chairman/POST Council.

E. Any hearings conducted by the council or appeal by an officer are conducted by rules and regulations established by the council.

1. An officer subject to a suspension hearing shall be duly notified at least 30 days in advance of the hearing by the council.

2. The council may take testimony and evidence during the hearing, and make findings of fact and conclusions of law.

3. The council shall notify the officer and the officer's employing agency regarding any decision.

4. Suspension hearings conducted the council can be conducted during a regularly scheduled meeting.

F. Conditions of Suspension

1. A suspension cannot begin sooner than the date of the misconduct.

2. A suspension may be ordered to run concurrently or consecutively with any other suspension.

3. Any suspension period cannot extend beyond 36 months (3 years).

G. Reinstatement after Suspension

1. A suspension issued for "failure to meet annual POST in-service training requirements" shall be automatically withdrawn upon confirmation that required training has been completed within the prescribed timeframe or by the issuance of a waiver by the POST Council. The peace officer's POST certification will be immediately reinstated, provided there are no other existing suspensions.

2. If the POST Council/staff is informed that criminal charges are dropped, withdrawn, or dismissed, the suspension is automatically removed. The peace officer's POST certification will be immediately reinstated, provided there are no other existing suspensions.

3. Any peace officer has the right to request an appeal of decision after being suspended or revoked by the POST Council. The request shall be submitted in writing to the POST Council, and include the reasons/justification for the reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 48:1275 (May 2022).

§4741. Training Centers

A. Each training center will be subject to a comprehensive performance review by the council once every four years.

B. Each training center will be monitored at least annually to ensure compliance with the council's training standards.

C. Each training center shall transmit to the POST Council a schedule of POST certifiable training being conducted. The training schedule shall be submitted no later than the Friday preceding the date on which the training is to be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 25:666 (April 1999).

§4743. Training Center Records

A. Each accredited training center shall develop and maintain a records management program consistent with state law (R.S. 44:411) and its own department policies, where appropriate.

B. The training center must, as part of its record management program, retain its training records for a minimum period of at least five years so its mandated POST comprehensive performance review can be conducted as required by R.S. 40:2404(5).

C. Record retention and disposal schedules shall be continuously updated as part of the training center's record management program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:833 (May 2006).

§4750. In Service Training and Certification

A. Firearms

1. Annual Requalification

a. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a POST certified firearms instructor.

b. If the period between qualifying exceeds 13 months for any reason, the officer will be required to successfully complete the pre-academy firearms course conducted by a POST certified firearms instructor, unless the officer had been in the military for more than five years and was exercising his veteran reemployment rights.

B. Minimum Training Hours

1. Each calendar year, all certified level 1 and 2 officers must successfully complete, at a minimum, the required 20 hours of in-service training hours to maintain certification, unless waived by the council. This requirement includes "grandfathered" peace officers. These training requirements begin the first calendar year after receiving certification or successful completion of "refresher" training.

2. The training hours must include, at a minimum:

a. legal (2 hours)

b. firearms (8 hours)

c. officer survival (4 hours)

d. electives (6 hours)

C. Failure to complete training requirements

1. If peace officer fails to complete the required number of training hours during a calendar year, the POST certification for the officer will be temporarily suspended. Once an officer's certification has been suspended, that officer shall be given 90 calendar days to correct his training deficiency, at which point the suspension shall be lifted. If an officer fails to correct his training deficiency within the 90-day probationary period, that officer's certification shall be revoked under provision of §4731(B)(3). Training completed while an officer's certification is suspended shall not count toward that officer's training requirements for the current year. To reactivate the certification, the officer must attend and successfully complete a "refresher" course as prescribed by the council.

2. Peace officers called to active military duty will not be required to complete in-service training requirements missed while performing the active duty service.

D. Training Coordinators

1. Each law enforcement agency shall designate a training coordinator to manage the training affairs of their agency's officers throughout the year. The agency head may serve as the training coordinator.

2. The training coordinators are required to use the POST designated learning management system (LMS) to schedule and document their officer's training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR:37:1606 (June 2011), amended LR 43:316 (February 2017), LR 44:1009 (June 2018), LR 48:1276 (May 2022).

§4761. Advanced Training

A. Sexual Assault Awareness Training

1. On and after January 1, 2016, each full-time peace officer shall complete a sexual assault awareness training program as provided by the council pursuant to R.S. 40:2405.8. The training program shall be implemented through a series of learning modules developed for this purpose.

B. Lead Homicide Investigator Training

1. Initial Training Course

a. The course content of the initial training course shall be approved by the council.

b. The content shall be determined based on a recommendation from a "curriculum committee" appointed by the council.

c. The "curriculum committee" shall consist of active homicide investigators, who shall advise the council on course content. The committee will consist of board members of the Louisiana Homicide Investigations Association.

d. Vehicular homicide investigators are not required to complete this course.

2. Waiver

a. The council may issue a waiver for the initial training course on a case-by-case basis declaring that an officer has previously received training and experience that is substantially equal to or exceeds that provided by the course.

b. A waiver form submitted to the council shall be reviewed by the committee and recommendations made to the council.

3. Certificate

a. Officers who complete the initial basic course or receive a waiver from the council shall be issued a certificate.

C. Domestic Violence Awareness Training

1. Each peace officer, as defined in R.S. 40:2402(3)(a) shall complete a domestic violence awareness training program as provided by the council pursuant to R.S. 40:2405.8(E). The training program shall be implemented through a series of learning modules developed for this purpose.

D. Communication with the Deaf and Hard of Hearing Individuals

1. Each peace officer, as defined in R.S. 40:2402(3)(a) shall complete an interactive training module as provided by the council on communicating with deaf and hard of hearing individuals pursuant to R.S.40:2405.8(F)(2).

E. Officer Involved Shooting Investigator Certification

1. Agency Certification

a. In order for an agency to be certified by the council to conduct officer involved shooting investigations, the agency must have at least three certified officer involved shooting investigators.

b. The POST Council will review each agency's certification annually, ensuring at least three investigators remain certified, according to the required criteria.

2. Investigator Certification

a. In order for an investigator to be certified by the council to conduct officer involved shooting investigations, the investigator must meet the following criteria:

i. must be a POST certified homicide investigator; and

ii. must have five years of general investigative experience; and

iii. must have three years of homicide investigative experience; and

iv. must have successfully completed a POST approved officer involved shooting investigator training.

b. The council may issue a waiver for the officer involved shooting investigator training, on a case-by-case basis, declaring that an investigator has previous experience and/or training that is substantially equal to or exceeds that provided by a training course. The waiver request must be submitted, in writing, to the council for review/approval.

c. In order for an investigator to remain certified by the council to conduct officer involved shooting investigations, the investigator must meet the following criteria:

i. must complete eight hours of continuing education annually (each calendar year);

ii. the following topics areas are recommended for the required continuing education hours: crime scene investigation, interview and interrogation, use of force, de-escalation, bias policing recognition, critical thinking, investigative techniques, investigation ethics, internal affairs, etc.;

iii. continuing education hours must be reported to POST, by the agency training coordinator, by December 31 of each calendar year;

iv. POST staff must report all deficiencies to the POST Council annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 42:274 (February 2016), amended by the Office of the Governor, Commission on Law Enforcement,LR 43:316 (February 2017), LR 44:1009 (June 2018), LR 48:298 (February 2022), LR 48:1276 (May 2022).

§4771. Emergencies and/or Natural Disasters

A. All previously certified and registered peace officers who have retired from full time law enforcement service for five years or more will be granted the authority to serve as "provisional peace officers" for the agency from which they retired during a state of emergency within a declared emergency zone. The provisional peace officer applicant must successfully qualify with his/her duty weapon as soon as possible with a P.O.S.T. certified firearms instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 33:1627 (August 2007).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 5. Grant Application or Subgrants Utilizing Federal, State or Self-Generated Funds

Chapter 51. Appeals Procedure

§5101. Appeals Procedure

A. When an application for funding is rejected by the commission, or when an approved subgrant is discontinued, the applicant or subgrantees may appeal the decision of the commission by filing a notice of appeal with the Louisiana Commission on Law Enforcement at the recognized business address (2121 Wooddale Boulevard, Room 6120, Baton Rouge, LA 70806). The notice of appeal must be by certified mail and must be filed no later than 15 business days after receipt of the notice of denial by the applicant or subgrantee.

B. Upon receipt of the notice of appeal by the LCLE, the executive director will notify the commission that an appeal hearing will be held on the date of the next regularly scheduled commission meeting. The priorities committee will hear the appeal and make recommendations to the commission. The executive director shall designate the time and place of the meetings, and a copy of the notice shall be sent to the applicant or subgrantee.

C. On the date of the next regularly scheduled commission meeting, the priorities committee shall meet and hear evidence by the applicant or subgrantee relative to reasons the appeal should be granted. The applicant or subgrantee may present as many witnesses as may be necessary to support his appeal, except that the committee chairman may limit the number or time allotted to the witnesses where necessary. The secretary to the commission shall take minutes of the appeal hearing and the entire hearing shall be recorded. The committee may also request other evidence relating to the application or project.

D. At the conclusion of the hearing, the committee shall present its findings and make recommendations to the commission.

E. A vote shall then be taken on the appeal.

F. In the event the appeal is denied, the applicant or subgrantee may, within 15 days of the date of denial, file with the Office of the Governor and the Louisiana Commission on Law Enforcement, a notice of appeal to the governor. The notice of appeal must be by certified mail.

G. Upon receipt of the notice of appeal to the governor, the Louisiana Commission on Law Enforcement shall have 15 days to provide the applicant or subgrantee and the governor with the minutes of the appeal hearing and a copy of the vote of the commission. The recorded tapes shall also be made available to the governor at his request.

H. The results of the appeal to the governor shall be communicated to the Louisiana Commission on Law Enforcement within 20 days.

I. Nothing herein shall preclude the resubmission of an application through the use of regular Louisiana Commission on Law Enforcement procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 15:1071 (December 1989).

Chapter 53. Drug Abuse Resistance Education (D.A.R.E.)

§5301. Introduction

A. In response to the mounting concern about the use of drugs by youth, the Louisiana Commission on Law Enforcement will make Drug Abuse Resistance Education (D.A.R.E.) grants available to sheriffs' offices and police departments who can demonstrate the capacity to offer the D.A.R.E. program in accordance with the national model. The D.A.R.E. Program National Model is contained in the U.S. Department of Justice, Bureau of Justice Assistance Program Brief, entitled "An Invitation to Project D.A.R.E." Copies of this program brief are available by contacting the Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Suite 708, D.A.R.E. Unit, Baton Rouge, LA 70806.

B. D.A.R.E. is a substance abuse prevention program designed to equip school children with skills for resisting peer pressure to experiment with tobacco, drugs, and alcohol. This program uses uniformed law enforcement officers to teach a formal curriculum to students in a classroom setting. Law enforcement officers must become certified by completing the required D.A.R.E. training offered through a certified D.A.R.E. training center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204.9.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 21:566 (June 1995).

Chapter 55. Uniform Crime Reporting System

§5501. Funding Eligibility

A. Effective January 1, 1998, law enforcement agencies that fail to participate in the state Uniform Crime Reporting System (UCR) or having been relieved of that obligation

through certification as a Louisiana Incident Based Crime Reporting System (LIBRS) agency that fail to participate in the LIBRS program shall not be eligible for funding under any grant program administered by the Commission on Law Enforcement.

B. Any agency receiving funding to participate in the Louisiana Incident Based Crime Reporting System (LIBRS) that fails to participate in the system shall not be eligible for funding under any grant program administered by the Commission on Law Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:936 (May 1998).

Chapter 57. Formula for Distribution of Federal Grant Funds

§5701. Adoption

A. The proposed distribution formula for federal grant funds was adopted by the commission at its meeting on March 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1201, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 26:1018 (May 2000), amended LR 38:1588 (July 2012).

§5702. Introduction

A. The commission distributes federal grant funds to the state's local law enforcement agencies through law enforcement planning districts via a funding formula initially devised in 1977, and subsequently modified as necessary by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1201, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 26:1018 (May 2000), amended LR 38:1588 (July 2012)

§5703. Distribution Formula

A. Included in the 1977 distribution formula was a variable base of funding for each law enforcement planning district based on the percentage of the district's crime rate to that of the entire state, as well as a rural adjustment for those areas of the state facing unique fund distribution problems given their population and criminal justice manpower percentage deviations. The rural adjustment allowed these rural districts to have sufficient funding for meaningful programs. Once the variable base and adjustments have been determined, the formula uses the following variables to determine how the remaining funds are distributed to each law enforcement planning district:

1. planning district's percentage of the state's total Uniformed Crime Reporting Part 1 Offenses;

2. planning district's percentage of state's total criminal justice manpower;

3. planning district's percentage of state's total population.

B. Given the changes in the state's crime, popul ation, and manpower figures since 1977, the commission collected data on the aforementioned variables through the year 2011, to include the most recent year for which data was available. The distribution formula devised for the years 2012 through 2021 modifies the variable base and maintains the rural and urban adjustments to reflect existing conditions within each planning district.

C. The proposed distribution formula percentage for each Law Enforcement Planning District for the years 2012 through 2021, as based on the most recent data, is as follows.

Law Enforcement Planning District	Formula Distribution Percentage
Northwest	11.07
North Delta	10.77
Red River	9.74
Evangeline	10.66
Capital	15.95
Southwest	10.44
Metropolitan	15.48
Orleans	15.89

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1201 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 26:1018 (May 2000), amended LR 38:1588 (July 2012).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 6. Program Operational Policies

Chapter 59. Drug Policy and Violent Crime Advisory Board

§5901. Adoption

A. The following operational policies are hereby adopted by the Drug Policy and Violent Crime Advisory Board pursuant to LAC 22 Part III Subpart 3 Chapter 45, §4511 and shall be effective upon approval of the Louisiana Commission on Law Enforcement as provided therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:81 (January 2006).

§5903. Introduction

A. All programs assigned by the commission to the Drug Policy and Violent Crime Advisory Board shall be governed by the rules set forth in this Section, unless explicitly removed from one or more of them by a vote of the commission upon the recommendation of the Drug Policy and Violent Crime Advisory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:82 (January 2006).

§5905. Program Rules

A. Governance. The rules and governance of the federal grant program shall be followed in all cases. Should federal programs be assigned to the Drug Policy and Violent Crime Advisory Board, which are more restrictive than those contained in this Section, the federal rule shall prevail. Subgrantees are responsible for compliance with all federal and state governance, regulations, and certifications applicable to their subgrant.

B. Match

1. All grant programs shall be matched in an amount not less than 25 percent of the total grant award.

2. Grants may be matched on an aggregate or statewide basis.

C. Funding

1. Administrative funds may be allocated from the total block grant award in an amount not to exceed the maximum established in the federal guidance.

2. After administrative funds are allocated, no more than 25 percent of the block grant funds may be allocated to state agencies or departments, unless otherwise required by the applicable federal guidance.

3. The remaining allocations shall be distributed among the regional planning districts as determined by the most recent formula adopted by the commission, unless otherwise specified in the federal guidance.

4. A minimum of 5 percent of the total block grant, exclusive of administrative funds, shall be for criminal record improvement programs.

D. Programs

1. All applications for funding shall specify a program, and not merely equipment or supplies.

2. Equipment and supplies are fundable items unless otherwise specified in the operational policies, but must be part of a program.

3. Eligible programs shall be defined in the operational policies of the Drug Policy and Violent Crime Advisory Board. When the operational policies are silent, the federal eligibility requirements shall serve as the determining governance. The operational policies may be more restrictive but not more inclusive than the federal guidance, unless otherwise stipulated in the federal guidance.

4. No program shall receive funding for a period greater than 48 months, with the exception of criminal records improvement projects, training, and multi-jurisdictional task forces.

E. Waiver. The commission may waive any of the policies contained in this Section provided:

1. an agency or organization eligible to receive funding under the applicable federal guidance submits a written request for waiver to the drug policy and Violent Crime Advisory Board; and

2. the Drug Policy and Violent Crime Advisory Board votes to recommend the waiver to the commission; and

3. the commission approves the waiver by a two-thirds vote of the members present and voting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:82 (January 2006).

Chapter 61. Policies and Procedures [Formerly Chapter 49]

§6101. VOCA and VAWA Grants [Formerly §4901]

A. The issues of services to victims of crime, underserved victims and an increased awareness of the prevalence and severity of domestic violence and violence against women coupled with the increased availability of federal funds to address these issues at the state, regional and local levels, have led to federal grant programs designed to focus on these topics. The Louisiana Commission on Law Enforcement has been named as the cognizant state agency for the federal programs and will make available to appropriate non-profit and public agencies grant funds, to be spent in accordance with federal program guidelines and the guidelines of the Victim Services Advisory Board and the Louisiana Commission on Law Enforcement.

B. The Victims of Crime Act of 1984 (VOCA) established within the U.S. Treasury an account funded by federal fines, penalties and forfeited bail bonds to be used for the purpose of funding victim assistance grants to the states. These grants are to be used for programs that provide direct services to victims of crime, with priority given to programs that have as their principal mission direct assistance to victims of sexual assault, spousal abuse, child abuse, and previously underserved victims of violent crime. VOCA funds in the state are administered by the Louisiana Commission on Law Enforcement in consultation with Victim Services Advisory Board to the Commission. The VOCA program in Louisiana is administered pursuant to the federal regulations in effect for the program.

C. For more information, interested persons may contact the Victim Services Section of the Louisiana Commission on Law Enforcement.

D. The Violence Against Women Act (VAWA) of 1994 was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services of these crimes. The State office shall allocate funds to courts, and for law enforcement, prosecution and victim services (including funds that must be awarded to culturally specific community-based organizations.) The VAWA program in Louisiana is administered pursuant to the federal regulations in effect for the program.

E. For more information, interested persons may contact the Victim Services Section of the Louisiana Commission on Law Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 15:1071 (December 1989), amended LR 29:2376 (November 2003), repromulgated LR 32:82 (January 2006) , amended LR 45:658 (May 2019).

Chapter 63. POST Equipment and Training Grants

§6301. Adoption

A. The following operational policies are hereby adopted by the Peace Officer Standards and Training Council pursuant to LAC 22 Part III Subpart 3 Chapter 45, §4511 and shall be effective upon approval of the Louisiana Commission on Law Enforcement as provided therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2044 (November 2006).

§6303. Eligible Agencies

A. In addition to training, Act 562 of the 1986 Legislative Session provides for "assistance" to local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6305. Eligible Purchases

A. Assistance funds may be used to purchase law enforcement or criminal justice-related equipment. These purchases may include, but are not limited to, the following items: portable radios, computer equipment, monitors, printers, scanners, electronic word processors, target systems (no targets), audio-visual equipment, television, VCR, telefax machines, training equipment and supplies, textbooks and manuals, surveillance equipment/cameras (grants for surveillance equipment will require a special condition), body armor (bullet-proof vests), and metal detectors. Video cameras, laptop computers, radio equipment (not radar), and cellular telephones are allowable for police automobiles.

B. When funds are used for portable radios, computers, etc., POST will allow accessories to be purchased with grant funds when used in purchasing a whole package. Example: portable radio with microphone, battery pack and carrying case, etc. It is restricted to purchase a microphone without purchasing the whole package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6307. Funding Restrictions

A. There is a general restriction prohibiting the funding of the following items:

1. all mobile vehicles (automobiles, vans, airplanes, boats, etc.), gasoline, tires, automobile repair and maintenance, insurance, uniforms, leather and accessories, firearms, tazers, and ammunition;

2. all office equipment and furniture: desks, typewriters, file cabinets, chairs, tables, credenzas, lamps, copiers, etc. Certified training academies may purchase copiers, student desks and/or chairs and file cabinets for proper storage of training records;

3. equipment purchased solely for recreational purposes is ineligible for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6309. Renovation

A. Act 562 assistance funds may not be used for renovation. Exceptions to this prohibition may be made by the full commission, if renovations are needed for a locally-funded, accredited academy to maintain compliance with POST standards and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6311. Training

A. In lieu of equipment purchases, a regional planning district may request funding to reimburse for in-service, specialized and advanced training costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6313. Liquidation Period

A. The liquidation period for all Act 562 assistance grants shall be June l of each fiscal year. Use of residual funds during the year-end liquidation period is limited to those agencies who submit revenues on a regular basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 7. Asset Forfeiture

Chapter 71. Code of Professional Conduct [Formerly Chapter 61]

§7101. Adoption [Formerly §6101]

A. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice has adopted a code of professional conduct for asset forfeiture at a meeting held Tuesday, December 2, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:935 (May 1998), repromulgated LR 32:83 (January 2006).

§7102. Introduction [Formerly §6102]

A. The purpose of the *Code of Professional Conduct* is to establish ethical standards applicable to asset forfeiture programs throughout the state of Louisiana. These standards are similar to the *National Code of Professional Conduct for Asset Forfeiture*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:935 (May 1998), repromulgated LR 32:83 (January 2006).

§7103. Code of Professional Conduct [Formerly §7103]

A. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

B. A prosecutor's or sworn law enforcement officer's employment or salary shall not be contingent upon the level of seizures or forfeitures he or she achieves.

C. Whenever practical, and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.

D. A judicial finding of probable cause must be secured as provided by law.

E. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.

F. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.

G. All property forfeited must be sold at public sale, and the proceeds distributed according to law.

H. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

I. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.

J. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:935 (May 1998), repromulgated LR 32:83 (January 2006).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 8. Innocence Compensation

Chapter 81. Authority and Definitions

§8101. Authority

A. Rules and regulations are hereby established by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice for the administration of the Innocence Compensation Fund by order of Act 696 of the 2012 Louisiana Legislature, R.S. 15:572.8(N), (R), and (S).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8103. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Commission—the Louisiana Commission on Law Enforcement.

Court—the *court* ordering payment pursuant to R.S. 15:592.8.

Factual Innocence—the petitioner did not commit the crime for which he was convicted and incarcerated nor did he commit any crime based upon the same set of facts used in his original conviction.

Fund—the Innocence Compensation Fund.

Petitioner—one who has been convicted of and imprisoned for crimes of which they are factually innocent as determined by a court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 83. Eligibility and Application Process

§8301. Eligibility

A. To be eligible for payments from the Innocence Compensation Fund pursuant to the provisions of R.S. 15:572.8, a petitioner must have been awarded compensation by the district court in which the original conviction was obtained, and the parties have exhausted their ability to have the judgment reviewed by the appellate courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8303. Application Process

A. Petitioners wishing to receive payments from the Innocence Compensation Fund shall file an application with the commission (application available online at www.lcle.la.gov).

B. Applications must be signed and dated by the petitioner and, if applicable, his legal representative. Only original signatures, no copies, will be accepted.

C. Unless the court awarding compensation has served a copy of the judgment upon the commission, the petitioner must attach a certified copy of the court judgment to the application or order awarding compensation pursuant to R.S. 15:572.8.

D. If a court enters a judgment or order that a petitioner is entitled to additional compensation, the petitioner must file a new application attaching a certified copy of the new court order or judgment awarding the additional compensation.

E. If a petitioner becomes eligible for additional compensation, the petitioner may file a new application with the commission for the additional compensation to which he is entitled. If the amount of additional compensation to which the petitioner is entitled is clear from the previous court judgment or order awarding compensation, the petitioner need not obtain a new court judgment or order for the additional compensation. The petitioner must attach a certified copy of the previous court judgment or order awarding compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 85. Payments

§8501. Payments from the Innocence Compensation Fund

A. The commission will only make payments in amounts and at times specifically ordered by a court judgment or order pursuant to R.S. 15:572.8.

B. Supplemental payments will be made by the commission in accordance with the provisions of the

judgment after verification of petitioner's current mailing address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 87. Administration and Annual Report

§8701. Administration

A. In accordance with R.S. 15:572.8(N)(1), the Innocence Compensation Fund is administered by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8703. Annual Report

A. In accordance with R.S. 15:572.8(R), the commission will submit an annual report on the Innocence Compensation Fund to the governor and the legislature on or before April 1 of each year.

B. The annual report will include the number of awards and the total amount of funds distributed during the preceding year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1042 (April 2013).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part V. Board of Pardons
Chapter 1. Administration

§105. Discretionary Powers of the Board

A.1. The Board of Pardons, at its discretion, may deny any applicant a hearing for any of the following reasons:

a. serious nature of the offense;

b. insufficient time served on sentence;

c. insufficient time after release;

d. proximity of parole/good time date;

e. institutional disciplinary reports;

f. probation/parole—unsatisfactory/violated;

g. past criminal record; or

h. any other factor determined by the board.

2. However, nothing in Chapter 1 shall prevent the board from hearing any case.

B. In any matters not specifically covered by LAC 22:V.Chapter 1, the board shall have discretionary powers to act.

C. No person shall have a right of appeal from a decision of the board of pardons or the governor regarding clemency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:1133 (June 1998), LR 28:1026 (May 2002), amended by the Office of the Governor, Board of Pardons, LR 39:2252 (August 2013).

§119. Training

A. Within 90 days of being appointed to the board, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15.572.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:42 (January 2015).

§121. Contact with the Board of Pardons

A. Contact with the Board of Pardons or any member is prohibited except by appearing/testifying at a public hearing or by written letter addressed to the Board of Pardons.

B. If a board member is improperly contacted, he/she must immediately notify the individual in writing that the contact is illegal. The letter must be accompanied by a copy of R.S. 15:573.1, and the contact must be reported to the other board members.

C. Any prohibited contact after an individual has been informed of the prohibition as provided in §121.B shall be fined not more than $500 or imprisoned for not more than six months or both.

D. All letters in favor of pardon, clemency, or commutation of sentence are subject to public inspection. Exceptions to §121 are:

1. letters from any victim of a crime committed by the applicant being considered for pardon, clemency, or commutation of sentence, or any person writing on behalf of the victim;

2. any letters written in opposition to pardon, clemency, or commutation of sentence.

E. All letters written by elected or appointed public officials in favor of or opposition to pardon, clemency, or commutation of sentence received after August 15, 1997 are subject to public inspection and shall be recorded in a central register maintained by the board. The register shall contain the name of the individual whose pardon, clemency, or commutation of sentence is subject of the letter, the name of the public official who is the author of the letter and the date the letter was received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013).

§123. Board Spokesperson

A. Only the chairman of the board or, in the absence of the chairman, the vice-chairman shall be authorized to speak on behalf of the entire board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013).

§125. Records Management and Confidentiality of Information

A. Records Management and Retention

1. The board shall implement a records management program to ensure all Board of Pardons vital records are stored managed, and disposed of in accordance with state law. The board shall use the records retention schedule created and maintained by the Department of Public Safety and Corrections, Corrections Services.

B. Confidentiality

1. The presentence investigation report, the pre-parole report, the clemency investigation, the information and data gathered by staff of the board, the prison record, and any other information obtained by the board or the Department of Public Safety and Corrections, in the discharge of their official duties shall be confidential and shall not be subject to public inspection or be disclosed directly or indirectly to anyone except as provided by these rules and La. R.S. 15:574.12, and regulations of the Department of Public Safety and Corrections.

C. Release of Information—Sex Offenders

1. board is authorized to release to the public the following information regarding sex offenders:

a. name and address;

b. crime of conviction and date of conviction;

c. date of release on parole or diminution of sentence;

d. most recent photograph available; and

e. any other information that may be necessary and relevant for public protection.

2. Verbal requests for such information are acceptable.

3. The chairman of the board or his or her designee may require a written request before releasing any information.

4. The board cannot release any information regarding victims or witnesses of sex crimes to the sex offender or the general public.

D. Release of Information—Minor Victim(s)

1. In addition to any other information authorized to be released, the board may, pursuant to R.S. 15:546, release information concerning any inmate under the jurisdiction of the board who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator.

E. Release of Information—Criminal Convictions

1. The board may disseminate information regarding an offender's criminal convictions without restriction.

F. Other information regarding an offender's criminal history records, including nonconviction history may only be released subject to the restrictions outlined in R.S. 15:548. Unless the request is made by a representative of a criminal justice agency or a juvenile justice agency, such information shall, under normal circumstances, be released only pursuant to a written request.

G. The board shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013).

Chapter 2. Clemency

§201. Types of Clemency

A. Executive Pardon. An executive pardon is a full pardon which unconditionally releases a person from punishment and forgives guilt for any Louisiana convictions. It restores an applicant to all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms.

B. Pardon without Firearm Authority. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

C. Pardon for Misdemeanor. A pardon for a misdemeanor conviction releases a person from punishment and forgives guilt.

D. Commutation of Sentence. A commutation of sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms.

E. Specific Authority to Own, Possess, or Use Firearms. The specific authority to own, possess, or use firearms re stores an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal firearms laws, the pardon board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts.

F. First Offender Pardons. For the purposes of this Section *first offender* means a person convicted within Louisiana of a felony but never previously convicted of a felony within Louisiana or convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state would have been a felony, regardless of any previous convictions for any misdemeanors. Once such a pardon is granted, the individual who received such pardon shall not be entitled to receive another such pardon. Types of first offender pardons are listed below.

1. Offenders Sentenced after November 5, 1968 and before December 31, 1974. An offender sentenced after November 5, 1968 and before December 31, 1974, who has never been previously convicted of a felony, and who has completed serving their sentence, is eligible to apply for a governor's first offender pardon. By Executive Order dated March 16, 2001, all of these types of applications for clemency must be submitted to the pardon board.

2. Offenders Sentenced on or after January 1, 1975 and before December 27, 1999 (automatic first offender pardon). A first offender sentenced on or after January 1, 1975 and who has never been previously convicted of a felony shall be automatically pardoned upon completion of his sentence without a recommendation of the pardon board and without action by the governor. The Division of Probation and Parole of the Department of Public Safety and

Corrections has responsibility for the issuance of this type of first offender pardon certificate. The certificate proclaims that the offender has been restored all basic rights of citizenship, which includes the right to vote, but does not specifically restore the right to own, possess, or use firearms.

3. Offenders Sentenced after December 27, 1999 (automatic first offender pardon). A first offender sentenced after December 26, 1999 for a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony shall be pardoned automatically upon completion of his sentence without a recommendation of the Board of Pardons and without action by the governor. The Division of Probation and Parole of the Department of Public Safety and Corrections has responsibility for the issuance of this type of first offender pardon certificate. The certificate proclaims that the offender has been restored all basic rights of citizenship, which includes the right to vote, but does not specifically restore the right to own, possess, or use firearms.

4. No person convicted of a sex offense as defined in R.S. 15:541 or determined to be a sexually violent predator or a child predator under the provisions of R.S. 15:542.1 et seq. shall be exempt from the registration requirements of R.S. 15:542.1 et seq., as a result of a pardon under the provision of this Subsection.

5. Any person sentenced on or after January 1, 1975 receiving a first offender pardon under these provisions may be charged and punished as a second or multiple offender as provided in R.S. 15:529.1

6. No first offender pardon may be issued to a first offender unless that person has paid all of the court costs which were imposed in connection with the conviction of the crime for which the pardon is to be issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572, 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2254 (August 2013).

§203. Eligibility for Clemency Consideration

A. Eligibility

1. Pardons. A person may not apply for a pardon if the applicant has any outstanding detainers, or any pecuniary penalties or liabilities which total more than $1,000 and result from any criminal conviction or traffic infraction. In addition, no person is eligible to apply for pardon unless the applicant has paid all court costs which were imposed in connection with conviction of the crime for which pardon is requested.

2. Commutation of Sentence. A person may not be considered for a commutation of sentence unless he or she has been granted a hearing by the pardon board and has had his or her case placed upon a pardon board agenda.

3. Remission of Fines and Forfeitures. A person may not apply for a remission of fines and forfeitures unless he or she has completed all sentences imposed and all conditions of supervision have expired of been completed, including, but not limited to, parole and/or probation.

4. Specific Authority to Own, Possess, or Use Firearms. A person may not apply for the specific authority to own, possess, or use firearms unless he or she has completed all sentences imposed for the applicant's most recent felony conviction and all conditions of supervision imposed for the applicant's most recent felony conviction have expired or been completed, including, but not limited to, parole and/or probation, for a period of five years. The applicant may not have any outstanding detainers, or any pecuniary penalties or liabilities which total more than $1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have had any outstanding victim restitution, including, but not limited to, restitution pursuant to a court or civil judgment or by order of the committee on parole.

B. Applications. All applications must be submitted in accordance with §205, Application Filing Procedures.

C. Incarcerated Applicants or Applicants Under Supervision of the Louisiana Department of Public Safety and Corrections

1. An executive pardon shall not be considered for an offender while in prison, except when exceptional circumstances exist.

2. An incarcerated offender who is not serving a life sentence for a non-violent crime may request a commutation of sentence:

a. at any time; and

b. must have been disciplinary report free for a period of at least 24 months prior to the date of the application or at the time of the hearing (if a hearing is granted); and

c. must not be classified to a maximum custody status at the time of the application or at the time of the hearing (if a hearing is granted); and

d. must possess a marketable job skill, either through previous employment history or through successful completion of vocational training while incarcerated.

3. An incarcerated offender who is not serving a life sentence, but who is serving a sentence for a violent offense as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, may request a commutation of sentence:

a. after having served a minimum of 10 years;

b. must have been disciplinary report free for a period of at least 24 months prior to the date of the application or at the time of the hearing (if a hearing is granted); and

c. must not be classified to a maximum custody status at the time of the application or at the time of the hearing (if a hearing is granted); and

d. must possess a marketable job skill, either through previous employment history or through successful completion of vocational training while incarcerated, unless deemed unable to work due to medical or mental health condition.

D. Life Sentences. An offender sentenced to life may not apply until he has served 15 years from the date of sentence, unless he has sufficient evidence which would have caused him to have been found not guilty. The 15 years shall include periods of time prior to the imposition of the sentence in which the defendant was in actual custody for the offense for which he was sentenced to life imprisonment. The offender must also meet the criteria stated in Subparagraphs C.3.a-d of this Section.

E. Capital Cases. Any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. See also §213, Capital Cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12, and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2255 (August 2013), amended LR 42:1087 (July 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 44:574 (March 2018), amended by the Office of the Governor, Board of Pardons, LR 44:1006 (June 2018), LR 47:358 (March 2021), repromulgated LR 47:455 (April 2021).

§205. Application Filing Procedures

A. All Applicants

1. Every application must be submitted on the form approved by the Board of Pardons which is made available on the board's webpage at www.doc.la.gov.

2. It is the applicant's responsibility to submit a complete application. The application shall not be processed until it is complete. If any required information does not apply, the response should be “NA”.

3. Each answer must be answered fully, truthfully, and accurately. The submission of any false information is grounds for immediate denial of the application.

4. Additional documentation that is relevant to the application may be also be submitted, including letters of support on behalf of the applicant, military DD-214 if applicable, other attachments that the applicant would like to include that are relevant to the application.

5. The mailed application must be filled out completely, signed, dated, and notarized where required.

6. The online application must be digitally signed and submitted through the website.

B. In addition to the information submitted by application, the following required documents must be attached as they apply to each applicant.

1. Incarcerated Applicants. Any applicant presently confined in any institution must attach a current master prison record and have the signature of a classification officer verifying the conduct of the applicant and a copy of conduct report. Applicants sentenced to death must attach proof of direct appeal denial.

2. Parolees. Applicants who have completed parole supervision must attach a copy of their parole certificate, a certified judgment and sentence on each conviction for which they are applying for a pardon; a certified statement from the clerk of court that all fines, fees, and court costs (including restitution and probation fees) have been paid in full; a current credit report (current within 90 days of date of application), and proof of residence.

3. Probationers. Applicants who have completed the probationary period must attach a certified copy of sentencing minutes or copy of automatic first offender pardon, a certified judgment and sentence on each conviction for which they are applying for a pardon; a certified statement from the clerk of court that all fines, fees, and court costs (including restitution and probation fees) have been paid in full; a current credit report (current within 90 days of date of application), and proof of residence.

4. First Offender Pardons [R.S. 15:572(B)]. Applicants who have received an automatic first offender pardon must attach a copy of the automatic first offender pardon.

C. No additional information or documents may be submitted until applicant has been notified that he/she will be given a hearing. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

D. Reapplication upon Denial. Any applicant denied by the board shall be notified, in writing, of the reason(s) for the denial and thereafter may file a new application as indicated below.

1. Applicants Sentenced to Life Imprisonment. Any applicant with a life sentence may reapply five years after the initial denial and every five years thereafter. Applicant must also meet the criteria stated in §203.C.2.a-d.

2. Other. Applicants without a life sentence may file a new application two years from date of the letter of denial.

3. Fraudulent Documents or Information. Any fraudulent documents or information submitted by an applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial.

4. Governor Granted Clemency. The Office of the Governor will notify an applicant if any clemency is granted. Any otherwise eligible person who has been granted any form of executive clemency by the governor may not reapply for further executive clemency for at least four years from the date that such action became final.

5. Denial/No Action Taken by Governor after Favorable Recommendation. The board shall notify an

applicant after its receipt of notification from the governor that the board's favorable recommendation was denied or no action was taken.

a. If the applicant is notified of denial by the governor, the applicant may not reapply for clemency for at least four years from the date of the denial. The application filing procedures in Subsections A-D.3 of this Section shall apply.

b. When no action is taken by the governor on a recommendation for clemency issued by the board, the person seeking clemency shall not be required to reapply to the board and the recommendation shall not expire upon the expiration of the governor's term in office and may be reviewed by the next governor to take office.

i. Upon receipt of the no action files from the governor's office, the parole board staff shall review the following:

(a). offender's disciplinary record; and;

(b). State Police rap sheet;

ii. Staff will use the updated information to determine if the applicant is still eligible to apply for clemency.

iii. Once approved, the file will be sent back to the governor's office within six months of being received, with a recommendation to the governor from the pardon board, signed by the board chair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2255 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:42 (January 2015), amended by the Office of the Governor, Board of Pardons, LR 42:1087 (July 2016), LR 43:1161 (June 2017), LR 45:1063 (August 2019), LR 47:358 (March 2021).

§209. Hearing Granted

A. After notice to an applicant that a hearing has been granted the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

> "I (applicant's name), (DOC number), have applied for clemency for my conviction of (crime). If you have any comments, contact the Board of Pardons (225) 342-5421."

B. At this stage of the process, along with the proof of advertisement published in the local journal, the applicant may submit additional information, (e.g., letters of recommendation and copies of certificates of achievement and employment/residence agreement).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2256 (August 2013), amended LR 43:1162 (June 2017).

§211. Hearings before the Pardon Board

A. The board shall meet on regularly scheduled dates as determined by it, and at such other times as the chairman may determine are necessary for the purpose of reviewing and taking action on clemency applications before it and to transact such other business as it deems necessary. The meeting calendar shall be made available to the public. The hearing dates shall also be posted on the website maintained by the board.

B. After receipt of all documents required by §203 and the clemency investigation from the appropriate probation and parole district, the board shall set the matter for public hearing.

C. At least 60 days prior to public hearing date, the board shall give written notice of the date, time, and place to the following:

1. the district attorney and sheriff of the parish in which the applicant was convicted and, in Orleans Parish, the superintendent of police;

2. the applicant;

3. the direct victim or the spouse or next of kin of the deceased victim. The notice is not required when the victim, or the spouse or next of kin of a deceased victim advises the board, in writing, that such notification is not desired;

4. the Crime Victims Services Bureau of the Department of Public Safety and Corrections; and

5. any other interested person who notifies the Board of Pardons, in writing, giving name and return address.

D. The direct victim, the guardian of the victim, or close relative of a deceased victim shall have the right to make a written or oral statement as to the impact of the crime.

E. The direct victim, the guardian of the victim, or close relative of a deceased victim or a victim's advocacy group, and the district attorney or his representative may also appear before the panel by means of teleconference or telephone communication.

1. Only three persons in favor, to include the applicant, and three in opposition, to include the victim/victim's family member, will be allowed to speak either in person, via phone or videoconferencing during the clemency hearing.

2. Any person making an oral presentation to the board will be allowed no more than 5 minutes. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. Any person making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes.

F. There is no limit on written correspondence in favor of and/or opposition to the applicant's request. a candidate for parole release or an applicant for clemency.

G. The board shall provide notice to the Department of Public Safety and Corrections, Crime Victims Services Bureau at least 30 days prior to pardon hearing.

H. If an applicant is requesting commutation of sentence, and is released from custody and/or supervision prior to public hearing date, the case will be closed without notice to the applicant. Applicant may reapply two years from the date of release.

I. Applicant's failure to attend and/or notify the board of pardons office of his/her inability to attend the hearing will result in an automatic denial. The applicant may reapply two years from the date of scheduled hearing. Lifers who fail to attend and/or advise of inability to attend may reapply in five years if it is his/her initial hearing, and every five years thereafter.

J. Four members of the board shall constitute a quorum for the transaction of business, and all actions of the board shall require the favorable vote of at least four members of the board.

1. If a favorable clemency recommendation is reached during a pardon hearing, any other specific recommendation regarding clemency (i.e., restoration of firearms privileges, commutation of sentence to a specified number of years, commutation of sentence with or without parole eligibility) shall be based on a majority vote of those members who voted to recommend clemency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12, and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2256 (August 2013), amended LR 42:1088 (July 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:46 (January 2017), LR 44:574 (March 2018), LR 44:2140 (December 2018), LR 47:359 (March 2021), LR 47:1107 (August 2021).

§213. Capital Cases

A. The board will consider recommending to the governor a stay of execution of death sentence upon receipt of a written application in behalf of a condemned felon. Any such application shall contain the following information:

1. the name of the applicant, together with any other pertinent identifying information;

2. identification of the applicant's agents, if any, who are presenting the application;

3. certified copies of the indictment, judgment, verdict of the jury, and sentence in the case, including official documentation verifying the scheduled execution date;

4. a brief statement of the offense for which the prisoner has been sentenced to death;

5. a brief statement of the appellate history of the case, including its current status;

6. a brief statement of the legal issues which have been raised during the judicial progress of the case;

7. the requested length of duration of the stay, which shall be in increments of 30 days, unless a different duration is requested on the basis of the grounds for the application set forth pursuant to §213.A.8;

8. all grounds upon the basis of which the stay is requested; provided that such grounds shall not call upon the board to decide technical questions of law which are properly presented via the judicial process; and

9. a brief statement of the effect of the offender's crime upon the family of the victim.

B. The written application must be delivered to the board office, Post Office Box 94304, Baton Rouge, LA 70804 not later than the twenty-first calendar day before the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day. The chairman may extend this timeframe for acceptance of the written application at his or her discretion, based on good and adequate cause. Otherwise, the applicant's recourse will be directly to the governor.

C. All supplemental information, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the board office, Post Office Box 94304, Baton Rouge, LA 70804 not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day. The chairman may extend this timeframe for acceptance of supplemental information at his or her discretion, based on good and adequate cause.

D. Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board, must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than ten and not more than twenty copies of the duplicate item.

E. A convicted person seeking a board recommendation to the governor of a reprieve or stay of execution may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith.

F. Upon receipt of a request for interview, the chairman shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of the Department of Public Safety and Corrections. Attendance at such interviews shall be limited to the convicted person and their counsel of record, the designated board member(s), and institutional staff. The board may consider statements by the offender made at such interviews when considering the offender's application for reprieve or stay of execution.

G. The board shall consider and decide applications for stay or reprieve from execution. Upon review, a majority of the board, in written and signed form may:

1. recommend to the governor a reprieve from execution (which may include a recommendation to commute the sentence to life imprisonment);

2. not recommend a reprieve from execution; or

3. set the matter for a hearing as soon as practicable and at a location convenient to the board and the parties to appear before it.

H. When the board sets a hearing pursuant to Subsection G.3 of this Section, it shall notify the trial officials of the parish of conviction and the attorney general of the state of Louisiana and allow any such official(s), or the designated representatives thereof, the opportunity to attend the hearing and/or to present any relevant information. Prior to the hearing date, the chairman may convene a conference meeting with attorneys for the state and the convicted person to discuss and resolve any hearing preparation issues (i.e., the issues to be heard and considered by the board, list witnesses and exhibits from both sides and any other pertinent details). No testimony from witnesses will be taken. The purpose of the conference is to improve the quality of the hearing with thorough preparation.

I. At the time of notifying the trial officials, the board shall also notify any representative of the family of the victim (who has previously requested to be notified) of the receipt of the application, the setting of a hearing, and of said representative or family member's rights to provide any written comments or to attend the hearing.

J. All hearings conducted by the board under this section shall be in open session pursuant to requirements of the Louisiana Open Meetings Act. For the purpose of discussing matters which are deemed confidential by statute, or where otherwise authorized by the provisions of the Louisiana Open Meetings Act, the proceedings may be conducted in executive session closed to members of the general public, for that limited purpose. Only those persons whose privacy interests and right to confidentiality may be abridged by discussion involving disclosure of confidential information may be allowed to meet with members of the board in their executive session to discuss that information. No decision, vote, or final action by the board shall be made during a closed meeting; the board's decision, vote, or final action shall be made and announced in an open meeting. The hearing may be recessed prior to its completion and reconvened pursuant to the directions of the board.

K. Advocates for and against the death penalty, generally, and members of the general public may present written information for the board's consideration at its central office headquarters at any reasonable time.

L. After the conclusion of the hearing, the board shall render its decision, reached by majority vote, within a reasonable time, which decision shall be either to:

1. recommend to the governor a reprieve from execution (which may include a recommendation for a commutation of sentence to life imprisonment);

2. not recommend a reprieve from execution; or

3. recess the proceedings without rendering a decision on the merits, if a reprieve has been granted by the governor or if a court of competent jurisdiction has granted a stay of execution.

M. Each of the provisions of this policy are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

N. Successive or repetitious reprieve applications submitted in behalf of the same condemned felon may be summarily denied by the board without meeting.

O. Time Limits. At the clemency hearing for capital punishment cases, the offender's clemency counsel and the attorneys for the state may make an oral presentation, each not to exceed 15 minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five minutes collectively. The chairman may extend these time frames at his or her discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2257 (August 2013).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part IX. Sentencing Commission
Subpart 1. Felony Sentencing Guidelines

Chapter 1. Purpose and Principles

§101. Purpose

A. The purpose of the Louisiana Sentencing Guidelines, hereinafter referred to as *guidelines*, is to recommend a uniform sanctioning policy which is consistent, proportional, and fair for use by the Louisiana judiciary in felony cases in which the sentencing court must determine the sentence to be imposed.

B. The guidelines do not apply to capital cases, cases punishable by a mandatory sentence of life imprisonment, or misdemeanor cases.

C. The guidelines do not apply to convictions for felony offenses for which no crime seriousness level has been determined. In such cases, the court may be guided by the guideline range for a ranked offense which the court determines to be analogous to the offense of conviction.

D. The guidelines are intended to ensure certainty, uniformity, consistency and proportionality of punishment, fairness to victims, and the protection of society.

E. The guidelines are intended to provide rational and consistent criteria for imposing criminal sanctions in a uniform and proportionate manner.

1. Uniformity in sentencing requires that offenders who are similar with respect to relevant sentencing criteria should receive similar sanctions, and that offenders who are substantially different with respect to relevant sentencing criteria should receive different sanctions.

2. Proportionality in sentencing requires that the severity of the punishment be proportional to the seriousness of the offense of conviction and the severity of the offender's prior criminal history.

F. The guidelines are intended to assist the court in stating for the record the considerations taken into account and the factual basis for imposing sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:44 (January 1992), repromulgated LR 18:165 (February 1992).

§103. Sentencing Principles

A. Sentences should be based primarily on the offense of conviction and the offender's prior criminal history. Therefore, those two factors determine the designated sentence range established under the guidelines.

B. The determination of the seriousness of the offense of conviction is based on the elements of the offense of conviction.

C. The severity of sanctions should increase or decrease in proportion to the seriousness of the offense of conviction and the severity of the offender's prior criminal history.

D. The guidelines are based on the typical case and the designated sentence ranges provided in the sentencing guidelines grid should be appropriate for cases in which aggravating and mitigating circumstances are not present.

E. While commitment to a term of imprisonment with or without hard labor is the most severe non-capital sanction that can follow conviction for a felony offense, there are other significant sanctions available to the sentencing court which lawfully can be imposed in conjunction with, or independent of, a term of imprisonment. These criminal penalties include home incarceration, periodic incarceration, community service, and various conditions of supervised probation.

F. Sentences shall not be determined on the basis of the race, gender, social, or economic status of the offender. The exercise of constitutional rights by the defendant during the adjudication process is not a justification for the imposition of a more severe sentence than is warranted by the offense of conviction, criminal history of the offender, and any relevant mitigating and aggravating factors. However, acceptance of responsibility and cooperation with law enforcement, which may involve relinquishment of rights, may be considered as mitigating factors justifying imposition of a more lenient sentence.

G. Sanctions imposed shall not be excessive.

H. The sentencing judge should have broad discretion in the determination and imposition of appropriate sentencing alternatives in particular cases.

I. Reasons for the imposition of a particular sentence shall be set forth for the record to facilitate appellate review.

J. The guidelines are advisory to the sentencing judge. No sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the judge to impose a sentence in conformity with the designated sentence range provided by the guidelines.

K. In imposing sentence, the court shall consider the guidelines in effect at the time of the guilty plea, plea of nolo contendere, or verdict of guilty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:45 (January 1992), repromulgated LR 18:165 (February 1992), amended LR 20:786 (July 1994).

Chapter 2. Determining Sentences Under the Sentencing Guidelines

§201. Sentencing Guidelines Grid

A. The basis for the sentence for any offender convicted of a felony is determined by locating the designated sentence range in the appropriate cell of the sentencing guidelines grid, hereinafter referred to as the *grid*. See Chapter 4, §403.A, Sentencing Guidelines Grid. The appropriate cell is determined by the crime seriousness level of the offense and the criminal history index of the offender.

B. In imposing a sentence under the guidelines, the court shall state for the record the factors which led the court to determine that the cell in the grid was appropriate. The court may refer to any pre-sentence investigation report or a sentencing guidelines report, if available, in stating for the record the factual basis for imposing sentence.

C. If the sentence imposed falls within the range of the appropriate cell of the grid, the sentence is appropriate for purposes of the guidelines and the court is not required to set forth additional factors justifying the selection of the particular sentence.

D. Sentences greater or lesser than a penalty within the designated sentence range should be determined through the procedures for departure. See §209, Departures from the Designated Sentence Range.

E. Use of mandatory minimum sentences, concurrent or consecutive sentences, and other sentencing considerations should be determined through the procedures set forth in the guidelines or as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:45 (January 1992), repromulgated LR 18:165 (February 1992).

§203. Crime Seriousness Level

A. The crime seriousness level is determined by the offense of conviction.

B. Offenses are ranked according to the following:

1. the interest protected; and

2. the type and level of harm or threat of harm proscribed by statute.

C. The placement of an offense in a particular seriousness level is determined by the typical case for each offense.

D. Offenses listed within each level of seriousness are deemed to be generally equivalent in seriousness.

E. The seriousness level for the felony offenses for which a crime seriousness level has been determined are set forth by level in the crime seriousness master ranking list. See Chapter 4, §401.A, Crime Seriousness Master Ranking List. Felony offenses are classified into five categories of offenses which are subdivided into ten levels of seriousness ranging from high, Level 0, to low, Level 9, listed alphabetically within each level.

1. The five categories of felony offenses are Categories I, II, III, IV, and V. Category I offenses are Levels 0 and 1; Category II offenses are Levels 2 and 3; Category III offenses are Levels 4 and 5; Category IV offenses are Levels 6 and 7; and Category V offenses are Levels 8 and 9.

2. All offenses with a mandatory life sentence are in Category I at Level 0.

3. The crime seriousness level for Criminal Conspiracy (R.S. 14:26) is one level below the crime seriousness level of the completed offense contemplated by the conspiracy, unless the completed offense is Level 9.

4. The crime seriousness level for Attempt (R.S. 14:27) is one level below the crime seriousness level of the completed offense attempted by the offender, unless the completed offense is Level 9.

5. The crime seriousness level for Attempt (R.S. 14:27) or Conspiracy (R.S. 14:26) to commit an offense ranked at Level 9 is also ranked at Level 9.

6. The crime seriousness level for Inciting a Felony (R.S. 14:28) is Level 7 regardless of the level of the incited felony.

7. The crime seriousness level for Accessory after the Fact (R.S. 14:25) is Level 6 regardless of the level of the felony to which the offender is an accessory.

F. For the convenience of the courts, three additional ranking lists are provided which list the offenses by:

1. Louisiana Revised Statute Number;

2. Offense Name, alphabetically; and

3. Crime Family, as designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:45 (January 1992), repromulgated LR 18:165 (February 1992).

§205. Criminal History Index Classification System

A. The Criminal History Index Classification System, hereinafter referred to as the *criminal history index*, is the method of evaluating an offender's criminal history in a uniform and consistent manner. The criminal history index is used to reflect increased levels of culpability for offenders who have previously been convicted of offenses or adjudicated delinquent. The index is based on computational rules which result in the assignment of varying points for certain prior convictions or adjudications.

B. Definitions

Crime Family—offenses which have been designated by the commission to be included within the same crime family based on similar interests protected and type of harm proscribed by the offenses. See Chapter 4, §402.D, Crime Family Table. Attempt, criminal conspiracy, inciting a felony, and accessory after the fact are considered to be in the same crime family as the completed offense or the offense to which the offender was an accessory. If a felony offense has not been designated to be included within a crime family, but the court determines that the offense is analogous to the offenses in a particular crime family, the court may treat that offense as included within the crime family for purposes of imposing sentence in a particular case. In such case, the court shall state for the record its reasons for finding that the offense was analogous to those of a particular crime family.

Crime-Free Time—a period of time during which the offender was not in a *custody status*, as defined below, and during which the offender has not committed an offense which subsequently results in a felony or misdemeanor conviction, as defined herein.

Custody Status—any form of criminal justice supervision resulting from a guilty plea, conviction, or an adjudication of delinquency including post conviction release or bail, confinement, probation, or parole.

Felony Adjudication—any unexpunged adjudication for delinquency by a court exercising juvenile jurisdiction:

a. for the offense of first degree murder, second degree murder, manslaughter, aggravated rape, forcible rape, simple rape, sexual battery, aggravated kidnapping, or armed robbery; or

b. for any felony offense if the defendant was under the age of 26 years at the time of the commission of the current offense; or

c. for any felony offense if the defendant was 26 years of age or older at the time of the commission of the current offense and the defendant previously had been convicted as an adult of a felony or a misdemeanor in which an element involved the use of a dangerous weapon.

Felony Conviction—for purposes of the guidelines, means a conviction for an offense punishable by a sentence of death or imprisonment, with or without hard labor, in excess of one year at the time of conviction, under the laws of this state, any other state, the United States, or any foreign government or country.

Misdemeanor Adjudication—any unexpunged adjudication for delinquency by a court exercising juvenile jurisdiction for an offense which, if committed by an adult, would be a misdemeanor, as defined herein.

Misdemeanor Conviction—for purposes of the guidelines, means any other conviction which is counted in the computation of criminal history score.

Prior Conviction or *Prior Adjudication*—for purposes of the guidelines, means a plea of guilty or nolo contendere, a verdict of guilty, a judgment of guilt, or an adjudication occurring before the conviction for the offense which serves as the basis for the current sentencing. A conviction which was set aside under the provision of C.Cr.P. 893 shall be included as a prior conviction. A plea of guilty under R.S. 40:983 shall be included as a prior conviction unless the defendant was subsequently discharged and the case dismissed.

C. Criminal History Index Factors

1. The criminal history index is based on points derived from the following factors:

a. prior felony convictions;

b. prior applicable misdemeanor convictions;

c. prior applicable adjudications of delinquency;

d. custody status at the time of the commission of the offense serving as the basis for the current conviction.

2. The Criminal History Index is composed of seven classes ranging from Class A, most serious criminal history, to Class G, least serious criminal history.

3. Method of Calculation

a. Prior felony convictions and adjudications: Score all prior felony convictions and applicable felony adjudications of delinquency by the number of points ascribed to the seriousness level of the offense of conviction as set forth in Chapter 4, §402.A and C. If the prior felony conviction is based on an unranked offense, i.e., not ranked in the crime seriousness ranking tables, the court may assign a seriousness score of one point to the conviction. If the court believes that a seriousness score of 1 point significantly under-represents the seriousness of the prior conviction, the judge may use the seriousness score of an analogous offense, provided the court states for the record why the unranked offense is analogous to the ranked offense which serves as the basis for the score.

b. Prior misdemeanor convictions and adjudications: Add 1/4 point, not to exceed a total of 1 point, for each qualifying misdemeanor. An offender's criminal history index score for misdemeanor convictions or adjudications shall not increase the offender's criminal history index more than one class. The following misdemeanor convictions or adjudications qualify:

i. any misdemeanor conviction for an offense in R.S. Title 14 or the Uniform Controlled Dangerous Substances Law of R.S. Title 40 or any local ordinance which is substantially similar to an offense in Title 14 or the Uniform Controlled Dangerous Substances Law of Title 40;

ii. any misdemeanor conviction for a traffic offense in R.S. Title 32 or local traffic ordinance substantially similar to any Title 32 traffic offense if the current offense of conviction involves the operation of a motor vehicle;

iii. any misdemeanor adjudication if, at the time of the commission of the current offense, the offender was under age 17, and is being prosecuted as an adult.

c. Prior similar criminal behavior: Add 1/2 point for each prior felony conviction or adjudication if the prior offense of conviction or adjudication is in the same crime family as the current offense of conviction. See Chapter 4, §402.D, Crime Family Table. The court also may add the additional 1/2 point if the court finds that the prior conviction or adjudication was analogous to the offenses in the crime family of the current offense, and states for the record the reasons for the finding.

d. Offenses committed during custody status: Add 1 point if the current felony offense was committed while the offender was in a custody status.

e. Multiple convictions on same day: Count only the most serious conviction or adjudication if more than one conviction or adjudication occurred on the same day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:46 (January 1992), repromulgated LR 18:166 (February 1992), amended LR 18:960 (September 1992), LR 19:892 (July 1993), LR 20:786 (July 1994).

§207. Designated Sentence Ranges

A. The Appropriate Grid Cell

1. The offense of conviction determines the appropriate seriousness level on the vertical axis of the grid. See Chapter 4, §403.A, Sentencing Guidelines Grid.

2. The offender's criminal history index score determines the appropriate criminal history class on the horizontal axis of the grid.

3. The designated sentence range is found in the grid cell at the intersection of the row defined by the crime seriousness level and the column defined by the criminal history index.

B. Incarceration Sanction Zone Sentences

1. The incarceration sanction zone includes all cells above the shaded area. See Chapter 4, §403.A, Sentencing Guidelines Grid. The court should impose a sentence consisting exclusively of incarceration for typical cases located in this zone.

2. Each cell in this zone contains a designated sentence range of incarceration in months.

3. Designated sentences of incarceration permit the court to determine the manner in which the sentence is to be served, i.e., with or without hard labor, as provided by law.

C. Discretionary Sanction Zone Sentences

1. The discretionary sanction zone includes all cells in the shaded area. See Chapter 4, §403.A, Sentencing Guidelines Grid. Each cell in this zone contains a designated range of sanction units for use when an intermediate sanction is imposed and a designated sentence range in months for use when a sentence of incarceration is given.

2. For typical cases in this zone, the court should consider whether the offender should be sentenced to incarceration, to an intermediate sanction, or to a combination of the two, depending upon the circumstances of the particular case. If the court imposes an intermediate sanction or sanctions, the resulting intermediate sanction, or combination of intermediate sanctions, should be within the designated range of sanction units.

3. Incarceration sanctions which should be considered for cases in this zone include, but are not limited to, shock incarceration, work release, work-day release, incarceration as a condition of probation, and periodic incarceration, such as confinement at regular intervals (e.g., weekends).

D. Intermediate Sanction Zone

1. The intermediate sanction zone includes all cells below the shaded area. See Chapter 4, §403.A, Sentencing Guidelines Grid. For typical cases in this zone, the court should impose a sentence consisting of an intermediate sanction or sanctions unless a mandatory sentence of incarceration is required by law.

a. Intermediate sanctions include any sanction the court may impose other than incarceration in a jail or prison unless the term is served as periodic incarceration.

b. Intermediate sanctions include, but are not limited to, probation, intensive supervision, periodic incarceration, home incarceration, community service, in-patient treatment, out-patient treatment, economic sanctions, and denial of privilege, such as driver's license.

2. Each cell in this zone contains a designated range of sanction units which may be fashioned by the judge into a specific sentence with a combination of sanctions by utilizing the intermediate sanction exchange table. See Chapter 4, §403.D, Using the Intermediate Sanction Exchange Table.

3. The duration of intermediate sanction sentences will vary according to the sanction or sanctions selected by the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:47 (January 1992).

§209. Departures from the Designated Sentence Range

A. Procedure for Departure

1. The designated sentence range provided in the grid is appropriate for a typical case; that is, an offense committed without aggravating or mitigating circumstances.

2. A departure from the designated sentence range occurs whenever the court imposes a sentence which is different from the types of sentences or outside the designated sentence range provided in the zone and cell appropriate to the case.

3. The court should depart from the designated sentence range when sufficient aggravating or mitigating circumstances are present significantly to differentiate the case from the typical case arising under the offense of conviction.

4. When departing from the designated sentence range, the court shall:

a. pronounce a sentence which is proportional to the seriousness of the offense and the offender's criminal history; and

b. state for the record the reasons for the departure which shall specify the mitigating or aggravating circumstances, and the factual basis therefor.

5. Reasons for departure from the designated sentence range are appropriate only when such reasons are based on mitigating or aggravating circumstances.

B. *Aggravating circumstance* means a factor which is present to a significant degree which makes the present case more serious than the typical case arising under the offense of conviction. Factors which constitute essential elements of the offense of conviction or separate offense(s) for which defendant was convicted and sentenced shall not be considered aggravating circumstances. The following factors constitute aggravating circumstances.

1. The offender's conduct during the commission of the offense manifested deliberate cruelty to the victim.

2. The offender knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability or ill health.

3. The offender offered or has been offered or has given or received anything of value for the commission of the offense.

4. The offender used his or her position or status to facilitate the commission of the offense.

5. The offender knowingly created a risk of death or great bodily harm to more than one person.

6. The offender used threats of or actual violence in the commission of the offense.

7. Subsequent to the offense, the offender used or caused others to use violence, force, or threats with the intent to influence the institution, conduct, or outcome of the criminal proceedings.

8. The offender committed the offense in order to facilitate or conceal the commission of another offense.

9. The offense resulted in a significant permanent injury or significant economic loss to the victim or his family.

10. The offender used a dangerous weapon in the commission of the offense.

11. The offense involved multiple victims or incidents for which separate sentences have not been imposed.

12. The offender was persistently involved in similar offenses not already considered as criminal history or as part of a multiple offender adjudication.

13. The offender was a leader or his violation was in concert with one or more other persons with respect to whom the offender occupied a position of organizer, a supervisory position, or any other position of management.

14. The offense was a major economic offense.

15. The offense was a controlled dangerous substance offense and the offender obtained substantial income or resources from ongoing drug activities.

16. The offense was a controlled dangerous substance offense in which the offender involved juveniles in the trafficking or distribution of drugs.

17. The offender committed the offense in furtherance of a terrorist action.

18. The offender's record of convictions for prior criminal conduct exceeds the threshold for Class A by at least two points on the criminal history index.

19. The offender foreseeably endangered human life by discharging a firearm during the commission of an offense which has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and which, by its very nature, involves a substantial risk that physical force may be used in the course of committing the offense.

20. The offender used a firearm or other dangerous weapon while committing or attempting to commit an offense which has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and which, by its very nature, involves a substantial risk that physical force may be used in the course of committing the offense.

21. The offender used a firearm or other dangerous weapon while committing or attempting to commit a controlled dangerous substance offense.

22. Any other relevant aggravating circumstances which distinguish the case from the typical case of the offense of conviction.

C. *Mitigating circumstance* means a factor which is present to a significant degree which lessens the seriousness of the offense below the level of the typical case arising under the offense of conviction. Factors which constitute a legal defense shall not be considered mitigating circumstances. The following factors constitute mitigating circumstances.

1. At the time of offense, to a degree, the victim was the initiator, willing participant, aggressor, provoker of the incident, or enticed the offender.

2. The offender committed the crime under some degree of duress, coercion, threat, or compulsion.

3. At the time of the offense, the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was somewhat impaired.

4. The offense was committed while the offender was under the influence or under domination of another person.

5. The offense was committed while the offender was under the influence of significant mental or emotional disturbance.

6. The offense was committed under circumstances which the offender reasonably believed would provide for a moral justification or extenuation for his conduct.

7. The offender committed the offense without significant premeditation.

8. The offender's judgment was impaired because of his extreme youth or advanced age.

9. The defendant manifested caution or sincere concern for the safety or well-being of the victim.

10. The offender played a minor or passive role in the crime.

11. The offender compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

12. The offender cooperated with law enforcement authorities with respect to the current crime of conviction or any other criminal conduct by the offender or other person.

13. The offender was motivated by a desire to provide basic necessities of life for his family or others.

14. The offense involved a small quantity of a controlled dangerous substance and the offense was committed exclusively to support his personal drug habit.

15. The offender pled guilty or otherwise accepted responsibility for the offense and expressed genuine remorse.

16. The offender took steps which rehabilitated him or were reasonably related to his rehabilitation.

17. The offender has spent a significant period of time free of any custody status during which he has not engaged in any criminal activity resulting in a felony or misdemeanor conviction, as defined herein. If deemed appropriate, the court may consider the suggested crime-free time reduction factors in Chapter 4, §402.E. Any prior conviction or adjudication of a Level 0 offense shall not be reduced.

18. Any other relevant mitigating circumstances which distinguish the case from the typical case of the offense of conviction.

D. Special Provisions for the Use of Sanction Units in an Approved Treatment Plan. When the sentencing court finds it appropriate to impose a sentence composed in whole or in part of sanction units requiring the defendant's participation in a program of treatment, the court may exceed the maximum number of sanction units provided in the appropriate grid cell if the court finds that additional sanction units are necessary for the satisfactory completion of the treatment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:47 (January 1992), amended LR 18:961 (September 1992), LR 19:892 (July 1993), LR 20:787 (July 1994).

§211. Mandatory Minimum Sentences

A. If an offender has been convicted of an offense for which a mandatory term of imprisonment must be imposed which exceeds the maximum duration provided in the designated sentence range for that offense, the court should impose the minimum sentence required by law to be served in the manner required by law unless aggravating circumstances justify imposition of a more severe sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:48 (January 1992).

§213. Designated Sentence Durations that Exceed the Statutory Maximum Sentence

A. If the minimum sentence duration provided by the sentence range in the appropriate cell of the grid exceeds the statutory maximum sentence for the offense of conviction, the court should impose the statutory maximum sentence unless mitigating circumstances justify imposition of a more lenient sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:49 (January 1992).

§215. Concurrent and Consecutive Sentences

A. Factors to be Considered

1. The sentencing court may impose either concurrent or consecutive sentences in cases where a defendant has been convicted of two or more offenses. In determining whether to impose either a concurrent or a consecutive sentence, the court should consider aggravating and mitigating circumstances which may be present.

2. If two or more criminal acts are based on the same act or transaction, or constitute parts of a common scheme or plan, concurrent sentences should be imposed.

3. In all other cases, concurrent or consecutive sentences should be supported by appropriate factors. If a consecutive sentence is imposed, the court shall state for the record the factors considered and the reasons for imposition of a consecutive sentence.

4. If statutory law requires that a sentence be imposed either concurrently or consecutively, the sentences must be imposed in the manner prescribed by law.

B. Procedure for Imposing Concurrent Sentence. If the court finds that concurrent sentences should be imposed, the following procedures apply.

1. Concurrent Sentences of Incarceration

a. A sentence is imposed for each offense of conviction.

b. The sentence with the longest term of incarceration shall set the term of incarceration.

c. Only one term of post-prison supervision should be ordered. The length of the post-prison term should be determined by the longest term of incarceration imposed.

2. Concurrent Intermediate Sanction Sentences

a. A sentence is imposed for each offense of conviction.

b. The sentence with the largest number of sanction units should determine the number of sanction units available for the concurrent sentences.

C. Procedure for Imposing Consecutive Sentences. If the court finds that a consecutive sentence should be imposed, the following procedures apply to determine the base sentence range and the recommended sentence.

1. The base sentence range is established by determining, from the appropriate cell in the grid, the designated sentence range for the most serious offense of conviction. The most serious offense is the offense with the longest statutory term of incarceration or the offense with the longest term of incarceration within the designated sentence range under the guidelines, whichever is greater.

2. After the base sentence range for the most serious offense has been determined, the remaining offenses provide the additional penalty to be imposed. No more than 50 percent of the minimum of the grid range for each of the subsequent offenses for which the offender is being sentenced should be added.

3. If the offense from which the base sentence range is determined requires imposition of a term of incarceration at hard labor, the entire term of imprisonment imposed should be at hard labor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:49 (January 1992), amended LR 18:961 (September 1992).

Chapter 3. General Sentencing Policy

§301. Plea Agreements Involving Stipulated Sentences

A. Stipulating the Grid Cell

1. As part of a plea agreement under the guidelines, the parties may stipulate a cell within the grid regardless of whether the cell corresponds to the defendant's criminal history index and the crime seriousness level of the offense(s) to which the defendant will plead.

2. In such cases, the court may:

a. accept the stipulated cell and impose a sentence within the range provided; or

b. reject the plea agreement.

B. Stipulating a Specific Sentence

1. As part of a plea agreement under the guidelines, the parties may stipulate a specific sentence regardless of whether the sentence is within the range provided in the cell which corresponds to the defendant's criminal history index and the crime seriousness level of the offense(s) to which the defendant will plead.

2. If stipulation is made to a specific sentence, the court may:

a. accept the plea agreement and impose the stipulated sentence; or

b. reject the plea agreement.

C. Stipulating Specific Facts and Circumstances

1. As part of a plea agreement under the guidelines, the parties may stipulate the facts and circumstances of the case and the prior criminal history of the defendant.

2. If the parties enter such a stipulation at the time of the plea, the court shall either:

a. accept the stipulation; or

b. refuse to accept the plea of guilty with such a stipulation.

3. If such a stipulation is entered and accepted, the court shall consider such a stipulation to be the facts and circumstances of the case and the criminal history of the defendant for purposes of imposition of sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:49 (January 1992), amended LR 20:787 (July 1994).

§303. Revocation of Probation

A. Violation of Condition of Probation

1. If an offender is brought before the court for the violation of a condition of probation which does not involve commission and conviction of a subsequent offense and the court does not consider revocation appropriate, the court may impose up to eight additional sanction units in consideration of the violation, e.g., up to two weeks in jail or 160 hours of community service, in lieu of revocation.

2. If the offender is brought before the court a second time for the violation of such a condition of probation, and the court does not consider revocation appropriate, the court may impose up to an additional 16 sanction units in lieu of revocation.

3. If the offender is brought before the court a third time for the violation of such a condition of probation, the court should consider revocation in lieu of an additional 16 sanction units.

B. Violation of Probation for Commission or Conviction of Misdemeanor. If an offender on probation is brought before the court for the commission or conviction of a misdemeanor, the court may impose up to eight additional sanction units or revoke the probation.

C. Violation of Probation for Commission or Conviction of Felony. If an offender on probation is brought before the court for the commission or conviction of a felony, the court may impose up to 16 additional sanction units or revoke the probation.

D. Imposition of Sentence Following Revocation. If the imposition of sentence was suspended, and the offender's probation is revoked, the court should follow the guidelines in imposing sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:49 (January 1992).

§305. Credit for Time Served

A. If a sentence of incarceration is imposed and executed, an offender should be given credit for time served under the following conditions prior to the imposition or execution of sentence:

1. time spent in actual custody in connection with the offense of conviction;

2. time spent in actual custody in a public or private mental hospital or other similar facility if ordered by the court in connection with the offense of conviction;

3. time spent in actual custody as a condition of probation if that probation is subsequently revoked.

B. *Actual custody*, as used in this Section, is limited to time spent in confinement in prisons, jails, parish prisons, prison farms, workhouses, work-release centers, regional correctional facilities, public or private mental hospitals, or other similar facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992).

§307. Juveniles Tried as Adults

A. If a person under 17 years of age is prosecuted as an adult in a court exercising criminal jurisdiction, the guidelines should be applied in the same manner as though the person were an adult.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992).

§309. Habitual Offender Sentencing

A. The guidelines increase the designated sentence range for an offender on the basis of the offender's prior criminal convictions, custody status, and the crime family of the current and prior convictions. In those cases in which the district attorney determines that the offender's pattern of past criminal conduct has been significantly more extensive than the typical offender with the same criminal history index, the district attorney may institute proceedings under R.S. 15:529.1, the Habitual Offender Law.

B. Any person who has been convicted of a felony and adjudged an habitual offender shall receive an enhanced penalty as provided by R.S. 15:529.1, the Habitual Offender Law. In such cases, the enhanced sentence may exceed the maximum sentence range specified in the appropriate cell in the grid. In such cases, the court should impose the minimum sentence provided by law unless aggravating circumstances justify imposition of a more severe sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992).

§311. Parole, Good Time, Commutation of Sentence, Pardon

A. The sentence, derived from the seriousness of the offense committed, the criminal history index of the offender, and any aggravating or mitigating circumstances, should reflect the maximum length of time an offender should remain in actual custody or under supervision, and the manner in which a sentence should be served.

B. Eligibility for good time and parole should not affect the determination of the sentence to be imposed by the sentencing court.

C. Parole eligibility is determined by law. An offender is eligible for parole consideration only after having served the statutorily required portion of his designated sentence.

D. The decision to grant or deny parole should be based primarily on the offender's record of behavior while in custody following conviction, such as the person's conduct while incarcerated, including participation in educational or job training programs.

E. The guidelines are not intended to affect the granting of pardons or commuting of sentences by the governor upon recommendations of the Board of Pardons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992).

Chapter 4. Louisiana Sentencing Guidelines Tables

§401. Crime Seriousness Level Tables

A. Crime Seriousness Master Ranking List

Ranked Felonies and R.S. Nos. by Crime Seriousness Level			
Grid Level	**Offense**	**R.S. No.**	**Category**
0	Aggravated Kidnapping	14:44	I
	Aggravated Rape	14:42	
	Distribution of Drugs to a Child (Sched. I, Narcotic)	40:981	
	Distribution of Drugs using a Child (Sched. I, Narcotic)	40:981.2	
	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Narcotic)	40:981.3	
	Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Narcotic)	40:981.3	
	First Degree Murder	14:30	
	Manufacture/Distribution of Drugs (Sched. I, Narcotic)	40:966(A)(1)	
	Possession with Intent to Distribute	40:966(A)(1)	
	Second Degree Murder	14:30.1	
1	Aggravated Burglary	14:60	I
	Aggravated Crime against Nature	14:89.1	
	Aggravated Oral Sexual Battery (Type I: Force or threat of force, or 2 or more offenders)	14:43.4(A), (1-3, 5)	
	Aggravated Sexual Battery	14:43.2	
1	Armed Robbery	14:64	I
	Attempt (to Commit any level 0 felony)	14:27	
	Carjacking	14:64.2	
	Conspiracy (to commit any level 0 felony)	14:26	
	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	40:981.3	
	Drug Free Zones: 40:966(E)(3)—Possession of 10,000 lbs or more of Marijuana	40:981.3	
	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Narcotic)	40:981.3	
	Forcible Rape	14:42.1	
	Inciting to Riot (Type I: Injury to victim resulting in death)	14:329.2 :329.7(C)	
	Manslaughter	14:31	
	Possession of 400 or more grams of Cocaine (Detectable amount)	14:967(F)(1)(c)	
	Possession of 400 or more grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(c)	
	Second Degree Kidnapping	14:44.1	
2	Aggravated Battery	14:34	II
	Attempt (to commit any level 1 felony)	14:27	
	Conspiracy (to commit any level 1 felony)	14:26	
2	Cruelty to Juveniles (Type I: Intentional injury to victim)	14:93	II
	Cruelty to the Infirm (Type I: Intentional injury to victim)	14:93.3	
	Distribution of Drugs to a Child (Sched. I, Non-narcotic and Non-marijuana of Sched. II, Narcotic)	40:981	
	Distribution of Drugs using a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	40:981.2	
	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Marijuana	40:981.3	
	Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	40:981.3	
	Drug Free Zones: 40:966(E)(2)—Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	40:981.3	
	Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Narcotic)	40:981.3	
	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	40:981.3	
	Drug Free Zones: 40:968(A)(1) - Manufacture/Distribution of Drugs (Sched. III)	40:981.3	
	Drug Free Zones: 40:969(A)(1) - Manufacture/Distribution of Drugs (Sched. IV)	40:981.3	
2	First Degree Robbery	14:64.1	II
	Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	40:966(A)(1)	

Ranked Felonies and R.S. Nos. by Crime Seriousness Level			
Grid Level	**Offense**	**R.S. No.**	**Category**
	Manufacture/Distribution of Drugs (Sched. II, Narcotic)	40:967(A)(1)	
	Obstruction of Justice (Type I: Obstruction in a capital or life imprisonment case)	14:130.1(A), (B)(1)	
	Possession of 10,000 lbs or more of Marijuana	40:966(E)(3)	
	Possession of more than 200 but less than 400 grams of Cocaine (Detectable amount)	40:967(F)(1)(b)	
	Possession of more than 200 but less than 400 grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(b)	
	Simple Rape	14:43	
3	Aggravated Arson	14:51	II
	Aggravated Criminal Damage to Property	14:55	
	Aggravated Escape (Type I: Foreseeable danger to human life)	14:110(C)	
	Aggravated Oral Sexual Battery (Type II: Victim is under 12 yrs)	14:43.4(A)(4)	
	Assault by Drive-by Shooting	14:37.1	
	Attempt (to commit any level 2 felony)	14:27	
3	Battery of a Police Officer (Type I: Serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	14:34.2(B)	II
	Conspiracy (to commit any level 2 felony)	14:26	
	Distribution of Drugs to a Child (Sched. II, Non-narcotic or Sched. III, or Sched IV or Marijuana)	40:981	
	Distribution of Drugs using a Child (Sched. II, Non-narcotic or Sched, III, or Sched. IV or Marijuana)	40:981.2	
	Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Non-narcotic)	40:981.3	
	Drug Free Zones: 40:968(A)(1)—Possession with Intent to Distribute (Sched. III)	40:981.3	
	Drug Free Zones: 40:969(A)(1)—Possession with Intent to Distribute (Sched. IV)	40:981.3	
	Drug Free Zones: 40:970(A)(1)—Manufacture/Distribution of Drugs (Sched. V)	40:981.3	
	False Imprisonment with a Dangerous Weapon	14:46.1	
	Institutional Vandalism (Type I: Damage is $50,000 or more)	14:225(A), (B)(3)	
	Looting	14:62.5	
	Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	40:967(A)(1)	
3	Manufacture/Distribution of Drugs (Sched. III)	40:968(A)(1)	II
	Manufacture/Distribution of Drugs (Sched. IV)	40:969(A)(1)	
	Molestation of a Juvenile	14:81.2	
	Obstruction of Justice (Type II: Obstruction in felony case necessarily punishable at hard labor for less than life)	14:130.1(A), (B)(2)	
	Oral Sexual Battery (Type I: Compulsion by fear of bodily harm)	14:43.3	
	Pornography Involving Juveniles	14:81.1	
	Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	40:966(E)(2)	
	Possession of more than 28 but less than 200 grams of Cocaine (Detectable amount)	40:967(F)(1)(a)	
	Possession of more than 28 but less than 200 grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(a)	
	Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	40:966(A)(1)	
	Possession with Intent to Distribute (Sched. II, Narcotic)	40:967(A)(1)	
	Purse Snatching	14:65.1	
	Riot (Type I: Participating in riot with injury to victim resulting in death)	14:329.1 :329.7(C)	
3	Second Degree Battery	14:34.1	II
	Sexual Battery (Type I: Compulsion by fear of bodily harm)	14:43.1	
	Simple Burglary of an Inhabited Dwelling	14:62.2	
	Simple Robbery	14:65	
	Vehicular Homicide	14:32.1	
4	Attempt (to commit any level 3 felony)	14:27	III
	Conspiracy (to commit any level 3 felony)	14:26	
	Carnal Knowledge of a Juvenile	14:80	
	Carrying a Firearm by a Student or Non-student on School Property or Firearm-Free Zone	14:95.2	
	Criminal Damage of A Pipeline Facility (Type I: Foreseeable danger to human life)	14:56.2(D)	
	Distribution of Drugs to a Child (Sched. V)	40:981	
	Distribution of Drugs using a Child (Sched. V)	40:981.2	
	Drug Free Zones: 40:966(A)(1)—Possession of Marijuana with Intent to Distribute	40:981.3	
	Drug Free Zones: 40:966(C)(1)—Possession of Drugs (Sched. I, Narcotic)	40:981.3	

Ranked Felonies and R.S. Nos. by Crime Seriousness Level			
Grid Level	**Offense**	**R.S. No.**	**Category**
	Drug Free Zones: 40:966(E)(1)—Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	40:981.3	
	Drug Free Zones: 40:970(A)(1)—Possession with Intent to Distribute (Sched. V)	40:981.3	
4	Extortion	14:66	III
	Intentional Exposure of AIDS Virus	14:43.5	
	Manufacture/Distribution of Drugs (Sched. V)	40:970(A)(1)	
	Manufacture /Distribution of Marijuana	40:966(A)(1)	
	Negligent Homicide	14:32	
	Obtaining Drugs by Fraud	40:971	
	Oral Sexual Battery (Type II: Victim is under 15 yrs)	14:43.3	
	Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	40:966(E)(1)	
	Possession with Intent to Distribute Marijuana	40:966(A)(1)	
	Possession with Intent to Distribute (Sched. II, Non-narcotic)	40:967(A)(1)	
	Possession with Intent to Distribute (Sched. III)	40:968(A)(1)	
	Possession with Intent to Distribute (Sched. IV)	40:969(A)(1)	
	Sexual Battery (Type II: Victim is under 15 yrs)	14:43.1	
	Simple Burglary	14:62	
	Simple Burglary of a Pharmacy	14:62.1	
	Simple Criminal Damage to Property (Type I: Damage is $50,000 or more)	14:56	
4	Simple Kidnapping	14:45	III
	Solicitation for Murder	14:28.1	
5	Attempt (to commit any level 4 felony)	14:27	III
	Battery of a Police Officer (Type II: No serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	14:34.2(B)	
	Conspiracy (to commit any level 4 felony)	14:26	
	Contributing to the Delinquency of Juveniles (Perform any sexually immoral act)	14:92(A)(7)	
	Cruelty to Juveniles (Type II: Criminally negligent or neglect)	14:93	
	Cruelty to the Infirm (Type II: Criminally negligent or neglect)	14:93.3	
	Drug Free Zones: 40:966(C)(2,3)—Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	40:981.3	
	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Narcotic)	40:981.3	
	Forgery	14:72	
	Illegal Possession of Stolen Goods (Type I: Value is $500 or more)	14:69	
	Incest (Type I: Relationship is father, mother, brother or sister)	14:78(A), (D)(1)	
	Indecent Behavior with Juveniles	14:81	
	Issuing Worthless Checks (Type I: Value is $500 or more)	14:71	
5	Offense Against Intellectual Property (Type I; Value is $500 or more)	14:73.2	III
	Operating a Vehicle while Intoxicated (Child Endangerment Law)	14:98(J)	
	Possession of Firearm or Carrying Concealed Weapon by a Person Convicted of Certain Felonies	14:95.1	
	Possession of Drugs (Sched. II, Narcotic)	40:967(C)	
	Possession of Intent to Distribute (Sched. V)	40:970(A)(1)	
	Prostitution Involving a Person Under 17	14:82.1	
	Theft (Type I: Value is $500 or more)	14:67	
	Theft of Crawfish (Type I: Value is $500 or more)	14:67.5	
	Theft of Domesticated Fish from a Fish Farm (Type I: Value is $500 or more)	14:67.4	
	Theft of Goods (Type I: Value is $500 or more)	14:67.10	
	Theft of Oil and Gas Equipment (Type I: Value is $500 or more)	14:67.9	
	Unauthorized Entry of an Inhabited Dwelling	14:62.3	
	Unauthorized Use of Access Card (Type I: Value is $500 or more)	14:67.3	
6	Accessory After the Fact (any felony)	14:25	IV
	Assisting Escape	14:111	
	Attempt (to commit any level 5 felony)	14:27	
6	Conspiracy (to commit any level 5 felony)	14:26	IV
	Contraband; Taking to and from Penal Institutions	14:402 (A-D) (1-5), (E) (4-6)	
	Contributing to the Delinquency of Juveniles (Become involved in commission of felony)	14:92(A)(11), (E)	
	Corrupt Influencing	14:120	
	Criminal Damage of a Pipeline Facility (Type II: No foreseeable danger to human life)	14:56.2(C)	
	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Non-narcotic)	40:981.3	

Ranked Felonies and R.S. Nos. by Crime Seriousness Level			
Grid Level	**Offense**	**R.S. No.**	**Category**
	Drug Free Zones: 40:968(C)—Possession of Drugs (Sched. III)	40:981.3	
	Drug Free Zones: 40:969(C)—Possession of Drugs (Sched. IV)	40:981.3	
	Enticing Persons into Prostitution	14:86	
	False Personation of a Peace Officer	14:112.1	
	Illegal Carrying of Weapons	14:95	
	Incest (Type II: Relationship is not father, mother, brother or sister)	14:78(A), (D)(2)	
	Inciting to Riot (Type II: Serious bodily injury or property damage $5,000 or more)	14:329.2 :328.7(B)	
	Institutional Vandalism (Type II: Damage is $500 or more but less than $50,000)	14.225(A), (B)(2)	
	Intimidating, Impeding or Injuring Witnesses	14:129.1	
6	Jury Tampering	14:129	IV
	Malfeasance in Office	14:134	
	Mingling Harmful Substances	14:38.1	
	Obscenity (Type I: Person under 17 yrs of age)	14:106(A)(1-3) (G)(4)	
	Obstruction of Justice (Type III: Obstruction in other criminal proceedings)	14:130.1(A), (B)(3)	
	Offense Against Computer Equipment and Supplies	14:73.3	
	Pandering (Force or threats, or parental consent)	14:84(1,3,5)	
	Perjury	14:123	
	Possession of Drugs (Sched. I, Narcotic)	40:966(C)(1)	
	Public Bribery	14:118	
	Public Intimidation	14:122	
	Simple Arson (Type I: Damage is $500 or more)	14:52	
	Simple Criminal Damage to Property (Type II: Property damage is $500 or more but less than $50,000)	14:56	
	Simple Escape (Type II: Intentional escape)	14:110(A)(1), (B)(3)	
	Unauthorized Entry of a Place of Business	14:62.4	
7	Access Device Fraud	14:70.4	IV
	Arson with Intent to Defraud	14:53	
7	Attempt (to commit any level 6 felony)	14:27	IV
	Avoiding Payment of Telecommunication Services	14:221	
	Computer Fraud	14:73.5	
	Conspiracy (to commit any level 6 felony)	14:26	
	Damage to Property with Intent to Defraud	14:57	
	Drug Free Zones: 40:966(D)—Simple Possession of Marijuana (Second Offense)	40:981.3	
	Drug Free Zones: 40:970(C)—Possession of Drugs (Sched. V)	40:981.3	
	Fishing or Hunting Contest Fraud	14:214	
	Inciting a Felony (any felony)	14:28	
	Illegal Possession of Stolen Goods (Type II: Value is $100 or more but $500 less than)	14:69	
	Illegal Use of Counterfeit Trademark	14:229	
	Illegal Use of Weapons or Dangerous Instrumentalities	14:94	
	Issuing Worthless Checks (Type II: Value is $100 or more but less than $500)	14:71	
	Jumping Bail	14:110.1	
	Medicaid Fraud	14:70.1	
	Obtaining Rented or Leased Motor Vehicles by False Representation	14:220	
7	Offense Against Intellectual Property (Type II: Value is $100 or more but less than $500)	14:73.2	IV
	Operating a Vehicle While Intoxicated (Multiple offense)	14:98	
	Pandering	14:84(1-4, 6)	
	Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	40:966(C) (2,3)	
	Terrorizing	14:40.1	
	Theft (Type II: Value is $100 or more but less than $500)	14:67	
	Theft of Crawfish (Type II: Value is $100 or more but less than $500)	14:67.5	
	Theft of Domesticated Fish from a Fish Farm (Type II: Value is $100 or more but less than $500)	14:67.4	
	Theft of Goods (Type II: Value is $100 or more but less than $500)	14:67.10	
	Theft of Livestock	14:67.1	
	Theft of Oil and Gas Equipment (Type II: Value is $100 or more but less than $500)	14:67.9	
	Theft of Oilfield Geological Survey, Seismograph, and Production Maps	14:67.8	
	Theft of Petroleum Products	14:67.7	
	Theft of Utility Services (Second offense)	14:67.6	

Ranked Felonies and R.S. Nos. by Crime Seriousness Level			
Grid Level	**Offense**	**R.S. No.**	**Category**
7	Unauthorized Use of a Movable (Value more than $1,000)	14:68	IV
	Unauthorized Use of Access Card (Type II: Value is $100 or more but less than $500)	14:67.3	
8	Attempt (to commit any level 7 felony)	14:27	V
	Conspiracy (to commit any level 7 felony)	14:26	
	Contraband; Taking to and from Penal Institutions	14:402(D) (6-8), (E) (1-3)	
	Criminal Damage to Coin-Operated Device	14:56.1	
	Dogfighting	14:102.5	
	Improper Telephone Communications (Second offense)	14:285	
	Obscenity	14:106	
	Possession of Drugs (Sched. II, Non-narcotic)	40:967(C)	
	Possession of Drugs (Sched. III)	40:968(C)	
	Possession of Drugs (Sched. IV)	40:969(C)	
	Public Contract Fraud	14:140	
	Public Payroll Fraud	14:138	
	Riot (Type II: Participating in a riot resulting in serious bodily injury or property damage $5000 or more)	14:329.1	
	Simple Arson (Type II: Damage is less than $500)	14:52	
8	Taking of Contraband to State-Owned Hospitals	14:402.1	V
9	Attempt (to commit any level 8 or 9 felony)	14:27	V
	Conspiracy (to commit any level 8 or 9 felony)	14:26	
	Crime Against Nature	14:89	
	Encouraging or Contributing to Child Delinquency	14:92.1	
	Possession of Drugs (Sched. V)	40:970(C)	
	Promoting Prostitution	14:83.2	
	Prostitution (Second offense)	14:82	
	Simple Escape (Type III: Failure to return)	14:110(A) (2,3), (B) (1,2)	
	Simple Possession of Marijuana (Second offense)	40:966(D)	

B. Felonies Ranked Numerically by Status Number

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number		
+ One level below the crime seriousness level of the completed offense * Unranked		
R. S. No.	**Offense**	**Grid Level**
14:25	Accessory After the Fact (any felony)	6
14:26	Criminal Conspiracy	+
14:27	Attempt	+
14:28	Inciting a Felony (any felony)	7
14:28.1	Solicitation of Murder	4
14:30	First Degree Murder	0
14:30.1	Second Degree Murder	0
14:31	Manslaughter	1
14:32	Negligent Homicide	4
14:32.1	Vehicular Homicide	3
14:34	Aggravated Battery	2
14:34.1	Second Degree Battery	3
14:34.2(B)	Battery of a Police Officer (Type I: Serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	3
14:34.2(B)	Battery of a Police Officer (Type II: No serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	5
14:37.1	Assault by Drive-by Shooting	3
14:38.1	Mingling Harmful Substances	6
14:40.1	Terrorizing	7
14:42	Aggravated Rape	0
14:42.1	Forcible Rape	1
14:43	Simple Rape	2
14:43.1	Sexual Battery (Type I: Compulsion by fear of bodily harm)	3
14:43.1	Sexual Battery (Type II: Victim is under 15 yrs)	4

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number

\+ One level below the crime seriousness level of the completed offense
* Unranked

R. S. No.	Offense	Grid Level
14:43.2	Aggravated Sexual Battery	1
14:43.3	Oral Sexual Battery (Type I: Compulsion by fear of bodily harm)	3
14:43.3	Oral Sexual Battery (Type II: Victim is 15 yrs)	4
14:43.4(A)(1-3,5)	Aggravated Oral Sexual Battery (Type I: Force or threat of force, or 2 or more offenders)	1
14:43.4(A)(4)	Aggravated Oral Sexual Battery (Type II: Victim is under 12 yrs)	3
14:43.5	Intentional Exposure of AIDS Virus	4
14:44	Aggravated Kidnapping	0
14:44.1	Second Degree Kidnapping	1
14:45	Simple Kidnapping	4
14:46.1	False Imprisonment with a Dangerous Weapon	3
14:51	Aggravated Arson	3
14:52	Simple Arson (Type I: Damage is $500 or more)	6
14:52	Simple Arson (Type II: Damage is less than $500)	8
14:53	Arson with Intent to Defraud	7
14:54.1	Communicating of False Information of Planned Arson	*
14:54.2	Manufacture and Possession of Delayed Action Incendiary Devices	*
14:54.3	Manufacture and Possession of a Bomb	*
14:55	Aggravated Criminal Damage to Property	3
14:56	Simple Criminal Damage to Property (Type I: Damage is $50,000 or more)	4
14:56	Simple Criminal Damage to Property (Type II: Damage is $500 or more but less than $50,000)	6
14:56.1	Criminal Damage to Coin-Operated Device	8
14:56.2(D)	Criminal Damage of a Pipeline Facility (Type I: Foreseeable danger to human life)	4
14:56.2(C)	Criminal Damage of a Pipeline Facility (Type II: No Foreseeable danger to human life)	6
14:57	Damage to Property with Intent to Defraud	7
14:58	Contaminating Water Supplies	*
14:60	Aggravated Burglary	1
14:62	Simple Burglary	4
14:62.1	Simple Burglary of a Pharmacy	4
14:62.2	Simple Burglary of an Inhabited Dwelling	3
14:62.3	Unauthorized Entry of an Inhabited Dwelling	5
14:62.4	Unauthorized Entry of a Place of Business	6
14:62.5	Looting	3
14:64	Armed Robbery	1
14:64.1	First Degree Robbery	2
14:64.2	Carjacking	1
14:65	Simple Robbery	3
14:65.1	Purse Snatching	3
14:66	Extortion	4
14:67	Theft (Type I: Value is $500 or more)	5
14:67	Theft (Type II: Value is $100 or more but less than $500)	7
14:67.1	Theft of Livestock	7
14:67.3	Unauthorized Use of Access Card (Type I: Value is $500 or more)	5
14:67.3	Unauthorized Use of Access Card (Type II: Value is $100 or more but less than $500)	7
14:67.4	Theft of Domesticated Fish from a Fish Farm (Type I: Value is $500 or more)	5
14:67.4	Theft of Domesticated Fish from a Fish Farm Type II: Value is $100 or more but less than $500)	7
14:67.5	Theft of Crawfish (Type I: Value is $500 or more)	5
14:67.5	Theft of Crawfish (Type II: Value is $100 or more but less than $500)	7
14:67.6	Theft of Utility Services (Second offense)	7
14:67.7	Theft of Petroleum Products	7
14:67.8	Theft of Oilfield Geological Survey, Seismograph, and Production Maps	7
14:67.9	Theft of Oil and Gas Equipment (Type I: Value is $500 or more)	5
14:67.9	Theft of Oil and Gas Equipment (Type II: Value is $100 or more but less than $500)	7
14:67.10	Theft of Goods (Type I: Value is $500 or more)	5
14:67.10	Theft of Goods (Type II: Value is $100 or more but less than $500)	7
14:68	Unauthorized Use of a Movable (Value more than $1,000)	7
14:69	Illegal Possession of Stolen Goods (Type I: Value is $500 or more)	5
14:69	Illegal Possession of Stolen Goods (Type II: Value is $100 or more but less than $500)	7
14:70.1	Medicaid Fraud	7

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number		
+ One level below the crime seriousness level of the completed offense * Unranked		
R. S. No.	**Offense**	**Grid Level**
14:70.4	Access Device Fraud	7
14:71	Issuing Worthless Checks (Type I: Value is $500 or more)	5
14:71	Issuing Worthless Checks (Type II: Value is $100 or more but less than $500)	7
14:72	Forgery	5
14:73.2	Offense Against Intellectual Property (Type I: Value is $500 or more)	5
14:73.2	Offense Against Intellectual Property (Type II: Value is $100 or more but less than $500)	7
14:73.3	Offense Against Computer Equipment and Supplies	6
14:73.4	Offenses Against Computer Users	*
14:73.5	Computer Fraud	7
14:76	Bigamy	*
14:77	Abetting in Bigamy	*
14:78(A), (D)(1)	Incest (Type I: Relationship is father, mother, brother or sister	5
14:78(A), (D)(2)	Incest (Type II: Relationship is not father, mother, brother or sister)	6
14:80	Carnal Knowledge of a Juvenile	4
14:81	Indecent Behavior with Juveniles	5
14:81.1	Pornography Involving Juveniles	3
14:81.2	Molestation of a Juvenile	3
14:82	Prostitution (Second offense)	9
14:82.1	Prostitution Involving a Person Under 17	5
14:83.2	Promoting Prostitution	9
14:84(1,3,5)	Pandering (Force or threats, or parental consent	6
14:84(1-4,6)	Pandering	7
14:86	Enticing Persons into Prostitution	6
14:87	Abortion	*
14:87.1	Killing a Child During Delivery	*
14:87.2	Human Experimentation	*
14:87.4	Abortion Advertising	*
14:87.5	Intentional Failure to Sustain Life and Health of Aborted Viable Infant	*
14:89	Crime Against Nature	9
14:89.1	Aggravated Crime Against Nature	1
14:92(A)(7)	Contributing to the Delinquency of Juveniles (Perform any sexually immoral act)	5
14:92(A)(11), (E)	Contributing to the Delinquency of Juveniles (Become involved in commission of felony)	6
14:92.1	Encouraging or Contributing to Child Delinquency	9
14.93	Cruelty to Juveniles (Type I: Intentional injury to victim)	2
14:93	Cruelty to Juveniles (Type II: Criminally negligent or neglect)	5
14:93.3	Cruelty to the Infirm (Type I: Intentional injury to victim)	2
14:93.3	Cruelty to the Infirm (Type II: Criminally negligent or neglect)	5
14:94	Illegal Use of Weapons or Dangerous Instrumentalities	7
14:95	Illegal Carrying of Weapons	6
14:95.1	Possession of Firearm or Carrying Concealed Weapon by a Person Convicted of Certain Felonies	5
14:95.2	Carrying a Firearm by a Student or Non-student on School Property or Firearm-free Zone	4
14:95.3	Unlawful Use of Body Armor	*
14:96	Aggravated Obstruction of a Highway of Commerce	*
14:98	Operating a Vehicle while Intoxicated (Multiple offense)	7
14:98(J)	Operating a Vehicle while Intoxicated (Child Endangerment Law)	5
14:100	Hit and Run Driving	*
14:101.1	Purchase or Sale of Human Organ	*
14:102.5	Dogfighting	8
14:102.8	Injuring or Killing of a Police Dog	*
14:106(A)(1-3), (G)(4)	Obscenity (Type I: Persons under 17 yrs of age)	6
14:106	Obscenity	8
14:106.1	Promotion or Wholesale Promotion of Obscene Devices	*
14:110(C)	Aggravated Escape (Type I: Foreseeable danger to human life)	3
14:110(A)(1). (B)(3)	Simple Escape (Type II: Intentional Escape)	6
14:110(A)(2,3), (B)(1,2)	Simple Escape (Type III: Failure to Return)	9
14:110.1	Jumping Bail	7

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number

\+ One level below the crime seriousness level of the completed offense
* Unranked

R. S. No.	Offense	Grid Level
14:111	Assisting Escape	6
14:112.1	False Personation of a Peace Officer	6
14:113	Treason	*
14:114	Misprison of Treason	*
14:115	Criminal Anarchy	*
14:118	Public Bribery	6
14:118.1	Bribery of Sports Participants	*
14:119	Bribery of Voters	*
14:120	Corrupt Influencing	6
14:122	Public Intimidation	6
14:123	Perjury	6
14:126.1	False Swearing for Purpose of Violating Public Health	*
14:126.2	False Statements Concerning Denial of Constitutional Rights	*
14:129	Jury Tampering	6
14:129.1	Intimidating, Impeding or Injuring Witnesses	6
14:130.1(A),(B)(1)	Obstruction of Justice (Type I: Obstruction in a capital or life imprisonment case)	2
14:130.1(A), (B)(2)	Obstruction of Justice (Type II: Obstruction in felony case necessarily punishable at hard labor for less than life)	3
14:130.1(A), (B)(3)	Obstruction of Justice (Type III: Obstruction in other criminal proceedings)	6
14:131	Compounding a Felony	*
14:132	Injuring Public Records	*
14:133	Filing False Public Records	*
14:134	Malfeasance in Office	6
14:134.2	Malfeasance in Office; tampering with Evidence	*
14:135	Public Salary Deduction	*
14:136	Public Salary Extortion	*
14:138	Public Payroll Fraud	8
14:139	Political Payroll Padding	*
14:139.1	Political Payroll Padding by Sheriff	*
14:139.2	Transfer of Capital Assets of Clerk of Court's Office	*
14:140	Public Contract Fraud	8
14:141	Splitting of Profits, Fees, or Commissions	*
14:201	Collateral Securities, Unauthorized Use or Withdrawal	*
14:202	Contractors, Misapplication of Payments Prohibited	*
14:209	Breaking Seals	*
14:214	Fishing or Hunting Contest Fraud	7
14:220	Obtaining Rented or Leased Motor Vehicles by False Representation	7
14:221	Avoiding Payment of Telecommunication Services	7
14:225(A), (B)(3)	Institutional Vandalism (Type I: Damage is $50,000 or more)	3
14:225(A), (B)(2)	Institutional Vandalism (Type II: Damage is $500 or more but less than $50,000)	6
14:229	Illegal Use of Counterfeit Trademark	7
14:285	Improper Telephone Communications (Second offense)	8
14:286	Sale of Minor Children	*
14:327	Obstructing a Firearm	*
14:329.1 :329.7(C)	Riot (Type I: Participating in riot with injury to victim resulting in death)	3
14:329.1 :329.7(B)	Riot (Type II: Participating in riot resulting in serious bodily injury or property damage $5,000 or more)	8
14:329.2 :329.7(C)	Inciting to Riot (Type I: Injury to victim resulting in death)	1
14:329.2 :329.7(B)	Inciting to Riot (Type II: Serious bodily injury or property damage $5,000 or more)	6
14:329.3	Failure to Comply with Command to Disperse	*
14:329.4	Wrongful Use of Public Property	*
14:329.5	Interference with Education Process	*
14:356	Sheriffs, etc., Solicitation of Legal Business	*
14:368	Failure to Register as Communist; Rules	*
14:388	False Statements in Affidavit as Perjury	*

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number		
+ One level below the crime seriousness level of the completed offense * Unranked		
R. S. No.	**Offense**	**Grid Level**
14:390.2	Dissemination/Storage of Communist Propaganda	*
14:402(A-D)(1-5), (E)(4-6)	Contraband; Taking to and from Penal Institutions	6
14:402(A-D)(6-8), (E)(1-3)	Contraband; Taking to and from Penal Institutions	8
14:402.1	Taking of Contraband to State-Owned Hospitals	8
14:403.2	Abuse and Neglect of Adults	*
14:404	Self-mutilation by a Prisoner	*
14:501	Killing or Injuring a Person while Hunting	*
14:511	Loan Sharking	*
14:512	Aggravated Loan Sharking	*
40:966(A)(1)	Manufacture/Distribution of Drugs (Sched. I, Narcotic)	0
40:966(A)(1)	Possession with Intent to Distribute (Sched. I, Narcotic)	0
40:966(A)(1)	Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	2
40:966(A)(1)	Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	3
40:966(A)(1)	Manufacture/Distribution of Marijuana	4
40:966(A)(1)	Possession with Intent to Distribute Marijuana	4
40:966(C)(1)	Possession of Drugs (Sched. I, Narcotic)	6
40:966(C)(2,3)	Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	7
40:966(D)	Simple Possession of Marijuana (Second Offense)	9
40:966(E)(3)	Possession of 10,000 lbs or more of Marijuana	2
40:966(E)(2)	Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	3
40:966(E)(1)	Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	4
40:967(A)(1)	Manufacture/Distribution of Drugs (Sched. II, Narcotic)	2
40:967(A)(1)	Possession with Intent to Distribute (Sched. II, Narcotic)	3
40:967(A)(1)	Manufacture/distribution of Drugs (Sched. II, Non-narcotic)	3
40:967(A)(1)	Possession with Intent to Distribute (Sched. II, Non-narcotic)	4
40:967(C)	Possession of Drugs (Sched. II, Narcotic)	5
40:967(C)	Possession of Drugs (Sched. II, Non-narcotic)	8
40:967(F)(1)(c)	Possession of 400 or more grams of Cocaine (Detectable amount)	1
40:967(F)(1)(b)	Possession of more than 200 but less than 400 grams of Cocaine (Detectable amount)	2
40:967(F)(1)(a)	Possession of more than 28 but less than 200 grams of Cocaine (Detectable amount)	3
40:967(F)(2)(c)	Possession of 400 or more grams of Amphetamine or Methamphetamine (Detectable amount)	1
40:967(F)(2)(b)	Possession of more than 200 but less than 400 grams of Amphetamine or Methamphetamine (Detectable amount)	2
40:967(F)(2)(a)	Possession of more than 28 but less than 200 grams of Amphetamine or Methamphetamine (Detectable amount)	3
40:968(A)(1)	Manufacture/Distribution of Drugs (Sched. III)	3
40:968(A)(1)	Possession with Intent to Distribute (Sched. III)	4
40:968(C)	Possession of Drugs (Sched. III)	8
40:969(A)(1)	Manufacture/Distribution of Drugs (Sched. IV)	3
40:969(A)(1)	Possession with Intent to Distribute (Sched. IV)	4
40:969(C)	Possession of Drugs (Sched. IV)	8
40:970(A)(1)	Manufacture/Distribution of Drugs (Sched. V)	4
40:970(A)(1)	Possession with Intent to Distribute (Sched. V)	5
40:970(C)	Possession of Drugs (Sched. V)	9
40:971	Obtaining Drugs by Fraud	4
40:981	Distribution of Drugs to a Child (Sched. I, Narcotic)	0
40:981	Distribution of Drugs to a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	2
40:981	Distribution of Drugs to a Child (Sched. II, Non-narcotic or Sched. III or Sched. IV or Marijuana)	3
40:981	Distribution of Drugs to a Child (Sched. V)	4
40:981.1	Distribution to a Student	*
40:981.2	Distribution of Drugs using a Child (Sched. I, Narcotic)	0
40:981.2	Distribution of Drugs using a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	2
40:981.2	Distribution of Drugs using a Child (Sched. II, Non-narcotic or Sched. III or Sched. IV or Marijuana)	3
40:981.2	Distribution of Drugs using a Child (Sched. V)	4
40:981.3	Drug Free Zone: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Narcotic)	0
40:981.3	Drug Free Zone: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Narcotic)	0

A Listing of Louisiana's Statutory Felony Offenses in Revised Statutes Title 14 and Title 40 by Statute Number		
+ One level below the crime seriousness level of the completed offense * Unranked		
R. S. No.	**Offense**	**Grid Level**
40:981.3	Drug Free Zone: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Non-Narcotic and Non-marijuana)	1
40:981.3	Drug Free Zone: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Non-Narcotic and Non-marijuana)	2
40:981.3	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Marijuana	2
40:981.3	Drug Free Zones: 40:966(A)(1)—Possession of Marijuana with Intent to Distribute	4
40:981.3	Drug Free Zones: 40:966(C)—Possession of Drugs (Sched. I, Narcotic)	4
40:981.3	Drug Free Zones: 40:966(C)(2,3)—Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	5
40:981.3	Drug Free Zones: 40:966(D)—Simple Possession of Marijuana (Second Offense)	7
40:981.3	Drug Free Zones: 40:966(E)(1)—Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	4
40:981.3	Drug Free Zones: 40:966(E)(2)—Possession of 2,000 lbs or more but less than 10,000 of Marijuana	2
40:981.3	Drug Free Zones: 40:966(E)(3)—Possession of 10,000 lbs or more of Marijuana	1
40:981.3	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Narcotic)	1
40:981.3	Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Narcotic)	2
40:981.3	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	2
40:981.3	Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Non-narcotic)	3
40:981.3	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Narcotic)	5
40:981.3	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Non-narcotic)	6
40:981.3	Drug Free Zones: 40:968(A)(1)—Manufacture/Distribution of Drugs (Sched. III)	2
40:981.3	Drug Free Zones: 40:968(A)(1)—Possession with Intent to Distribute (Sched. III)	3
40:981.3	Drug Free Zones: 40:968(C)—Possession of Drugs (Sched. III)	6
40:981.3	Drug Free Zones: 40:969(A)(1)—Manufacture/Distribution of Drugs (Sched. IV)	2
40:981.3	Drug Free Zones: 40:969(A)(1)—Possession with Intent to Distribute (Sched. IV)	3
40:981.3	Drug Free Zones: 40:969(C)—Possession of Drugs (Sched. IV)	6
40:981.3	Drug Free Zones: 40:970(A)(1)—Manufacture/Distribution of Drugs (Sched. V)	3
40:981.3	Drug Free Zones: 40:970(A)(1)—Possession with Intent to Distribute (Sched. V)	4
40:981.3	Drug Free Zones: 40:970(C)—Possession of Drugs (Sched. V)	7
NOTE: This listing of statutory felony offenses is for convenience in cross-referencing to the Crime Seriousness Ranking Tables §401.A and C; it is not official nor is it intended to be used in place of §401.A and C.		

C. Ranked Felonies in Alphabetical Order

Offense	R.S. No.	Grid Level
+ One level below the crime seriousness level of the completed offense		
Accessory After the Fact (Any felony)	14:25	6
Access Device Fund	14:70.4	7
Aggravated Arson	14:51	3
Aggravated Battery	14:34	2
Aggravated Burglary	14:60	1
Aggravated Crime Against Nature	14:89.1	1
Aggravated Criminal Damage to Property	14:55	3
Aggravated Escape (Type I: Foreseeable danger to human life)	14:110(C)	3
Aggravated Kidnapping	14:44	0
Aggravated Oral Sexual Battery (Type I: Force or threat of force, or 2 or more offenders)	14:43.4(A)(1-3,5)	1
Aggravated Oral Sexual Battery (Type II: Victim is under 12 yrs)	14:43.4(A)(4)	3
Aggravated Rape	14:42	0
Aggravated Sexual Battery	14:43.2	1
Armed Robbery	14:64	1
Arson with Intent to Defraud	14:53	7
Assisting Escape	14:111	6
Assault by Drive-by Shooting	14:37.1	3
Attempt	14:27	+
Avoiding Payment of Telecommunication Services	14:221	7
Battery of a Police Officer (Type I: Serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	14:34.2(B)	3
Battery of a Police Officer (Type II: No serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	14:34.2(B)	5
Carjacking	14:64.2	1

Offense	R.S. No.	Grid Level
Carnal Knowledge of a Juvenile	14:80	4
Carrying a Firearm by a Student or Non-student on School Property or Firearm-free Zone	14:95.2	4
Computer Fraud	14:73.5	7
Contraband; Taking to and from Penal Institutions	14:402(A-D)(1-5), (E)(4-6)	6
Contraband; Taking to and from Penal Institutions	14:402(D)(6-8), (E)(1-3)	8
Contributing to the Delinquency of Juveniles (Perform any sexually immoral act)	14:92(A)(7)	5
Contributing to the Delinquency of Juveniles (Become involved in commission of felony)	14:92(A)(11), (E)	6
Corrupt Influencing	14:120	6
Crime Against Nature	14:89	9
Criminal Conspiracy	14:26	+
Criminal Damage of a Pipeline Facility (Type I: Foreseeable danger to human life)	14:56.2(D)	4
Criminal Damage of a Pipeline Facility (Type II: No foreseeable danger to human life)	14:56.2(C)	6
Criminal Damage to Coin-Operated Device	14:56.1	8
Cruelty to Juveniles (Type I: Intentional injury to victim)	14:93	2
Cruelty to Juveniles (Type II: Criminally negligent or neglect)	14:93	5
Cruelty to the Infirm (Type I: Intentional injury to victim)	14:93.3	2
Cruelty to the Infirm (Type II: Criminally negligent or neglect)	14:93.3	5
Damage to Property with Intent to Defraud	14:57	7
Distribution of Drugs to a Child (Sched. I, Narcotic)	40:981	0
Distribution of Drugs to a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	40:981	2
Distribution of Drugs to a Child (Sched. I, Non-narcotic or Sched. III or Sched. IV or Marijuana)	40:981	3
Distribution of Drugs to a Child (Sched. V)	40:981	4
Distribution of Drugs to a Child (Sched. I, Narcotic)	40:981.2	0
Distribution of Drugs using a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	40:981.2	2
Distribution of Drugs using a Child (Sched. I, Non-narcotic or Sched. III or Sched. IV or Marijuana)	40:981.2	3
Distribution of Drugs using a Child (Sched. V)	40:981.2	4
Dogfighting	14:102.5	8
Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Narcotic)	40:981.3	0
Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	40:981.3	1
Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Marijuana)	40:981.3	2
Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Narcotic)	40:981.3	0
Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	40:981.3	2
Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute Marijuana (Amount is less than 1 plant)	40:981.3	5
Drug Free Zones: 40:966(C)(1)—Possession of Drugs (Sched. I, Narcotic)	40:981.3	4
Drug Free Zones: 40:966(C)(2,3)—Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	40:981.3	5
Drug Free Zones: 40:966(A)(1)—Possession of Marijuana with Intent to Distribute	40:981.3	4
Drug Free Zones: 40:966(D)—Simple Possession of Marijuana (Second offense)	40:981.3	7
Drug Free Zones: 40:966(E)(1)—Possession of 60 lbs or more but less than 2,000 lbs or Marijuana	40:981.3	4
Drug Free Zones: 40:966(E)(2)—Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	40:981.3	2
Drug Free Zones: 40:966(E)(3)—Possession of 10,000 lbs or more of Marijuana	40:981.3	1
Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Narcotic)	40:981.3	1
Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	40:981.3	2
Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Narcotic)	40:981.3	2
Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Non-narcotic)	40:981.3	3
Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Narcotic)	40:981.3	5
Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Non-narcotic)	40:981.3	6
Drug Free Zones: 40:968(A)(1)—Manufacture/Distribution of Drugs (Sched. III)	40:981.3	2
Drug Free Zones: 40:968(A)(1)—Possession with Intent to Distribute (Sched. III)	40:981.3	3
Drug Free Zones: 40:968(C)—Possession of Drugs (Sched. III)	40:981.3	6
Drug Free Zones: 40:969(A)(1)—Manufacture/Distribution of Drugs (Sched. IV)	40:981.3	2
Drug Free Zones: 40:969(A)(1)—Possession with Intent to Distribute (Sched. IV)	40:981.3	3
Drug Free Zones: 40:969(C)—Possession of Drugs (Sched. IV)	40:981.3	6
Drug Free Zones: 40:970(A)(1)—Manufacture/Distribution of Drugs (Sched. V)	40:981.3	3
Drug Free Zones: 40:970(A)(1)—Possession with Intent to Distribute (Sched. V)	40:981.3	4
Drug Free Zones: 40:970(C)—Possession of Drugs (Sched. V)	40:981.3	7
Encouraging or Contributing to Child Delinquency	14:92.1	9
Enticing Persons into Prostitution	14:86	6

Offense	R.S. No.	Grid Level
Extortion	14:66	4
False Imprisonment with a Dangerous Weapon	14:46.1	3
False Personation of a Peace Officer	14:112.1	6
First Degree Murder	14:30	0
First Degree Robbery	14:64.1	2
Fishing or Hunting Contest Fraud	14:214	7
Forcible Rape	14:42.1	1
Forgery	14:72	5
Illegal Carrying of Weapons	14:95	6
Illegal Possession of Stolen Goods (Type I: Value is $500 or more)	14:69	5
Illegal Possession of Stolen Goods (Type II: Value is $100 or more but less than $500)	14:69	7
Illegal Use of Counterfeit Trademark	14:229	7
Illegal Use of Weapons or Dangerous Instrumentalities	14:94	7
Improper Telephone Communications (Second offense)	14:285	8
Incest (Type I: Relationship is father, mother, brother or sister)	14:78(A), (D)(1)	5
Incest (Type II: Relationship is not father, mother, brother or sister)	14:78(A), (D)(2)	6
Inciting a Felony (any felony)	14:28	7
Inciting to Riot (Type I: Injury to victim resulting in death)	14:329.2 :329.7(C)	1
Inciting to Riot (Type II: Serious bodily injury or property damage $5,000 or more)	14:329.2 :329.7(B)	6
Indecent Behavior with Juveniles	14:81	5
Institutional Vandalism (Type I: Damage is $50,000 or more)	14:225(A), (B)(3)	3
Institutional Vandalism (Type II: Damage is $500 or more but less than $50,000)	14:225(A), (B)(2)	6
Intentional Exposure of AIDS Virus	14:43.5	4
Intimidating, Impeding or Injuring Witnesses	14:129.1	6
Issuing Worthless Checks (Type I: Value is $500 or more)	14:71	5
Issuing Worthless Checks (Type II: Value is $100 or more but less than $500)	14:71	7
Jumping Bail	14:110.1	7
Jury Tampering	14:129	6
Looting	14:62.5	3
Malfeasance in Office	14:134	6
Manslaughter	14:31	1
Manufacture/Distribution of Drugs (Sched. I, Narcotic)	40:966(A)(1)	0
Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	40:966(A)(1)	2
Manufacture/Distribution of Drugs (Sched. II, Narcotic)	40:967(A)(1)	2
Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	40:967(A)(1)	3
Manufacture/Distribution of Drugs (Sched. III)	40:968(A)(1)	3
Manufacture/Distribution of Drugs (Sched. IV)	40:969(A)(1)	3
Manufacture/Distribution of Drugs (Sched. V)	40:970(A)(1)	4
Manufacture/Distribution of Marijuana	40:966(A)(1)	4
Medicaid Fraud	14:70.1	7
Mingling Harmful Substances	14:38.1	6
Molestation of a Juvenile	14:81.2	3
Negligent Homicide	14:32	4
Obscenity (Type I: Persons under 17 yrs of age)	14:106(A)(1-3), (G)(4)	6
Obscenity	14:106	8
Obstruction of Justice (Type I: Obstruction in a capital or life imprisonment case)	14:130.1(A), (B)(1)	2
Obstruction of Justice (Type II: Obstruction in felony case necessarily punishable at hard labor for less than life)	14:130.1(A), (B)(2)	3
Obstruction of Justice (Type III: Obstruction in other criminal proceedings)	14:130.1(A), (B)(3)	6
Obtaining Drugs by Fraud	14:971	4
Obtaining Rented or Leased Motor Vehicles by False Representation	14:220	7
Offense Against Computer Equipment and Supplies	14:73.3	6
Offense Against Intellectual Property (Type I: Value is $500 or more)	14:73.2	5
Offense Against Intellectual Property (Type II: Value is $100 or more but less than $500)	14:73.2	7
Operating a Vehicle while Intoxicated (Multiple offense)	14:98	7
Operating a Vehicle while Intoxicated (Child Endangerment Law)	14:98(J)	5
Oral Sexual Battery (Type I: Compulsion by fear of bodily harm)	14:43.3	3
Oral Sexual Battery (Type II: Victim is under 15 yrs)	14:43.3	4
Pandering (Force or threats, or parental consent)	14:84(1,3,5)	6

Offense	R.S. No.	Grid Level
Pandering	14:84(1-4,6)	7
Perjury	14:123	6
Pornography Involving Juveniles	14:81.1	3
Possession of 10,000 lbs or more of Marijuana	40:966(E)(3)	2
Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	40:966(E)(2)	3
Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	40:966(E)(1)	4
Possession of 400 or more grams of Cocaine (Detectable amount)	40:967(F)(1)(c)	1
Possession of more than 200 but less than 400 grams of Cocaine (Detectable amount)	40:967(F)(1)(b)	2
Possession of more than 28 but less than 200 grams of Cocaine (Detectable amount)	40:967(F)(1)(a)	3
Possession of 400 or more grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(c)	1
Possession of more than 200 but less than 400 grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(b)	2
Possession of more than 28 but less than 200 grams of Amphetamine or Methamphetamine (Detectable amount)	40:967(F)(2)(a)	3
Possession of Drugs (Sched. I, Narcotic)	40:966(C)(1)	6
Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	40:966(C)(2,3)	7
Possession of Drugs (Sched. II, Narcotic)	40:967(C)	5
Possession of Drugs (Sched. II, Non-narcotic)	40:967(C)	8
Possession of Drugs (Sched. III)	40:968(C)	8
Possession of Drugs (Sched. IV)	40:969(C)	8
Possession of Drugs (Sched. V)	40:970(C)	9
Possession with Intent to Distribute (Sched. I, Narcotic)	40:966(A)(1)	0
Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	40:966(A)(1)	3
Possession with Intent to Distribute Marijuana	40:966(A)(1)	4
Possession with Intent to Distribute (Sched. II, Narcotic)	40:967(A)(1)	3
Possession with Intent to Distribute (Sched. II, Non-narcotic)	40:967(A)(1)	4
Possession with Intent to Distribute (Sched. III)	40:968(A)(1)	4
Possession with Intent to Distribute (Sched. IV)	40:969(A)(1)	4
Possession with Intent to Distribute (Sched. V)	40:970(A)(1)	5
Possession of Firearm or Carrying Concealed Weapon by a Person Convicted of Certain Felonies	14:95.1	5
Promoting Prostitution	14:83.2	9
Prostitution (Second offense)	14:82	9
Prostitution Involving a Person Under 17	14:82.1	5
Public Bribery	14:118	6
Public Contract Fraud	14:140	8
Public Intimidation	14:122	6
Public Payroll Fraud	14:138	8
Purse Snatching	14:65.1	3
Riot (Type I: Participating in riot with injury to victim resulting in death)	14:329.1 :329.7(C)	3
Riot (Type II: Participating in riot resulting in serious bodily injury or property damage $5,000 or more)	14:329.1 :329.7(B)	8
Second Degree Battery	14:34.1	3
Second Degree Kidnapping	14:44.1	1
Second Degree Murder	14:30.1	0
Sexual Battery (Type I: Compulsion by fear of bodily harm)	14:43.1	3
Sexual Battery (Type II: Victim is under 15 yrs)	14:43.1	4
Simple Arson (Type I: Damage is $500 or more)	14:52	6
Simple Arson (Type II: Damage is less than $500)	14:52	8
Simple Burglary	14:62	4
Simple Burglary of a Pharmacy	14:62.1	4
Simple Burglary of an Inhabited Dwelling	14:62.2	3
Simple Criminal Damage to Property (Type I: Damage is $50,000 or more)	14:56	4
Simple Criminal Damage to Property (Type II: Property damage is $500 or more but less than $50,000)	14:56	6
Simple Escape (Type II: Intentional escape)	14:110(A)(1), (B)(3)	6
Simple Escape (Type III: Failure to return	14:110(A)(2,3) (B)(1,2)	9
Simple Kidnapping	14:45	4
Simple Possession of Marijuana (Second Offense)	40:966(D)	9
Simple Rape	14:43	2
Simple Robbery	14:65	3
Solicitation for Murder	14:28.1	4

Offense	R.S. No.	Grid Level
Taking of Contraband to State-Owned Hospitals	14:402.1	8
Terrorizing	14:40.1	7
Theft (Type I: Value is $500 or more)	14:67	5
Theft (Type II: Value is $100 or more but less than $500)	14:67	7
Theft of Crawfish (Type I: Value is $500 or more)	14:67.5	5
Theft of Crawfish (Type II: Value is $100 or more but less than $500)	14:67.5	7
Theft of Domesticated Fish from a Fish Farm (Type I: Value is $500 or more)	14:67.4	5
Theft of Domesticated Fish from a Fish Farm (Type II: Value is $100 or more but less than $500)	14:67.4	7
Theft of Goods (Type I: Value is $500 or more)	14:67.10	5
Theft of Goods (Type II: Value is $100 or more but less than $500)	14:67.10	7
Theft of Livestock	14:67.1	7
Theft of Oil and Gas Equipment (Type I: Value is $500 or more)	14:67.9	5
Theft of Oil and Gas Equipment (Type II: Value is $100 or more but less than $500)	14:67.9	7
Theft of Oilfield Geological Survey, Seismograph, and Production Maps	14:67.8	7
Theft of Petroleum Products	14:67.7	7
Theft of Utility Services (Second offense)	14:67.6	7
Unauthorized Entry of a Place of Business	14:62.4	6
Unauthorized Entry of an Inhabited Dwelling	14:62.3	5
Unauthorized Use of a Movable (Value more than $1,000)	14:68	7
Unauthorized Use of Access Card (Type I: Value is $500 or more)	14:67.3	5
Unauthorized Use of Access Card (Type II: Value is $100 or more but less than $500)	14:67.3	7
Vehicular Homicide	14:32.1	3

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992), amended LR 18:961 (September 1992), LR 19:892 (July 1993), LR 20:787 (July 1994).

§402. Criminal History Tables

A. Criminal History Index Score for Prior Felony Convictions

Crime Seriousness Level for Prior Felony Conviction	Criminal History Index Points
Level 0	5 Points
Level 1	3 Points
Level 2	3 Points
Level 3	2 Points
Level 4	2 Points
Level 5	2 Points
Level 6	1 Points
Level 7	1 Points
Level 8	1 Points
Level 9	1 Points

B. Criminal History Index Score for Prior Misdemeanor Convictions

All Eligible Misdemeanors	0.25 Point
Maximum Limit on the number of Misdemeanor Points	1 Point

C. Criminal History Index Score for Prior Adjudications of Delinquency

Crime Seriousness Level of the Prior Adjudication of Delinquency	Criminal History Index Points
Level 0	3 Points
All Other Levels (Felony)	1 Point
All Adjudications of Delinquency based on a Misdemeanor	0.25 Point Subject to the 1 Point Limit on Misdemeanors

D. Crime Family Table

LEGEND	
Keyword	**Offense Category**
PERSON	Offenses Against the Person (Excluding Sex Offenses)
SEXADLT	Offenses Against the Person (Sex crimes excluding Children)
SEXCHLD	Offense Against the Person (Sex crimes affecting Children)
PROP-PERS	Offenses Against Property (Primary interest: Person)
PROP-EXCLPERS	Offenses Against Property (Excluding crimes with Person as Primary Interest)
INSTITUTE	Offenses Affecting Public Institutions
PUBLORDR	Offenses Affecting Public Order
PUBLMOR	Offenses Affecting Public Morals
FAMILY	Offenses Affecting the Family
DRUGS	Controlled Dangerous Substances Offenses

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
PERSON	14:30	First Degree Murder	0
PERSON	14:30.1	Second Degree Murder	0

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
PERSON	14:44	Aggravated Kidnapping	0
PERSON	14:31	Manslaughter	1
PERSON	14:44.1	Second Degree Kidnapping	1
PERSON	14:34	Aggravated Battery	2
PERSON	14:46.1	False Imprisonment with a Dangerous Weapon	3
PERSON	14:32.1	Vehicular Homicide	3
PERSON	14:34.1	Second Degree Battery	3
PERSON	14:34.2(B)	Battery of a Police Officer (Type I: Serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	3
PERSON	14:37.1	Assault by Drive-by Shooting	3
PERSON	14:28.1	Solicitation for Murder	4
PERSON	14:32	Negligent Homicide	4
PERSON	14:45	Simple Kidnapping	4
PERSON	14:43.5	Intentional Exposure of AIDS Virus	4
PERSON	14:34.2(B)	Battery of a Police Officer (Type II: No serious bodily injury and offender is under jurisdiction and custody of Department of Public Safety and Corrections)	5
PERSON	14:38.1	Mingling Harmful Substances	6
PERSON	14:40.1	Terrorizing	7
SEXADLT	14:42	Aggravated Rape	0
SEXADLT	14:89.1	Aggravated Crime Against Nature	1
SEXADLT	14:43.2	Aggravated Sexual Battery	1
SEXADLT	14:42.1	Forcible Rape	1
SEXADLT	14:43(A) (1-3,5)	Aggravated Oral Sexual Battery (Type I: Force or threat of force, or 2 or more offenders)	1
SEXADLT	14:43	Simple Rape	2
SEXADLT	14:43.1	Sexual Battery (Type I: Compulsion by fear of bodily harm)	3
SEXADLT	14:43.3	Oral Sexual Battery (Type I: Compulsion by fear of bodily harm)	3
SEXCHLD	14:43.4(A)(4)	Aggravated Oral Sexual Battery (Type II: Victim is under 12 yrs)	3
SEXCHLD	14:81.2	Molestation of a Juvenile	3
SEXCHLD	14:43.1	Sexual Battery (Type II: Victim is under 15 yrs)	4
SEXCHLD	14:43.3	Oral Sexual Battery (Type II: Victim is under 15 yrs)	4
SEXCHLD	14:80	Carnal Knowledge of a Juvenile	4
SEXCHLD	14:81	Indecent Behavior with Juveniles	5
SEXCHLD	14:92(A)(7)	Contributing to the Delinquency of Juveniles (Perform any sexually immoral act)	5
PROP-PERS	14:60	Aggravated Burglary	1
PROP-PERS	14:64	Armed Robbery	1
PROP-PERS	14:64.2	Carjacking	1
PROP-PERS	14:64.1	First Degree Robbery	2
PROP-PERS	14:51	Aggravated Arson	3
PROP-PERS	14:55	Aggravated Criminal Damage to Property	3
PROP-PERS	14:62.2	Simple Burglary of an Inhabited Dwelling	3
PROP-PERS	14:65	Simple Robbery	3
PROP-PERS	14:65.1	Purse Snatching	3
PROP-PERS	14:66	Extortion	4
PROP-PERS	14:62.3	Unauthorized Entry of an Inhabited Dwelling	5
PROP-EXCLPERS	14:62.5	Looting	3
PROP-EXCLPERS	14:225(A), (B)(3)	Institutional Vandalism (Type I: Damage is more than $50,000)	3
PROP-EXCLPERS	14:56	Simple Criminal Damage to Property (Type I: Damage is $50,000 or more)	4
PROP-EXCLPERS	14:56.2(D)	Criminal Damage of a Pipeline Facility (Type I: Foreseeable danger to human life)	4
PROP-EXCLPERS	14:62.1	Simple Burglary of a Pharmacy	4
PROP-EXCLPERS	14:62	Simple Burglary	4
PROP-EXCLPERS	14:67	Theft (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:67.3	Unauthorized Use of Access Card (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:67.4	Theft of Domesticated Fish from a Fish Farm (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:67.5	Theft of Crawfish (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:67.9	Theft of Oil and Gas Equipment (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:67.10	Theft of Goods (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:69	Illegal Possession of Stolen Goods (Type I: Value is $500 or more)	5

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
PROP-EXCLPERS	14:71	Issuing Worthless Checks (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:72	Forgery	5
PROP-EXCLPERS	14:73.2	Offense Against Intellectual Property (Type I: Value is $500 or more)	5
PROP-EXCLPERS	14:225(A), (B)(2)	Institutional Vandalism (Type II: Damage is $500 or more but less than $50,000)	6
PROP-EXCLPERS	14:56.2(C)	Criminal Damage of a Pipeline Facility (Type II: No foreseeable danger to human life)	6
PROP-EXCLPERS	14:56	Simple Criminal Damage to Property (Type II: Property damage is $500 or more but less than $50,000)	6
PROP-EXCLPERS	14:73.3	Offense Against Computer Equipment and Supplies	6
PROP-EXCLPERS	14:62.4	Unauthorized Entry of a Place of Business	6
PROP-EXCLPERS	14:52	Simple Arson (Type I: Damage is $500 or more)	6
PROP-EXCLPERS	14:214	Fishing or Hunting Contest Fraud	7
PROP-EXCLPERS	14:67.6	Theft of Utility Services (Second offense)	7
PROP-EXCLPERS	14:69	Illegal Possession o Stolen Goods (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:73.2	Offense Against Intellectual Property (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:67.3	Unauthorized Use of Access Card (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:67.4	Theft of Domesticated Fish from a Fish Farm (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:70.1	Medicaid Fraud	7
PROP-EXCLPERS	14:67.8	Theft of Oilfield Geological Survey, Seismograph, and Production Maps	7
PROP-EXCLPERS	14:221	Avoiding Payment of Telecommunication Services	7
PROP-EXCLPERS	14:71	Issuing Worthless Checks (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:67.1	Theft of Livestock	7
PROP-EXCLPERS	14:68	Unauthorized Use of a Movable (Value over $1,000)	7
PROP-EXCLPERS	14:229	Illegal Use of Counterfeit Trademark	7
PROP-EXCLPERS	14:67.7	Theft of Petroleum Products	7
PROP-EXCLPERS	14:73.5	Computer Fraud	7
PROP-EXCLPERS	14:70.4	Access Device Fraud	7
PROP-EXCLPERS	14:67.5	Theft of Crawfish (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:53	Arson with Intent to Defraud	7
PROP-EXCLPERS	14:67.10	Theft of Goods (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:67.9	Theft of Oil and Gas Equipment (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:67	Theft (Type II: Value is $100 or more but less than $500)	7
PROP-EXCLPERS	14:220	Obtaining Rented or Leased Motor Vehicles by False Representation	7
PROP-EXCLPERS	14:57	Damage to Property with Intent to Defraud	7
PROP-EXCLPERS	14:56.1	Criminal Damage to Coin-Operated Device	8
PROP-EXCLPERS	14:52	Simple Arson (Type II: Damage is less than $500)	8
INSTITUTE	14:130.1(A), (B)(1)	Obstruction of Justice (Type I: Obstruction in a capital or life imprisonment case)	2
INSTITUTE	14:130.1(A), (B)(1)	Obstruction of Justice (Type II: Obstruction in felony case necessarily punishable at hard labor for less than life)	3
INSTITUTE	14:123	Perjury	6
INSTITUTE	14:134	Malfeasance in Office	6
INSTITUTE	14:129.1	Intimidating, Impeding or Injuring Witnesses	6
INSTITUTE	14:122	Public Intimidation	6
INSTITUTE	14:118	Public Bribery	6
INSTITUTE	14:120	Corrupt Influencing	6
INSTITUTE	14:129	Jury Tampering	6
INSTITUTE	14:130.1(A), (B)(3)	Obstruction of Justice (Type III: Obstruction in other criminal proceedings)	6
INSTITUTE	14:140	Public Contract Fraud	8
INSTITUTE	14:138	Public Payroll Fraud	8
PUBLORDR	14:329.2 :329.7(C)	Inciting to Riot (Type I: Injury to victim resulting in death)	1
PUBLORDR	14:110(C)	Aggravated Escape (Type I: Foreseeable danger to human life)	3
PUBLORDR	14:329.1 :329.7(C)	Riot (Type I: Participating in riot with injury to victim resulting in death)	3
PUBLORDR	14:95.2	Carrying a Firearm by a Student or Non-Student on School Property or Firearm-free Zone	4
PUBLORDR	14:95.1	Possession of Firearm or Carrying Concealed Weapon by a Person Convicted of Certain Felonies	5
PUBLORDR	14:98(J)	Operating a Vehicle while Intoxicated (Child Endangerment Law)	5

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
PUBLORDR	14:95	Illegal Carrying of Weapons	6
PUBLORDR	14:106(A)(1-3), (G)(4)	Obscenity (Type I: Persons under 17 yrs of age)	6
PUBLORDR	14:110(A)(1), (B)(3)	Simple Escape (Type II: Persons Intentional escape)	6
PUBLORDR	14:111	Assisting Escape	6
PUBLORDR	14:112.1	False Personation of a Peace Officer	6
PUBLORDR	14:329.2 :329.7(B)	Inciting to Riot (Type II: Serious bodily injury or property damage $5,000 or more)	6
PUBLORDR	14:402(A-D)(1-5), (E)(4-6)	Contraband; Taking to and from Penal Institutions	6
PUBLORDR	14:94	Illegal Use of Weapons or Dangerous Instrumentalities	7
PUBLORDR	14:98	Operating a Vehicle while Intoxicated (Multiple offense)	7
PUBLORDR	14:110.1	Jumping Bail	7
PUBLORDR	14:102.5	Dogfighting	8
PUBLORDR	14:402(D)(6-8), (E) (1-3)	Contraband; Taking to and from Penal Institutions	8
PUBLORDR	14:329.1 :329.7(B)	Riot (Type II: Participating in a riot resulting in injury but not death)	8
PUBLORDR	14:106	Obscenity	8
PUBLORDR	14:402.1	Taking of Contraband to State-Owned Hospitals	8
PUBLORDR	14:110(A)(2,3), (B)(1,2)	Simple Escape (Type III: Failure to return)	9
PUBLMOR	14:93	Cruelty to Juveniles (Type I: Intentional Injury to victim)	2
PUBLMOR	14:93.3	Cruelty to the Infirm (Type I: Intentional Injury to victim)	2
PUBLMOR	14:81.1	Pornography Involving Juveniles	3
PUBLMOR	14:82.1	Prostitution Involving a Person Under 17	5
PUBLMOR	14:93	Cruelty to Juveniles (Type II: Criminally negligent or neglect)	5
PUBLMOR	14:93.3	Cruelty to the Infirm (Type II: Criminally negligent or neglect)	5
PUBLMOR	14:84(1,3,5)	Pandering (Force or threats, or parental consent)	6
PUBLMOR	14:86	Enticing Persons into Prostitution	6
PUBLMOR	14:92(A)(11), (E)	Contributing to the Delinquency of Juveniles (Become involved in commission of felony)	6
PUBLMOR	14:84(1-4,6)	Pandering	7
PUBLMOR	14:285	Improper Telephone Communications (Second offense)	8
PUBLMOR	14:82	Prostitution (Second offense)	9
PUBLMOR	14:83.2	Promoting Prostitution	9
PUBLMOR	14:89	Crime Against Nature	9
PUBLMOR	14:92.1	Encouraging or Contribution to Child Delinquency	9
FAMILY	14:78(A), (D)(1)	Incest (Type I: Relationship is father, mother, brother or sister)	5
FAMILY	14:78(A), (D)(2)	Incest (Type II: Relationship is not father, mother, brother or sister)	6
DRUGS	40:981.3	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Narcotic)	0
DRUGS	40:981.3	Drug Free Zones: 40:966(A)(1)—Possession with Intent to Distribute (Sched. I, Narcotic)	0
DRUGS	40:981	Distribution of Drugs to a Child (Sched. I, Narcotic)	0
DRUGS	40:981.2	Distribution of Drugs using a Child (Sched. I, Narcotic)	0
DRUGS	40:966(A)(1)	Manufacture/Distribution of Drugs (Sched. I, Narcotic)	0
DRUGS	40:966(A)(1)	Possession with Intent to Distribute (Sched. I, Narcotic)	0
DRUGS	40:981.3	Drug Free Zones: 40:966(E)(3)—Possession of 10,000 lbs or more of Marijuana	1
DRUGS	14:981.3	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Narcotic)	1
DRUGS	14:981.3	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	1
DRUGS	40:967(F)(1)(c)	Possession of 400 or more grams of Cocaine (Detectable amount)	1
DRUGS	40:967(F)(2)(c)	Possession of 400 or more grams of Amphetamine or Methamphetamine (Detectable amount)	1
DRUGS	40:981.3	Drug Free Zones: 40:967(A)(1) - Possession with Intent to Distribute (Sched. II, Narcotic)	2
DRUGS	40:981.3	Drug Free Zones: 40:966(A)(1) - Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	2
DRUGS	40:981	Distribution of Drugs to a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	2

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
DRUGS	40:981.2	Distribution of Drugs using a Child (Sched. I, Non-narcotic and Non-marijuana or Sched. II, Narcotic)	2
DRUGS	40:981.3	Drug Free Zones: 40:966(A)(1)—Manufacture/Distribution of Marijuana	2
DRUGS	40:981.3	Drug Free Zones: 40:966(E)(2)—Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	2
DRUGS	40:981.3	Drugs Free Zones: 40:968(A)(1)—Manufacture/Distribution of Drugs (Sched. III)	2
DRUGS	40:981.3	Drug Free Zones: 40:967(A)(1)—Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	2
DRUGS	40:981.3	Drug Free Zones: 40:969(A)(1)—Manufacture/Distribution of Drugs (Sched. IV)	2
DRUGS	40:967(A)(1)	Manufacture/Distribution of Drugs (Sched. II, Narcotic)	2
DRUGS	40:966(E)(3)	Possession of 10,00 lbs or more of Marijuana	2
DRUGS	40:966(A)(1)	Manufacture/Distribution of Drugs (Sched. I, Non-narcotic and Non-marijuana)	2
DRUGS	40:967(F)(1)(b)	Possession of more than 200 but less than 400 grams of Cocaine (Detectable amount)	2
DRUGS	40:967(F)(2)(b)	Possession of more than 200 but less than 400 grams of Amphetamine or Methamphetamine (Detectable amount)	3
DRUGS	40:966(A)(1)	Possession with Intent to Distribute (Sched. I, Non-narcotic and Non-marijuana)	3
DRUGS	40:967(A)(1)	Possession with Intent to Distribute (Sched. II, Narcotic)	3
DRUGS	40:981.3	Drug Free Zones: 40:968(A)(1)—Possession with Intent to Distribute (Sched. III)	3
DRUGS	40:981.3	Drug Free Zones: 40:967(A)(1)—Possession with Intent to Distribute (Sched. II, Non-narcotic)	3
DRUGS	40:981.3	Drug Free Zones: 40:969(A)(1)—Possession with Intent to Distribute (Sched. IV)	3
DRUGS	40:981	Distribution of Drugs to a Child (Sched. II, Non-narcotic to Sched. III or Sched. IV or Marijuana)	3
DRUGS	40:981.2	Distribution of Drugs using a Child (Sched. II, Non-narcotic or Sched. III or Sched. IV or Marijuana)	3
DRUGS	40:968(A)(1)	Manufacture/Distribution of Drugs (Sched. III)	3
DRUGS	40:969(A)(1)	Manufacture/Distribution of Drugs (Sched. IV)	3
DRUGS	40:981.2	Distribution of Drugs using a Child (Sched. II, Non-narcotic or Sched. III or Sched. IV)	3
DRUGS	40:967(A)(1)	Manufacture/Distribution of Drugs (Sched. II, Non-narcotic)	3
DRUGS	40:981.3	Drug Free Zones: 40:970(A)(1)—Manufacture/Distribution of Drugs (Sched. V)	3
DRUGS	40:966(E)(2)	Possession of 2,000 lbs or more but less than 10,000 lbs of Marijuana	3
DRUGS	40:967(F)(1)(a)	Possession of more than 28 but less than 200 grams of Cocaine (Detectable amount)	3
DRUGS	40:967(F)(2)(a)	Possession of more than 28 but less than 200 grams of Amphetamine or Methamphetamine (Detectable amount)	3
DRUGS	40:981.3	Drug Free Zones: 40:970(A)(1) - Possession with Intent to Distribute (Sched. V)	4
DRUGS	40:966(A)(1)	Possession with Intent to Distribute Marijuana	4
DRUGS	40:967(A)(1)	Possession with Intent to Distribute (Sched. II, Non-narcotic)	4
DRUGS	40:968(A)(1)	Possession with Intent to Distribute (Sched. III)	4
DRUGS	40:969(A)(1)	Possession with Intent to Distribute (Sched. IV)	4
DRUGS	40:981.3	Drug Free Zones: 40:966(E)(1)—Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	4
DRUGS	40:981.3	Drug Free Zones: 40:966(C)(1)—Possession of Drugs (Sched. I, Narcotic)	4
DRUGS	40:981.3	Drug Free Zones: 40:966(A)(1)—Possession of Marijuana with Intent to Distribute	4
DRUGS	14:970(A)(1)	Manufacture/Distribution of Drugs (Sched. V)	4
DRUGS	14:981	Distribution of Drugs to a Child (Sched. V)	4
DRUGS	40:981.2	Distribution of Drugs using a Child (Sched. V)	4
DRUGS	40:966(A)(1)	Manufacture/Distribution of Marijuana	4
DRUGS	40:971	Obtaining Drugs by Fraud	4
DRUGS	40:966(E)(1)	Possession of 60 lbs or more but less than 2,000 lbs of Marijuana	4
DRUGS	40:981.3	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Narcotic)	5
DRUGS	40:967(C)	Possession of Drugs (Sched. II, Narcotic)	5
DRUGS	40:970(A)(1)	Possession with Intent to Distribute (Sched. V)	5
DRUGS	40:981.3	Drug Free Zones: 40:966(C)(2,3)—Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	5
DRUGS	40:981.3	Drug Free Zones: 40:967(C)—Possession of Drugs (Sched. II, Non-narcotic)	6
DRUGS	40:981.3	Drug Free Zones: 40:969(C)—Possession of Drugs (Sched. III)	6
DRUGS	40:981.3	Drug Free Zones: 40:969(C)—Possession of Drugs (Sched. IV)	6
DRUGS	40:966(C)(1)	Possession of Drugs (Sched. I, Narcotic)	6
DRUGS	40:966(A)(1)	Manufacture/Distribution of Marijuana (Amount is less than 1 plant)	7
DRUGS	40:981.3	Drug Free Zones: 40:970(C)—Possession of Drugs (Sched. V)	7

Seriousness Ranking Felonies by Crime Family			
Keyword	**R.S. No.**	**Offense**	**Grid Level**
DRUGS	40:966(C)(2,3)	Possession of Drugs (Sched. I, Non-narcotic or Non-marijuana)	7
DRUGS	40:981.3	Drug Free Zones: 40:966(D)—Simple Possession of Marijuana (Second offense)	7
DRUGS	40:968(C)	Possession of Drugs (Sched. III)	8
DRUGS	40:969(C)	Possession of Drugs (Sched. IV)	8
DRUGS	40:967(C)	Possession of Drugs (Sched. II, Non-narcotic)	8
DRUGS	40:970(C)	Possession of Drugs (Sched. V)	9
DRUGS	40:966(D)	Simple Possession of Marijuana (Second offense)	9

E. Crime-Free Time

Amount of Crime-Free Time	Suggested Multiplication Factor
Less than 5 years	1 (Full value)
5 years to 10 years	0.75 (Reduced by one-fourth)
Over 10 years but less than 20 years	0.50 (Reduced by one-half)
20 years or more	0.10 (Reduced by 90%)

F. Criminal History Index Classification System

Criminal History Index Score Range	Classification	
5.0 +	Class A	Most Serious
4.0 - 4.9	Class B	
3.0 - 3.9	Class C	
2.0 - 2.9	Class D	
1.0 - 1.9	Class E	
.1 - .9	Class F	
0	Class G	Least Serious

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992), amended LR 18:961 (September 1992), LR 19:893 (July 1993), LR 20:788 (July 1994).

§403. Tables for Determining Designated Sentence

A. Sentencing Guidelines Grid

*		A (5.0 +)	B (4.9-4.0)	C (3.9-3.0)	D (2.9-2.0)	E (1.9-1.0)	F (0.9-0.1)	G (0)
MURDER AG RAPE DIST DRUGS SCH I NARC AG KIDNAPPING	0	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE
ARM ROBBERY FORC RAPE MANSLAUGHTER AG BURGLARY KIDNAPPING II	1	360-330	300-270	240-210	180-150	126-96	102-72	90-60
AG BATTERY ROBBERY I DIST DRUGS SCH II NARC SIMP RAPE	2	240-210	180-150	126-96	108-84	84-72	72-60 180-120	60-36 165-110
MOLEST JUVEN PURSE SNATCH BATTERY II SIMP BURGLARY INHAB DWELL SIMP ESCAPE	3	144-120 240-160	108-84 225-150	84-72 210-140	66-54 195-130	60-48 180-120	54-36 165-110	48-24 150-100
CARNAL KNOWL OF JUVENILE SIMP BURGLARY SIM CR DMG PRP I > = 50,000	4	120-96 225-150	84-66 210-140	72-54 195-130	42-30 180-120	36-24 165-110	36-18 150-100	36-18 135-90
FORGERY IND BEHAV JUV ILL POSS STOL GDS I >=500 THEFT I >=500	5	72-60 210-140	66-54 195-130	46-36 180-120	36-24 165-110	30-18 150-100	(30-18) 135-90	(30-15) 120-80
SMP ARS I>=500 UNLAW ENTRY PL BUS SIMP CRIM DMG PROP II>=500	6	60-48 195-130	30-24 180-120	24-18 165-110	(24-18) 150-100	(24-15) 135-90	(24-12) 120-80	(24-12) 108-54
ILL POSS STOL GOODS II >=100 POSS DRUGS SCH I, Non-Narcotic THEFT II >=100	7	48-36 180-120	24-18 165-110	(24-18) 150-100	(24-15) 135-90	(21-12) 120-80	(21-12) 108-54	(21-12) 72-36
CONTRABAND POSS DRUGS SCH II, Non-N,III,IV SIMP ARS. II<500	8	36-24 165-110	(24-18) 150-100	(24-15) 135-90	(24-15) 120-80	(18-12) 108-54	(18-12) 72-36	(18-12) 48-24
CRIM AGNST NATURE PROSTITUTION SIMP ESCAPE SIMP POSS MARI	9	24-18 150-100	(24-15) 135-90	(24-12) 120-80	(24-12) 108-54	(15-12) 72-36	(15-12) 48-24	(15-12) 24-12

* Most frequently occurring offenses for each level are listed.

B. Diagram of Sanction Zones in the Designated Sentence Range Grid

Example

Incarceration		
Sanction	**84-72**	**Designated Sentence Range in Months of Incarceration**
Zone		

▲ ABOVE SHADED AREA ▲

Discretionary	**30-18**	**Designated Sentence Range in Months of Incarceration (If incarceration selected by the court)**
Sanction		
Zone	**150-100**	**Designated Sentence Range in Sanction Units (If Intermediate Sanction selected by the court)**

▼ BELOW SHADED AREA ▼

Intermediate	**(15-12)**	**Designated Sentence Range in Months of Incarceration**
Sanction		
Zone	**135-90**	**Designated Sentence Range in Sanction Units**

C. Intermediate Sanction Exchange Rate Table

Sanction	Duration	Sanction Unit Value
Prison	1 Month	16
Jail	1 Month	16
Shock Incarceration[1]	1 Week	4
Work Release[2]	1 Week	4
Halfway House[2]	1 Week	4
Periodic Incarceration	7 Days	4
Home Incarceration[2]	1 Month	3
Intensive Supervision[1]	1 Month	3
Day Reporting	1 Month	3
Treatment--Residential[3]	1 Month	3
Treatment--Nonresidential[3] such as: Drug Counseling; Alcohol Counseling; Parenting Counseling (child abuse/neglect cases); Aggressive Behavior Therapy	15 Hours	3
Probation (Supervised with Standard Conditions)	1 Month	2
Community Service (Successfully Completed)	20 Hours	1
Rehabilitative Efforts (Successfully Completed) such as: Adult Education; Literacy Program; GED Program; Vo-Tech Training Program; High School or College Courses; Budgeting Courses	20 Hours	1
Loss of Privilege (No violations)	90 Days	1
Drug Monitoring (Drug Free)	90 Days	1
Unsupervised Probation	1 Month	1
Economic Sanction	Amount of Average Monthly Income	10

[1]Only available under the provisions of R.S. 15:574.4, 574.5.
[2]May require approval of appropriate correctional officials.
[3]May exceed the maximum number of sanction units in accordance with LAC 22:IX.209.D.

D. Using the Intermediate Sanction Exchange Rate Table

1. The purpose of Intermediate Sanction Exchange Rates is to provide the court maximum flexibility in fashioning appropriate sentences utilizing intermediate sanctions. Intermediate sanctions are intended for offenders convicted of less serious and nonviolent offenses who do not have an extensive prior criminal history. In addition to punishment, intermediate sanctions may be fashioned in several ways to meet the needs of society, the victim, and the defendant. Use of the Intermediate Sanction Exchange Rate Table preserves uniformity in the amount of punishment imposed on offenders with similar criminal history, circumstances, and offense of conviction.

2. Goals of Intermediate Sanction Exchange Rates. In fashioning an intermediate sanction sentence, the sentencing court should consider the following goals:

a. proportionality of the sanction imposed to the offense of conviction and the offender's prior criminal record;

b. restoration of the victim as nearly as possible to pre-offense condition;

c. specific deterrence of the offender from future criminal conduct;

d. rehabilitation of the offender;

e. maximizing the degree to which the offender is held responsible for the costs and conduct associated with the sanction.

3. Use of the Intermediate Sanction Exchange Rate Table

a. The table should be used when the designated sentence range is located in the grid within the intermediate sanction zone, i.e., all cells below the shaded area, or when it is located in the discretionary sanction zone, i.e., all cells in the shaded area, and the court decides to impose an intermediate sanction.

b. The table may be used by analogy when the court decides that an incarceration sanction zone, i.e., all cells above the shaded area, case is sufficiently mitigated to warrant a departure to an intermediate sanction. In such cases, the commission makes no specific recommendation concerning the appropriate sentence.

c. For each cell in the discretionary or intermediate sanction zone, a designated sentence range of sanction units is provided for use with the table. The court may impose any combination of intermediate sanctions for which the total sanction unit score falls within the range provided in the appropriate cell. Sentences which fall within the sanction unit score range do not require additional justification.

d. Intermediate sanctions are divided into four levels. The sanction unit value is the same for all sanctions within a level. Each specific sanction has a duration attached to it which corresponds to the amount of sanction units specified for that level. The ranges of duration included with each specific sanction are intended to give the court additional flexibility in fashioning an appropriate intermediate sentence.

E. Intermediate Sanction Definitions

Adult Education—any program of adult education certified by the Louisiana Department of Education. Examples of adult education programs include any program of adult education leading to the High School Equivalency Diploma certified by the Louisiana Department of Education or literacy programs (reading/writing) certified by the Louisiana Department of Education. College programs qualify as adult education if offered by an accredited college or university. For an adult education program of any type to qualify for sanction unit credit, it must be ordered by the court. To receive credit for participation in a particular 20 hours of adult education, the offender must have successfully completed all 20 hours of the program; that is, attended all scheduled sessions and completed all work required by the program.

Community Service—a sanction where an offender is required to work without pay for a designated number of hours, normally for public or private non-profit organizations. To receive credit, the offender must have successfully worked the full 20 hours.

Day Reporting—a program in which offenders are required to report in person to the Sheriff's Office, Police Department, Division of Probation and Parole, or a special day reporting center, as designated by the court, or to an individual designated by the court. The offender will be monitored throughout the day by various forms of random checks. The sanction unit credits are earned by reporting and being subjected to the monitoring and control system. Other program participation, which may be part of a special day reporting center's operation, are considered to be separate sanctions for which additional sanction unit credit is given. For example, additional sanction unit credits should be given for participation in a drug monitoring program which may be offered by a drug treatment center which has been designated by the court for day reporting.

Drug Monitoring—a procedure to determine that an offender remains drug-free while in the community. Drug monitoring is a separate sanction when required as a condition of probation, but not when it is part of a treatment program for which the offender is already receiving sanction unit credit. To qualify as a drug monitoring sanction, the program must:

a. be ordered by the court, and not included as a routine part of a treatment program for which the offender is also receiving sanction unit credit;

b. utilize a generally accepted method of drug monitoring or testing, such as urine testing, blood testing, hair testing, anabuse monitoring, or any drug monitoring or testing program utilized by the Division of Probation and Parole, Louisiana Department of Public Safety and Corrections;

c. require at least one unannounced (randomly scheduled) test per 30-day period;

d. have clearly defined consequences resulting from testing positive for drug use.

If ordered to participate in a drug monitoring program, an offender should receive sanction unit credit only if he or she remained drug-free for a 30-day period. Anabuse, when associated with anabuse monitoring program, qualifies as a drug monitoring program.

Economic Sanction—any economic sanctions imposed on an offender including fines, costs, and restitution. The amount of sanction unit credit for the economic sanction is based on the percentage of the offender's average gross monthly income which may be necessary to pay the economic sanctions imposed by the court. Ten sanction units are earned by payment of an economic sanction or sanctions amounting to the offender's average gross monthly income. If the fine, costs, or restitution do not correlate directly with the offender's average gross monthly income, an appropriate addition or reduction of the units by the equivalent percentage may be necessary. For example, if an offender with an average gross monthly income of $10,000 is ordered to pay $1,000 in fines, costs, and restitution, only one sanction unit should be given. Likewise, in such case, if the offender's average gross monthly income was only $1,000, ten sanction units should be given.

Halfway House/Community Rehabilitation Center—a nonsecure residential facility for offenders. Nonsecure means that the facility lacks physical restraints designed to prevent offenders from departing without permission, such as bars on the windows. Halfway house may provide staff 24 hours per day to insure that all rules are followed.

Home Incarceration—a sanction which restricts an individual to his or her residence for specific periods of time. Typically, an offender would be permitted to leave his or her home only for employment, medical needs, or such mandated assignments as community service. While home incarceration does not require electronic monitoring as a necessary element, some method of monitoring is required to assure compliance.

Intensive Supervision—participation in the intensive parole supervision programs as defined and implemented by the Department of Public Safety and Corrections or Sheriff under R.S. 15:574.4 and 574.5 or satisfaction of more restrictive probationary conditions than those customarily imposed, such as multiple weekly unannounced visits by the supervising officials, abiding by curfew, or refraining from use of alcoholic beverages. Any other intensive supervision which incorporates all of the major elements contained in the state program may be used if approved by the court.

Jail—incarceration not in custody of the Department of Public Safety and Corrections. If the court desires to sentence an offender to less than one month of jail time, the offender should receive a proportionate reduction in the number of sanction unit credits. When jail is used as an intermediate sanction, sanction unit credit is based on the number of days or months which the offender will actually serve, deducting the amount of anticipated good time credit which the offender will earn if he serves his sentence on good behavior.

Loss of Privilege—a sanction which occurs whenever a court removes an individual's permission to exercise a privilege. Examples include the suspension or revocation of a driver's license, suspension of a license to practice medicine, or to work as a pharmacist. A loss of privilege sanction should generally be related to the offense serving as the basis of the conviction. The loss of privilege due to administrative action, without the order of the court, does not receive sanction unit credit. In order to receive credit for a loss of privilege for 90 days, an offender must not violate the order of the court relative to the privilege during the entire 90 day period.

Periodic Incarceration—a sanction of incarceration served in segments, as opposed to continuous confinement. An example of periodic incarceration is a sentence of 10 days incarceration to be served on five consecutive weekends.

Prison—incarceration in custody of the Department of Public Safety and Corrections. When prison is used as an intermediate sanction, sanction unit credit is based on the number of days or months actually served.

Probation—supervision of the offender in the community under the standard conditions of probation set forth in the Code of Criminal Procedure. When an offender is required as a condition of probation to perform any additional intermediate sanction such as community service or payment of a fine, the additional sanctions should be counted as additional sanction units.

Shock Incarceration—programs which typically involve a short period of incarceration, during which offenders are subjected to boot camp-style discipline and intensive treatment, followed by a period of intensive supervision in the community. These programs are authorized by R.S. 15:574.4 and 574.5 and require approval of appropriate correctional officials for an offender to be admitted.

Treatment-Residential—treatment programs which are associated with treatment institutions, such as hospitals or detoxification centers, when the offender is treated as an in-house patient. In order to receive sanction unit credit for a residential treatment program.

a. The offender's participation in the program must be ordered by the court.

b. The offender must be treated as an in-house patient, i.e., the offender must participate in the residential aspect of the program.

c. The offender must have satisfactorily participated according to the rules of the specific program.

Treatment-Nonresidential—treatment programs which have no residential component, or treatment programs associated with treatment institutions where the offender is treated as an outpatient. Examples of non-residential treatment programs are drug counseling, alcohol counseling (including Alcoholics Anonymous), parenting counseling (in cases involving child abuse or neglect), aggressive behavior therapy, and various mental health programs. In order to receive sanction unit credit for a nonresidential treatment program, the program must be ordered by the court, and the offender must have satisfactorily participated according to the rules of the specific program.

Vocational/Technical Training—vocational/technical training programs which have been certified by the state of Louisiana. Sanction unit credit is given for successfully completing either 20 classroom hours or 80 hours of on the job training.

Work Release—a sanction that allows an offender to participate in a court-approved work release program. Such a program allows an offender to be released from incarceration to report for work for a specified period of time. Participation in the program requires approval of appropriate correctional officials. A participant must return to his place of incarceration at the end of his workday. An offender receives four sanction units of credit for each four week period in actual work release custody. He should receive one sanction unit for any week or portion thereof which is not part of a continuous four-week period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:50 (January 1992), amended LR 18:962 (September 1992), LR 19:893 (July 1993).

§404. Sentencing Guideline Report

A. The court should require the completion of a sentencing guidelines report in each felony case. (The report is intended to provide the court with the seriousness level of the current offense, a computation of the offender's criminal history index, and the designated sentence range provided by the guidelines. The sentencing guidelines report and instructions will be promulgated at a later date, after review and testing in the field.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Louisiana Sentencing Commission, LR 18:51 (January 1992).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XI. Committee on Parole

Chapter 1. Administration

§101. Authority

A. The Louisiana Committee on Parole, hereinafter referred to as the "committee," has the authority:

1. to determine the time and conditions of release on parole of any person who has been convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections and who is statutorily eligible for parole consideration; and

2. to determine and impose sanctions for violation of the conditions of parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2258 (August 2013).

§102. Powers and Duties of the Committee

A. The Louisiana Committee on Parole shall:

1. make parole, release and revocation decisions under R.S. 15:574.2;

2. evaluate any application filed pursuant to R.S. 15:308 and taking into consideration the risk of danger the applicant would pose to society if released from confinement, shall make recommendations to the Board of Pardons as to whether the applicant is eligible for a reduction in sentence pursuant to R.S. 15:308;

3. adopt rules not inconsistent with law as it deems necessary and proper with respect to the eligibility of offenders for parole and the conditions imposed upon offenders who are released on parole;

4. keep records of its official actions and make them accessible according to law;

5. collect, develop, and maintain statistical information concerning its services and decisions;

6. notify the district attorney of the parish where the conviction occurred:

a. the district attorney of the parish where the conviction occurred shall be allowed to review the record of the offender since incarceration, including but not limited to any educational or vocational training, rehabilitative program participation, disciplinary conduct and risk assessment score. The district attorney shall be allowed to present testimony to the committee and submit information relevant to the proceedings.~~;~~

7. notify the victim, or the spouse, or next of kin of a deceased victim, when the offender is scheduled for a parole hearing;

8. when requested to do so, notify, in writing at least seven days prior to the offender's release on parole, the chief of police, sheriff, or district attorney of the parish where the offender will reside and where the conviction(s) occurred;

9. submit an annual report on its performance to the secretary of the Department of Public Safety and Corrections on or before February 1 each year for the previous calendar year. This report shall include statistical and other data with respect to the work committee may make of sentencing, parole, or related functions, and may include recommendations for changes considered necessary to improve its effectiveness.

B. The Louisiana Committee on Parole may:

1. apply to a district court to issue subpoenas, compel the attendance of witnesses, and the production of books, papers, and other documents pertinent to the subject of its inquiry;

2. take testimony under oath, either at a hearing or by deposition;

3. sanction an offender's disorderly, threatening, or insolent behavior, or use of insulting, abusive, or obscene language at a hearing or in written communications with the offender's parole application, notice for which shall be provided to the offender at, or prior to, the commencement of proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2258 (August 2013), amended LR 41:42 (January 2015), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 44:575 (March 2018), LR 47:359 (March 2021).

§103. Composition of the Committee

A. The Louisiana Committee on Parole (Committee) shall consist of seven members:

1. the five members of the Board of Pardons appointed by the governor;

2. two-at-large appointees to the Committee on Parole appointed by the governor, who shall serve only as members of the committee and shall not serve as members of the Board of Pardons; and

3. one ex-officio member.

a. The warden, or in their absence, the deputy warden of the correctional facility in which the offender is incarcerated shall be an ex-officio member of the committee. When the offender is housed in a local correctional facility and the warden or deputy warden of that facility is not able to attend the offender's parole hearing, the warden, or in his absence, the deputy warden, of the facility where the offender's parole hearing is held, may serve as an ex-officio member of the committee. The Ex-Officio member shall not be a voting member nor shall they be counted or permitted to be counted for purposes of the number of members necessary to take committee action or the number of members necessary to establish quorum.

b. The facility Warden or his/her designee, of the local level facility in which the offender is housed, shall be present to provide information to members of the Parole Board regarding the offender's progress and disciplinary infractions during incarceration.

4. Each member shall, except the ex officio member, devote full time to the duties of the office.

B. The chairman of the board shall be the chief administrative officer for the committee and shall be responsible for assuring that all meetings, hearings and administrative matters for the committee are properly conducted in accordance with law and with these rules or executive order.

C. The vice-chairman of the Board of Pardons shall act in place of the chairman in his or her absence and shall be responsible for any other administrative duties as directed by the chairman or as provided by law or executive order. In the event that the vice-chairman is incapacitated or otherwise unable to perform his or her duties for any reason, the chairman shall perform such duties until the vice-chairman is able to resume performance of his or her duties.

D. All members, except the ex-officio member, appointed after August 1, 2014 shall possess not less than a bachelor's degree from an accredited college or university, and shall possess not less than five years' actual experience in the field of corrections, law enforcement, sociology, law, education, social work, medicine, psychology, psychiatry, or a combination thereof. If a member does not have a bachelor's degree from an accredited college or university, he shall have no less than seven years, experience in a field listed in this Subsection. The provisions of this Subsection shall not apply to any person serving as a member of the board on August 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended by Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2259 (August 2013), LR 41:43 (January 2015), LR 47:360 (March 2021).

§109. Restrictions on the Representation of Offenders

A. The following persons shall not represent any offender, directly or indirectly, before the committee:

1. the executive counsel to the governor;

2. the executive secretary to the governor;

3. any member of the immediate staff of the governor;

4. any member of a law firm, law partnership, or law corporation of which a member, associate, or partner is the executive counsel to the governor, the executive secretary to the governor, or a member of the immediate staff of the governor.

B. If an executive counsel, executive secretary, or member of the immediate staff of the governor violates the provisions of this Section, such person shall forfeit the office or position held and all emoluments of the office or position. In addition, if a member of a law firm, partnership, or corporation of which such a person is a member, associate, or partner violates the provisions of this Section, the office or position held with the governor and all emoluments of said office shall be forfeited. [See R.S. 15:572.7(A)(2)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:114 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2293 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2260 (August 2013).

§111. Communications between Committee Members

A. There shall be no informal, off-the-record communications regarding the merits or the substance of an offender's case between committee members for the purpose of influencing a decision of the committee outside of an official public hearing. The warden or deputy warden, as ex officio member, may provide information to other members of the committee regarding an offender's progress during incarceration. Such communication may be submitted in writing in advance of the offender's scheduled hearing or may be provided verbally during the course of the public hearing; however, as an ex officio member, the warden or deputy Warden shall not be a voting member of the committee. Any attempt by a committee member to discuss cases in an effort to persuade another committee member or members outside of an official public hearing shall be documented as set forth in §113.D.1-3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2260 (August 2013).

§113. Communications with Committee Members

A.1. No member of the committee shall transmit any correspondence to, or otherwise confer with, a judge before

whom a convicted offender is awaiting sentencing to request or recommend any action relating to the sentence to be imposed upon the offender.

2. The committee shall notify the governor of its finding of a violation of this Section. However, no decision of the committee shall be nullified or otherwise affected by the participation of a member who has violated this Section, except a decision that involves the offender on whose behalf the request or recommendation was made.

B. Notwithstanding the provisions of R.S. 15:574.12(A), or any other provision of law to the contrary, no person shall contact or communicate with the committee or any of its members urging parole, or otherwise regarding any offender, except in an open hearing/meeting or by written letter addressed to the committee.

1. Any written communication with the committee regarding an offender as provided in this Section shall be deemed a public record and subject to public inspection as provided by R.S. 44:1 et seq.

2. Letters written by or on behalf of any victim of a crime committed by the offender, or any letter written in opposition to the offender being placed on parole shall not be deemed a public record. However, this exception shall not apply to any written communication by an elected or appointed official.

C. Any member of the committee improperly contacted by an individual shall immediately cease the inappropriate communication with the individual, notify the individual in writing, return receipt requested, accompanied by a copy of this rule, that such contact was illegal and inappropriate, and report the contact to the other committee members.

1. Any person who persists in violating the provisions of this Section, after being informed of the inappropriate contact as provided in this Section, shall be reported to the appropriate district attorney for prosecution.

2. If convicted, the violator shall be fined not more than $500 or imprisoned for not more than six months, or both.

D. Any oral communication received by a committee member with the intent to affect the outcome of any offender's case shall be documented in writing.

1. The written documentation shall include the name of the individual making the contact, date and time of the contact, type of communication, name of offender, nature of the request and committee member's action.

2. A copy of such written documentation shall be kept in a central registry at the committee office and shall be subject to public inspection.

E. Copies of any written communication received by a committee member shall be made available to all committee members and shall be subject to public inspection.

F. Any public records' request directed to the committee or its staff should be made in writing. The chairman or his or her designee and/or the committee's attorney shall review and approve or disapprove the request in accordance with R.S. 15:574.12 and R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2260 (August 2013).

§115. Ethics and Conflicts of Interest

A. Members of the committee are subject to the constraints imposed by the Louisiana *Code of Governmental Ethics*, which ensures the public confidence in the integrity of government.

B. Any member of the committee who has a conflict of interest must recuse himself or herself from a matter pending before the committee. A conflict of interest may include, but not be limited to the following.

1. The committee member is a witness.

2. The committee member has been employed as an attorney for the offender.

3. The attorney for the offender is the spouse of a committee member or is related to a committee member.

4. The offender is a relative of a committee member.

5. The committee member is biased, prejudiced, or interested in the case or its outcome, or biased or prejudiced toward or against the offender or the offender's attorney to the extent that he/she would be unable to fairly and impartially participate in the hearing.

C. If a committee member fails to recuse himself or herself, any interested person may request in writing to the chairman of the committee that a member be recused. This request should include detailed reasons why a member should be recused.

D. If the member fails to recuse himself or herself, the matter shall be referred to the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2260 (August 2013).

§117. Training

A. Within 90 days of being appointed to the committee, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2261 (August 2013), LR 41:43 (January 2015).

§121. Committee Spokesperson

A. The chairman is the official spokesperson for the board. In the absence of the chairman, the executive director is authorized to speak on behalf of the board. When acting as the official spokesperson, views expressed at all times shall be consistent with approved board policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2261 (August 2013), LR 47:360 (March 2021).

§122. Records Management and Confidentiality of Information

A. Parolee Record

1. The committee shall cause a complete record to be kept of every inmate released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there always will be immediate availability of complete information about such inmate.

B. Records Management and Retention

1. The committee shall implement a records management program to ensure all Committee on Parole vital records are stored managed, and disposed of in accordance with state law. The committee shall use the records retention schedule created and maintained by the Department of Public Safety and Corrections, Corrections Services.

C. Release of Information—Sex Offenders

1. The committee is authorized to release to the public the following information regarding sex offenders:

a. name and address;

b. crime of conviction and date of conviction;

c. date of release on parole or diminution of sentence;

d. most recent photograph available; and

e. any other information that may be necessary and relevant for public protection.

2. Verbal requests for such information are acceptable.

3. The chairman of the committee or his or her designee may require a written request before releasing any information.

4. The committee cannot release any information regarding victims or witnesses of sex crimes to the sex offender or the general public.

D. Release of Information—Minor Victim(s)

1. In addition to any other information authorized to be released, the committee may, pursuant to R.S. 15:546, release information concerning any offender under the jurisdiction of the committee who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator.

E. Release of Information—Criminal Convictions

1. The committee may disseminate information regarding an offender's criminal convictions without restriction.

F. Other information regarding an offender's criminal history records, including nonconviction history may only be released subject to the restrictions outlined in R.S. 15:548. Unless the request is made by a representative of a criminal justice agency or a juvenile justice agency, such information shall, under normal circumstances, be released only pursuant to a written request.

G. The committee shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2261 (August 2013).

Chapter 3. Parole—Eligibility and Types

§301. General Information

A. The authority for determining parole eligibility dates, offender class, good time release dates and full-term dates will be the official master prison record computed by the Louisiana Department of Public Safety and Corrections. The board may accept changes in the offender class and parole eligibility dates when recommended by the Division of Probation and Parole and verified by the records custodian of the Department of Public Safety and Corrections. No offender may be paroled while there is pending against him any indictment or bill of information for any crimes suspected of having been committed by him while a prisoner.

AUHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2269 (August 2013).

§303. Regular Parole

A. An offender's eligibility is specified by Louisiana law. Parole eligibility is generally based on the nature of the

offense, offender class, and length of time served. Not all offenders are eligible for parole consideration. Parole eligibility is determined and calculated by the Department of Public Safety and Corrections.

B. Generally within nine months prior to an offender's parole eligibility date, all pertinent information will be compiled concerning the offender's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2269 (August 2013), LR 42:1283 (August 2016), LR 44:575 (March 2018).

§305. Impact Parole

A. A person otherwise eligible for parole, convicted of a nonviolent first felony offense or of a nonviolent second felony offense, but never having served time in the custody of the Department of Public Safety and Corrections, may be eligible for intensive parole supervision upon successful completion of intensive incarceration.

1. The intensive incarceration and parole supervision program is administered by the Department of Public Safety and Corrections. The offender voluntarily enrolls in the program after having been advised by the Department of Public Safety and Corrections of the rules and regulations governing the participation in the program.

B.1. When an offender completes intensive incarceration, the committee shall review the case in a public hearing in accordance with §511 to determine whether the offender should be released on intensive parole supervision or serve the remainder of his sentence as provided by law. Such review shall include:

a. an evaluation of the offender's performance while incarcerated;

b. the likelihood of successful adjustment on parole; and

c. other factors deemed relevant by the committee.

2. The committee may defer any final decision and reschedule the consideration for the next scheduled hearing at the Elayn Hunt Correctional Center.

C. When the offender is released to intensive parole supervision by the committee, the committee shall require the offender to comply with conditions of intensive parole supervision in accordance with R.S. 15:574.4(H) in addition to any other conditions of parole ordered by the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2296 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013).

§307. Medical Parole/Medical Treatment Furlough

A. An offender determined by the Department of Public Safety and Corrections to be permanently disabled offender or terminally ill offender may be eligible for medical parole consideration.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical parole consideration.

2. Offenders who are serving a sentence for conviction of first degree murder, second degree murder, or who are sentenced to death are not eligible for medical parole consideration.

3. Medical parole consideration shall be in addition to any other parole for which an offender may be eligible. An offender eligible for both medical parole and traditional parole under the provisions of R.S. 15:574.4 shall be first considered for traditional parole.

4. *Permanently Disabled Offender*—any offender who is unable to engage in any substantial gainful activity by reason of any medically-determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.

5. *Terminally Ill Offender*—any offender who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this Section, “terminally ill” is defined as having a life expectancy of less than one year due to an underlying medical condition.

6. In considering an offender for medical parole, the committee may require that additional medical evidence be produced or that additional medical examinations be conducted.

B. An offender determined by the secretary of the DPS and C to be a limited-mobility offender may be considered for medical treatment furlough release to an off-site medical facility appropriate to meet the offender’s medical and treatment needs.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical treatment furlough.

2. Offenders who are serving a sentence for conviction of first degree murder or who are sentenced to death are not eligible for medical treatment furlough consideration.

3. Medical parole consideration shall be in addition to any other parole for which an offender may be eligible. An offender eligible for both medical parole and traditional parole under the provisions of R.S. 15:574.4 shall be first considered for traditional parole.

4. *Limited Mobility Offender*—any offender who is unable to perform activities of daily living without significant help or is totally confined to a bed or chair, including but not limited to prolonged coma and mechanical ventilation. Due to their significant limitation in mobility,

these offenders represent a low public safety risk to society. If granted a medical furlough, limited mobility offenders shall only be discharged to an acute care hospital, nursing home, or other healthcare facility.

5. In considering an offender for medical parole, the committee may require that additional medical evidence be produced or that additional medical examinations be conducted

C. The authority to grant medical parole or medical treatment furlough shall rest solely with the committee.

1. The committee on parole shall determine the risk to public safety and shall grant medical parole or medical treatment furlough only after determining that the offender does not pose a threat to public safety.

2. As a condition of the medical parole or medical treatment furlough, the offender shall waive their right to medical confidentiality and privacy.

3. Due to the nature of medical parole/medical treatment furlough cases, an exception to board policy, 05-509, victim notification and participation in hearings, shall be made regarding the notice to victims, requiring the notice to be at least 60 days in advance of the scheduled hearing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:43 (January 2015), LR 42:1283 (August 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:2495 (December 2017), LR 44:575 (March 2018), LR 44:2141 (December 2018).

§309. Diminution of Sentence (Good Time/Parole Supervision Release)

A. Each offender released on diminution of sentence/parole supervision shall be subject to conditions of parole pursuant to R.S. 15:574.4(H) and Chapter 9 of these rules.

B. If an offender violates a condition of his diminution of sentence/parole supervision release or other conditions imposed by the committee shall proceed in the same manner as in revocation matters pertaining to those granted regular parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2271 (August 2013).

Chapter 5. Meetings and Hearings of the Committee on Parole

§501. Types of Meetings

A. All meetings and hearings of the committee shall be open to the public, in accordance with the provisions of R.S. 42:1 et seq., (public policy for open meetings) and *Robert's Rules of Order*. For the purpose of convenience and in order to differentiate between the different types of forums for conducting business, the following designation or title has been given, depending upon the nature of the matters or actions to be considered.

1. A *business meeting* is a meeting of the full committee to discuss all general business matters as set forth in §507.

2. A *public hearing* is a meeting of randomly selected, three or five-member panels, as set forth in §511.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:44 (January 2015), LR 47:360 (March 2021).

§503. Parole Panels

A. The committee shall meet in panels comprised of at least three members of the committee, except as otherwise provided in these rules.

B. The chairman of the committee shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. The random selection of panels shall be done in such a manner as to result in the smallest probability of having a panel constituted by the same three members for two consecutive months.

D. A member may request a change in the composition of a panel to which that member has been assigned. However, such requests shall be carefully considered and shall generally only be made in the case of illness or emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:44 (January 2015).

§504. General Procedures

A. Minutes. The committee's minutes of public hearings shall include the following information as applicable:

1. name and Department of Corrections (DOC) number of the offender;

2. name of counsel representing the offender (an offender docketed for a public hearing may be represented by counsel);

3. the vote of each member; and

4. the decision of the committee.

B. Votes

1. The vote of each panel member shall be recorded by name and date on the vote sheet.

2. Only those members present shall vote; voting by proxy is prohibited.

3. No vote shall be taken while the panel is in executive session.

4. The panel shall not rescind the original vote without conducting a new hearing, except as provided in §505.M, §513.A.1-3, and §711.

5. The original vote sheet shall remain in the inmate's DOC file and a copy shall be attached to the minutes and maintained in a separate locked file in the committee office.

C. Accuracy of Vote. The chairperson of the panel shall ensure that support staff reviews case records subsequent to voting to assure the accuracy of all documents.

D. Continuance/Recess. A majority vote is required to continue or recess a meeting or hearing. Generally, the matter will be rescheduled for the next month, but may be rescheduled for an earlier date if deemed appropriate by the panel (see §514, Voting/Votes Required).

E. Executive Session. A panel may go into executive session to discuss each offender's case prior to a decision pursuant to the provisions of R.S. 42:6, 42:6.1 and 15:574.12. No vote shall be taken while the panel is in executive session.

F. Observance of Proceedings. The committee may extend invitations to individuals to observe committee proceedings.

G. Testimony. The committee may direct questions to and/or request statements from anyone appearing before the committee.

H. Children Under 12. It is generally inappropriate for children under the age of 12 years, except when the child is a victim and chooses to appear, to be present during any public meeting or hearing of the committee.

I. Space and Security. The number of people supporting or opposing the granting of parole, including victims and/or family members of victims will be limited only by space and security considerations.

J. Meeting/Hearing Schedule. The chairman shall be responsible for schedules of business meetings and public hearings.

1. Such schedules may be changed, only upon prior notice, provided that such changes are made in a timely manner in order to notify all concerned.

2. Such meetings may be rescheduled without notice due to inclement weather, or any other emergency or unforeseen situation.

K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of the decision granted by the committee or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

1. The board may choose to automatically rescind and change the decision for granting of parole under the below conditions:

a. offender has received a disciplinary report prior or subsequent to the hearing, but prior to parole release;

b. time calculation adjustments by the Department of Corrections that changes the parole eligibility date, causing the offender to become ineligible for parole or pushing his parole eligibility dates beyond the allowed time frame for parole release or rescheduling;

c. refusing to comply with post and/or prior to release conditions set forth by the panel.

2. If it is determined prior to an offender's parole release that proper notification requirements were not met, the board may rescind its decision to grant parole.

a. If the board rescinds its decision to grant parole, the offender shall promptly receive another parole hearing.

b. In the event that the offender has been granted parole, the board may rescind its decision and promptly schedule a hearing in accordance with §510.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:44 (January 2015), amended LR 45:1063 (August 2019), amended LR 46:42 (January 2020), LR 47:360 (March 2021).

§505. Duty Officer

A. The chairman of the committee or his or her designee shall develop a duty calendar and shall designate one committee member as the daily duty officer.

1. The duty officer shall be available and present to act on behalf of the committee concerning both routine office and administrative matters as authorized by these rules.

2. If the duty officer must substitute for another member at a hearing or is absent for any other reason, he or she need not be replaced by another duty officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:44 (January 2015).

§507. Business Meetings

A. The full committee shall meet as necessary when called by the chairman of the board. Additional meetings may be called a majority vote of the committee.

B. The agenda for business meetings of the committee may include, but shall not be limited to, the following topics:

1. committee rules;

2. personnel matters;

3. litigation; and

4. any other matters the committee deems necessary.

C. Business meetings should be audio recorded and copies of the audio recording and/or written minutes shall be available upon request.

D. At business meetings, detailed minutes indicating time of commencement, persons present (including visitors and witnesses), adoption of previous minutes, motions and seconds, and time of adjournment shall be recorded and maintained by the committee staff member so designated by the chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended LR 41:45 (January 2015).

§510. Victims

A. Before a parole panel considers parole release for an offender who is serving a sentence of an offense in which a person was a victim, the direct victim of the offense shall be allowed to present written or oral testimony of the victim's views about the offense, the offender, and the effect of the offense on the victim. The parole panel shall allow one person to appear in person before the panel to present testimony on behalf of the victim. Nothing in this Section is intended to limit the panel's discretion to allow individual victims to make personal appearance or to make contact by phone through the local district attorney's victim advocacy representative. There is no limit on written correspondence in favor of and/or opposition to an offender's consideration for parole.

B. The direct victim, spouse, or next of kin of a deceased victim and any person who has filed a victim notice and registration form shall be advised in writing no less than 60 days prior to the scheduled hearing date.

1. *Victim*—an individual against whom a crime has been perpetrated.

C. The notice shall advise the victim, spouse, or next of kin of a deceased victim that:

1. the hearing is open to the public;

2. he or she may remain in the hearing room during the entire hearing (except during executive session); and

3. the direct victim, the guardian of the victim, or close relative of a deceased victim will be allowed to speak to the panel prior to its making a decision in the case.

D. The Committee on Parole has delegated the responsibility for advance notice of a scheduled hearing to the direct victim to the Department of Public Safety and Corrections, Division of Probation and Parole. This notification is not required when the direct victim cannot be located despite the exercise of due diligence.

E. The written notice is not required when the victim, the spouse, or next of kin of a deceased victim, advises the committee in writing that such notification is not desired.

F. If victim notification is determined to have not met the advance notice time requirements required by this section, a victim may request that a hearing be re-scheduled if the hearing has not yet been conducted. Likewise, a victim may waive the notice requirement; however, such waiver must be received in writing from the victim.

G. Should a hearing be re-scheduled by the board for any reason other than the victim's request, the board shall notify the victim as soon as possible by telephone and shall follow-up with written confirmation of the telephone notification via certified U.S. Mail (with return receipt requested).

H. The direct victim, the guardian of the victim, or close relative of a deceased victim shall have the right to make a written or oral statement as to the impact of the crime.

I. The direct victim, the guardian of the victim, or close relative of a deceased victim or a victim's advocacy group, and the district attorney or his representative may also appear before the panel by means of teleconference or telephone communication.

J. If more than one person is entitled to appear for a parole hearing, the person chosen by all persons entitled to appear may serve as a spokesperson for all those entitled to appear. Any person making an oral presentation to the parole panel will be allowed no more than five minutes. However, at the parole panel chairman's discretion more than one person may present a written or oral statement to the panel.

1. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes.

K. There is no limit on written correspondence in favor of and/or opposition to a candidate for parole release.

L. The Committee on Parole shall notify all persons who have filed a victim notice and registration form with the Department of Public Safety and Corrections of an offender's release from incarceration by parole. Such written notice shall be sent by certified mail (with return receipt requested).

M. Notice to Crime Victim Services Bureau of Parole Hearings. The committee shall provide notice to the Department of Public Safety and Corrections Crime Victims Services Bureau at least 30 days prior to parole hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:47 (January 2017), LR

44:575 (March 2018), LR 44:2142 (December 2018), LR 47:1107 (August 2021).

§511. Panel Action

A. The chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the committee office.

B.1. The panel may consider the following actions with the offender present:

a. parole;

b. revocation; and

c. recommendations for transitional work program.

2. The panel may consider the following actions without the offender present:

a. to consider rehearing requests;

b. cases where the offender is housed in a medical treatment facility or facility in other jurisdiction (such hearings conducted in absentia shall observe the same safeguards as hearings where the offender is present); and

c. to consider those matters referred by a member from single-member action (see §513, Single Member Action); the member who makes such a referral may not serve on the panel;

d. to evaluate and consider any application filed pursuant to R.S. 15:308 in accordance with rules promulgated by the Department of Public Safety and Corrections and Chapter 8, Ameliorative Penalty Consideration.

C. Offenders incarcerated in a parish jail or parish correctional center may be interviewed by a single member of the Committee on Parole prior to a public parole hearing. The interviewing member will then present the case to the full parole panel for parole release consideration during the public parole hearing. Due to transport considerations, the offender will not be present during the public hearing. However, the public hearing will be conducted in a manner which allows for observation and input by members of the public.

D. Generally, public hearings shall be conducted via videoconferencing, with the committee members participating from the committee's headquarters in Baton Rouge, and offenders appearing before the committee via videoconferencing at the designated prison facility.

1. In the event the offender is unable to appear before the board due to a medical condition, a medical professional shall be made available to the parole panel to provide information about the offender's medical condition. The hearing will occur in absentia. (§511.B.2.a. if offender being considered for medical parole is housed in a medical treatment facility).

2. In the case of videoconferencing, the family, friends, and attorney of the offender shall be at the location of the offender.

3. In the case of videoconferencing, the victim(s) may be at the location of the committee or at the office of the district attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:57 (January 2014), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015), LR 46:1232 (September 2020), LR 47:361 (March 2021).

§513. Single-Member Action

A.1. A single committee member may act upon the following matters which have been reviewed and recommended by the Division of Probation and Parole:

a. activity reports (see §1103); and

b. activity reports from other states via the interstate compact agreement;

c. consideration to delay an offender's revocation hearing beyond 60 calendar days of the offender's return to prison (arrest or detainment), but such a delay may only be authorized by a committee member for good cause.

2. A single committee member may rescind parole as under the conditions provided in §504, General Procedures.

3. The duty officer may add or remove conditions relative to parolees, as recommended by the Division of Probation and Parole and/or committee counsel on matters in litigation.

a. In the event the committee member fails to follow the recommendation of the Division of Probation and Parole, the matter shall be automatically scheduled for consideration by a three-member panel at the next available public hearing date.

B. Written documentation must be placed in the offender's file which clearly documents the reason for the decision by the single member panel.

C. Under no circumstances should a committee member sign a blank form concerning single-member action matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2300 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2264 (August 2013), LR 40:1528 (August 2014), repromulgated LR 40:1695 (September 2014), LR 47:362 (March 2021).

§514. Voting/Votes Required

A. Unanimous Vote

1. A unanimous vote of those present is required to grant parole when the number of those present exceeds three.

2. Notwithstanding any other provision of law, no person convicted of a crime of violence against any peace officer as defined in R.S. 14:30(B), shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the committee are present and all members present vote to grant parole.

3. Notwithstanding any other provision of law, an offender serving a life sentence for second degree murder as defined in R.S. 14:30.1 and pursuant to the subsections, shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the committee are present and all members present vote to grant parole.

a. The offense was committed after July 2, 1973, and prior to June 29, 1979.

b. The offender has served forty years of the sentence imposed.

4. A unanimous vote is required to consider any action when the offender is not present as described in §511.B.2.b or §513.A.4.a.

B. Majority Vote

1. The committee may grant parole with two votes of a three-member panel if the following conditions are met.

a. The offender has not been convicted of a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

b. The offender has not committed any major disciplinary (schedule B) offenses in the 12 consecutive months prior to the parole hearing date. If the offender's period of incarceration is less than 12 months, the offender must not have committed any disciplinary offenses during his/her entire period of incarceration.

c. The offender has completed the mandatory minimum of 100 hours of pre-release programming in accordance with R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

d. The offender has completed substance abuse treatment and or anger management as applicable, if such programming is available at the facility where the offender is incarcerated.

e. The offender has obtained a HSE credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE credential due to a learning disability. If the offender is deemed incapable of obtaining a HSE credential, the offender must complete at least one of the following:

i. a literacy program;

ii. an adult basic education program; or

iii. a job skills training program.

f. The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

2. A majority vote is required to impose all special conditions of release.

3. A majority vote is required to revoke parole.

4. A majority vote is required to continue or recess a meeting or hearing.

5. A majority vote is required to grant an offender's request for a rehearing.

6. A majority vote is required for executive session.

7. A majority vote is required to recommend to the Board of Pardons as to whether an applicant is eligible for a reduction in sentence pursuant to R.S. 15:308 and Chapter 8, "Ameliorative Penalty Consideration."

C. Once the panel votes to grant or deny parole at a particular hearing, the vote may not be rescinded at that hearing.

D. If a member of a panel moves that a particular condition of parole be considered and determined prior to the vote to grant or deny parole, that issue shall be determined prior to the vote on parole. Otherwise, following a vote granting parole, the panel shall consider whether to impose special conditions of release.

E. The ex officio member of the committee is a non-voting member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2264 (August 2013), amended LR 41:45 (January 2015), LR 44:2142 (December 2018), LR 47:362 (March 2021), LR 47:1108 (August 2021).

Chapter 7. Parole Decisions

§701. Policy Statement

A. It shall be the policy of the committee to give every offender meaningful consideration for parole. The committee will exercise its discretionary releasing authority based upon consideration of the unique factors and variables of the individual case. The committee shall determine release suitability of eligible offenders through decisions that promote fairness, objectivity, and public safety and are responsive to the concerns of victims, members of the community, and other persons within the criminal justice system.

B. The committee shall consider all pertinent information (pre-parole investigation and institutional record) at least six months prior to the offender's parole eligibility date. The information shall be a part of the

offender's consolidated summary record. At a minimum, a pre-parole investigation shall be made available to the panel for its review. No case may be considered for parole release without a pre-parole investigation.

C. The panel shall apply the following guidelines as a basis, but not as the exclusive criteria, upon which parole panels base parole release decisions.

1. Nature and Circumstances of the Crime

a. The committee will evaluate and consider the circumstances of the crime based upon the official version of the offense, as well as the victim's and offender's versions of the offense, to determine, if possible, whether the particular conditions that contributed to the commission of the crime are likely to reoccur.

b. The committee shall also consider the seriousness of the offense, the offender's role in the offense and the degree of his involvement, whether the offender was the instigator of the crime, and whether the crime was premeditated.

c. Particular consideration will be given to those cases which involved the use of a weapon and/or caused injury to the victim; where the offender committed one or more violent acts indicating a conscious disregard for the lives, safety, or property of others; or the instant offense has elements of brutality, violence, or conscious selection of victim's vulnerability such that the offender poses a continuing threat to public safety.

2. Prior Criminal Record

a. The committee will evaluate and consider any available prior adult and/or juvenile records and the number and seriousness of prior convictions including the length of time between any prior convictions and the commitment of the instant offense to determine the seriousness of the offender's prior criminal history.

b. A pattern of repeated criminal episodes or a pattern of similar offenses may indicate a predisposition to commit criminal acts upon release and the likelihood that the offender will not succeed on parole.

c. The committee may also consider whether the instant offense was committed while the offender was on probation or parole, and the offender's response to prior community supervision, if any.

3. Character, Social Background, and Emotional and Physical Condition

a. The committee will evaluate and consider information pertaining to the offender's work record, level of education, occupational skills, and evidence of emotional stability.

b. A history of chronic drug and alcohol abuse may evidence the likelihood that the offender will not succeed on parole.

4. Institutional Adjustment

a. The committee will evaluate and consider information concerning the offender's attitude while incarcerated, including the offender's participation in available programs and his overall compliance with institutional regulations.

b. Obedience to institutional rules may evidence that the offender will comply with parole conditions, while a disciplinary record consisting of major and/or minor infractions may be viewed negatively.

c. Offenders with one or more high court disciplinary report(s) in the 12 months prior to screening for parole eligibility, would generally not be considered a good risk for early release and will, therefore, not be given parole consideration until such time as the offender has been disciplinary report free for 12 consecutive months. Offenders may be removed from a parole docket if they receive a high court disciplinary report during the investigation period.

i. The offender may request reconsideration of this decision in writing. Such request must include any mitigating factors that the offender wishes be considered during the review process.

ii. The offender will be notified if they are not considered for placement on or removed from a docket.

iii. The offender is responsible for notifying the board in writing when they are disciplinary report free for 12 consecutive months to be reconsidered for scheduling.

d. Offenders assigned to working cellblock or disciplinary detention/extended lockdown or otherwise assigned to cellblock areas for disciplinary reasons would generally not be considered a good risk for early release and will, therefore, be ineligible for parole consideration until such time as the offender has not been in lockdown status for a period of six months.

5. Police, Judicial and Community Attitudes toward the Offender

a. The committee will evaluate and consider information concerning the offender from the community and public officials who are acquainted with the case.

b. This factor is given greater weight because the probability that an offender will succeed on parole is greatly diminished if he will return to a community which has expressed hostility toward him and is lacking support for him.

c. Effective August 1, 2018, victims of any offender who appears before the Committee on Parole for a parole hearing may provide the parole panel a re-entry statement to request proximity or contact restrictions, if that offender is granted parole. Victims must submit the re-entry statement to the Committee on Parole at least 60 days prior to the offender’s scheduled parole hearing. The committee will consider the re-entry statement only for the purpose of determining the offender’s parole conditions and not for the purpose of determining whether to order the release of the offender on parole. The re-entry statement is not binding on the Committee on Parole, but shall be considered in concert

with other information when determining conditions of parole.

d. Evidence of official and/or community support may increase the likelihood of parole.

6. Parole Plan

a. The committee will evaluate and consider the strength of the offender's social ties, including whether he has a supportive family, resources available to him in the community, and employment opportunities.

b. The committee will place emphasis on the appropriateness of the parole plan; therefore, it is important for the offender to have secure employment plans and a stable living arrangement available upon parole.

c. Lack of an acceptable parole plan may decrease the likelihood of parole.

7. Program Participation. The committee will evaluate and consider an offender's participation in vocational training, adult education, or reading programs as well any treatment or rehabilitation program that has been certified by the department. Such participation is considered beneficial.

8. Risk Assessment

a. All Offenders. The committee will consider the risk assessment score provided by the Department of Public Safety and Corrections. The score is determined by a validated risk assessment instrument that has been validated for the Louisiana offender population. The assessment identifies potential risk and identifies programmatic needs of offenders utilizing two sets of components, static and dynamic factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2300 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2265 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:58 (January 2014), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 44:576 (March 2018), LR 45:1064 (August 2019).

§703. Result of Decision to Grant or Deny Parole

A. The committee's decision to grant or deny parole will be made and disclosed to the offender at the time of the parole hearing and he will be furnished with a copy of the parole decision form. The parole decision form shall also be made available to the administration at the facility housing the offender.

1. The original parole decision form will be placed in the offender's DOC record and will serve as the authority for the certificate of parole to be prepared.

2. The certificate will then be forwarded to the Division of Probation and Parole district office where the offender will be supervised while on parole.

B. No physical release from custody shall be authorized by the granting of a parole eligibility date that extends beyond nine months from the date of the hearing; nor shall release be authorized until all notice requirements, if any, have been timely made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2266 (August 2013), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 44:576 (March 2018).

§705. Application for Parole Rehearing or Request for Reconsideration of Decision

A. If denied at the initial parole hearing, an offender must apply in writing for a subsequent parole hearing, referred to as a "parole rehearing". The written request must be submitted by the offender or his attorney.

B. Application for a parole rehearing will be allowed only under the following conditions.

1. The offender must not have had a major (schedule B) disciplinary misconduct report in the six months prior to the reapplication request;

2. The offender must not have been in disciplinary lockdown status for a period of six months prior to the reapplication request.

3. If both criteria in §705.C.1 and 2 are met, an offender may apply to the committee for a rehearing at the following intervals.

Type of Crime	Initial Request for Rehearing	Subsequent request for Rehearing[1]
Nonviolent, except as otherwise restricted	6 mos after original date of denial	6 mos after date of initial reapplication
Crime of Violence enumerated in R.S. 14:2(B)	1 yr after original date of denial	Every 2 yrs after date of initial reapplication
Crime Against Person enumerated in R.S. 14:29-47	1 yr after original date of denial	Every 2 yrs after date of initial reapplication
Sex Offense as defined in §903	2 yrs after original date of denial	Every 2 yrs after date of initial reapplication
Murder, 1st or 2nd degree	2 yrs after original date of denial	Every 2 yrs after date of initial reapplication
Manslaughter	2 yrs after original date of denial	Every 2 yrs after date of initial reapplication

[1] Subsequent request for rehearing may be submitted if initial request for rehearing was denied.

D. Reconsideration. An offender may request that the committee reconsider its decision to deny parole as outlined herein. However, this process does not establish a formal appeal process as parole is an administrative discretionary decision that is not subject to appeal.

1. A parole panel may reconsider a decision of any parole panel at the request of the board chairman.

2. An offender whose parole is denied or rescinded, or whose parole supervision is revoked may request reconsideration by the committee.

a. The request for reconsideration shall be made in writing by the offender (or the offender's authorized legal representative) and shall be postmarked no later than twenty-one calendar days from the date of the hearing during which the parole panel action was taken.

b. If the request for reconsideration is not postmarked within 21 calendar days, it shall be denied.

c. Reconsideration review shall be at the discretion of the committee and shall not be available except for the following reasons:

i. if there is an allegation of misconduct by a committee member that is substantiated by the record;

ii. if there is a significant procedural error by a committee member; or

iii. if there is significant new evidence that was not available when the hearing was conducted. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

d. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error being alleged.

e. A written request for reconsideration postmarked within the time period set forth in §705.D.2.a. shall be screened by the chairman or designee to determine whether the request for reconsideration raises substantial grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c. may be present. The request for reconsideration shall be denied by the chairman or designee, if in his or her discretion, it is determined that the request does not raise adequate grounds to believe that one or more of the reasons for reconsideration set forth in§705.D.2.c. are present.

3. If the chairman or designee determines upon screening that a request for reconsideration raises adequate grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c are present.

a. The case shall be set for administrative review at the next available parole panel hearing date. The review shall be conducted from the record of the first hearing. The appearance of the offender shall not be necessary.

b. The reviewing panel may vote to:

i. grant a new parole hearing and staff will make every attempt to schedule the hearing with a different parole panel than that which rendered the original decision; or

ii. affirm the original decision.

c. The applicant shall be advised, in writing, of the results of the review.

4. If the chairman or designee determine there is no basis to grant the request for reconsideration, the applicant will be advised in writing.

E. Disciplinary Removals

1. If the Offender has one or more major (Schedule B) Disciplinary Report(s) in the 12 months prior to their parole eligibility date, they will generally not be considered a good risk for early release and will, therefore, not be given parole consideration until such time as the offender has been disciplinary report free for twelve consecutive months. Offenders may be removed from a parole docket if they receive a Schedule B Disciplinary Report during the investigation period. The offender will be notified if they are not considered for placement on or removed from a docket.

a. The offender may request reconsideration of this decision in writing in accordance with the process outlined in this policy. Such request must include any mitigating factors that the offender wishes be considered during the review process.

b. The offender is responsible for notifying the board in writing when they are disciplinary report free for 12 consecutive months to be reconsidered for scheduling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2266 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:58 (January 2014), LR 45:1065 (August 2019), LR 47:363 (March 2021).

§707. Parole Plans

A. In order for an offender to be considered for parole release, the offender must have a viable transition plan that includes housing, potential job opportunities, and a support network that can incorporate family, friends, church, and rehabilitative programs. The plan for housing and will be investigated and approved by the Division of Probation and Parole.

B. In-State Parole

1. The board will not issue a certificate of parole to anyone granted parole until the residence plan has been approved by the Division of Probation and Parole. The residence plan should be given to the classification officer at the correctional facility where the offender is housed at the pre-parole interview or mailed directly to the board 30 days prior to the parole hearing.

2. A parole hearing may be held as docketed without an approved residence plan. Parole may be granted at the hearing, subject to the residence plan being approved through the Division of Probation and Parole.

C. Out-of-State Parole

1. Before any parolee can be considered for a plan of supervision in another state, the offender shall sign an application for interstate compact services agreement to return (waiver of extradition).

2. Out-of-state parole plans may be considered when the state in question issues a written statement expressing its willingness to accept the parolee under specific conditions.

Release will be deferred until such approval is received by the board from the receiving state.

3. The parolee shall be required to comply with all applicable provisions of the interstate compact, and shall be required to acknowledge, in writing, that he or she is fully aware of the requirements of transfer under the compact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2267 (August 2013), LR 45:1066 (August 2019).

§709. Parole to Detainer

A. When the committee determines that it would be in the best interest of the public and the inmate, parole may be granted subject to any outstanding detainers or notices that are held by local and/or immigration authorities. Once the parolee is released from the detaining authority, he must report to the Division of Probation and Parole district office where he will be supervised while on parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2267 (August 2013).

§711. Conditional Parole

A. When the committee determines that it would be in the best interest of the public and the offender, the committee may require successful completion of a specific rehabilitative program (i.e., substance abuse treatment, transitional work program, 100 hours of pre-release training, reentry program, attainment of high school equivalency (HSE) as a prerequisite to release on parole to ensure public safety and enhance the offender's opportunity for success.

1. For conditional parole decisions, the committee will generally require completion of programs that have been certified by the Department of Public Safety and Corrections or that are recommended by the Division of Probation and Parole.

2. Program completion should occur within six months from the parole decision. However, if the program is more than six months in duration, the offender may be allowed up to nine months after the parole decision to complete the specified program. In no event, however, may the physical release from custody on parole extend beyond nine months from the hearing date.

3. If the offender has not successfully completed the program in nine months from the hearing date, the committee shall rescind or reconsider his parole and schedule a subsequent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2267 (August 2013), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 44:576 (March 2018).

§713. Parole Supervision

A. Field supervision of parolees will be the responsibility of the Department of Public Safety and Corrections, Division of Probation and Parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998).

Chapter 8. Ameliorative Penalty Consideration

§801. Application

A. An offender may apply for ameliorative penalty consideration in as provided by R.S. 15:308(C) relative to ameliorative penalty provisions, in accordance with rules promulgated by the Department of Public Safety and Corrections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015).

§802. Victim and District Attorney Notification [Formerly §807]

A. The victim and district attorney shall be invited to provide written input into the ameliorative penalty consideration process.

B. The committee shall ensure victims registered with the Crime Victims Services Bureau of the department receive written notification of the date and time an offender is docketed for review by a parole panel. A copy of the letter to the victim shall also be sent to the prosecuting district attorney. Such notice shall be made no less than 30 days prior to the scheduled docket date for administrative review.

C. In any case where there is no registered victim, the prosecuting district attorney shall be provided notice as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:46 (January 2015), amended by the Office of the Governor, Committee on Parole, LR 41:1667 (September 2015).

§803. Committee Evaluation

A. After a determination that an offender qualifies for consideration under R.S. 15:308(C) and rules set by the department, the Department of Public Safety and Corrections shall forward all such applications to the Committee on Parole. The case shall be set for administrative review by a parole panel.

B. The panel shall evaluate the record of any offender whose application is submitted by the department, taking into consideration the risk of danger the applicant would pose to society if released from confinement. Such evaluation may be conducted by record review, telephone or video conference, or other meeting technology at the discretion of the panel.

C. The criteria for such evaluation includes, but is not limited to the guidelines listed in Chapter 7, §701.C.1, 2, 4, and D.8. In addition, an offender shall be considered inappropriate for recommendation to the Board of Pardons for ameliorative penalty consideration for one or any combination of the following:

1. poor conduct and/or disciplinary record, including habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith effort and/or other undesirable behavior;

2. maximum custody status, except those offenders assigned to maximum custody based solely upon classification criteria other than disciplinary reasons;

3. low level of program activity and/or completion when compared to program opportunity and availability;

4. extensive habitual and or violent criminal history;

5. extensive supervision revocation history.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015).

§805. Parole Panel Decision/Recommendation

A. All members of the panel will vote individually to grant or deny (with or without instructions) the offender's application. Any recommendation of the panel shall not be binding on the board.

1. If the offender's application is granted, the application and packet shall be forwarded to the Board of Pardons with a recommendation for reduction in sentence pursuant to R.S. 15:308.

B. The panel may also recommend new, additional, and/or require completion of programming, within the department, such as substance abuse treatment, educational or vocational training, etc.

C. The committee shall notify each offender in writing of the panel's decision in his/her case with instructions, if applicable. A copy of all decisions shall be disseminated to the warden of the facility where the offender is housed, the offender's master prison record, and the offender's case record.

D. In the event the offender is instructed to re-apply to the Committee on Parole, re-application frequency shall be a minimum of 12 months.

E. The decision of the parole panel is final and shall not be appealed through the administrative remedy procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:46 (January 2015).

§809. Consideration by the Board of Pardons

A. Upon receipt of a recommendation for ameliorative review consideration from the Committee on Parole, the Board of Pardons shall notify the offender in writing of the requirement to place advertisement in the official journal of the parish where the offense occurred. The ad must state: "I, (applicant's name), (DOC number), have applied for ameliorative penalty consideration for my conviction of (crime). If you have any comments, contact the Board of Pardons (225) 342-5421."

B. The applicant shall provide the board office with proof of advertisement within 60 days from the date of notice that a hearing has been granted.

C. After receipt of the clemency investigation from the appropriate probation and parole district and any other documents requested by the board, the board shall set the matter for public hearing.

D. The procedure for hearings conducted for the purpose of ameliorative penalty consideration shall follow the procedures outlined in LAC 22:V.211 and board policy 02-209, "Hearings before the Board of Pardons."

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Committee on Parole, LR 41:1667 (September 2015).

Chapter 9. Conditions of Parole

§901. Certificate of Parole

A. The certificate of parole will not become operative until specific conditions of release have been acknowledged and agreed to in writing by the offender.

1. The offender shall be advised orally and in writing of the conditions of parole prior to his release from incarceration.

2. The conditions of parole shall include, but not be limited to, those conditions contained in the certificate of parole, as approved by the committee and the Division of Probation and Parole pursuant to the provisions of R.S. 15:574.4.

B. Special conditions of parole, in addition to those required by R.S. 15:574.4, may be imposed and may include one or more of the following:

1. attendance at AA/NA meetings (the committee may specify the number of meetings to attend weekly);

2. mental health evaluation and treatment;

3. substance abuse evaluation and treatment;

4. payment of restitution for a direct pecuniary loss other than damage to or loss of property;

5. payment of fines and/or costs of court;

6. prohibited contact with the victim(s);

7. prohibited contact with co-defendant(s);

8. required GED, vo-tech or other educational plan;

9. compliance with treatment plan as ordered in the mental health or substance abuse treatment provider;

10. any other special conditions the committee may deem appropriate.

C. The committee shall impose special conditions of parole as set forth below.

1. When the victim's loss consists of damage to or loss of property, payment of restitution, either in a lump sum amount or in monthly installments based on the offender's earning capacity and assets. If the victim has been paid for such damage to or loss of property with monies from the Crime Victims Reparations Fund, the committee shall order the parolee to make payments as reimbursement to the fund in the same amount as was paid from the fund to the victim. The Department of Public Safety and Corrections shall verify that prior payment has not been made by the parolee.

2. If the offender has not paid and is liable for any costs of court or costs of the prosecution or proceeding in which he was convicted or any fine imposed as a part of his sentence, the committee shall require the payment of such costs or fine, either in a lump sum or according to a schedule of payments established by the committee and based upon the offender's ability to pay.

3.a. If the offender does not have a high school degree or its equivalent, the committee shall require the offender to enroll in and attend an adult education or reading program until he obtains a GED, or until he completes such educational programs required by the committee, and has attained a sixth grade reading level, or until his term of parole expires, whichever occurs first. All costs shall be paid by the offender.

b. If it is determined that there are no adult education or reading programs in the parish in which the offender will be residing, or that the offender is unable to afford such a program, or attendance would create an undue hardship, this condition may be suspended.

c. The provisions of §901 shall not apply to those offenders who are mentally, physically, or by reason of age, infirmity, dyslexia, or other such learning disorders, unable to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2267, 2271 (August 2013).

§903. Sex Offenders; General

A. *Sex Offender*—an offender/parolee who has been convicted for the commission, attempted commission, or conspiracy to commit any offense as cited in R.S. 15:541, or the equivalent, if committed in another jurisdiction.

B. The committee will consider any offender who has been convicted of a sex offense, when the law permits parole consideration for that offense and the offender is otherwise eligible.

C. In addition to any other notification requirement imposed by law, any sex offender released on parole shall be required to register and provide notification as a sex offender in accordance with R.S. 15:542 et seq.

D. Any sex offender released on parole shall be required to comply with the prohibitions and conditions of parole detailed in 15:538 et seq.

E. Any sex offender released on parole shall be required to comply with conditions of R.S. 15:574.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2268 (August 2013), LR 40:527 (March 2014).

Chapter 11. Violations of Parole

§1101. Types of Violations

A. New Felony Conviction—Automatic Revocation

1. Parole will be automatically revoked when a parolee is convicted and sentenced in Louisiana for a new felony.

2. A parolee who is convicted of a new felony in another state, or of a misdemeanor which if committed in this state would be a felony, shall have his parole revoked.

B. Technical Violations

1. Technical violations include any violations of the conditions of parole which are not felony convictions. Engaging in conduct constituting a felony or misdemeanor offense, if not adjudicated, may be considered a technical violation for revocation purposes.

2. When a parolee has been detained in jail by the Division of Probation and Parole, a preliminary hearing on-site will be scheduled as soon as possible upon request. Subsequent to the preliminary hearing, bond may be permitted, but only with authorization of the committee.

C. Absconders

1. A parolee may be considered to have absconded supervision if he absents himself from his approved place of residence without permission from the Division of Probation and Parole.

2. When apprehended, absconders may be returned to the custody of the Department of Public Safety and Corrections for a revocation hearing.

a. Extradition or waiver of extradition may be considered as probable cause for absconders apprehended out-of-state.

b. Upon return to the custody of the department, a parole revocation questionnaire shall be completed and forwarded to the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2304 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2272 (August 2013), LR 45:1066 (August 2019).

§1103. Activity Report

A. An activity report is used by the Division of Probation and Parole to advise the committee of an offender's actions for informational purposes and document and notify an offender's violation of the conditions of parole. An activity report may, or may not, require action by thecommittee.

1. If action by the committee is necessary, the activity report will normally be used to recommend the following:

a. issuance of an arrest warrant;

b. issuance of a reprimand (usually not in custody);

c. removal of a detainer to allow bond;

d. suspension of supervision;

e. unsatisfactory termination of parole;

f. impose, add, or modify special conditions of parole;

g. revocation of parole and

h. hold parolee pending disposition of charges.

2. The Division of Probation and Parole will prepare the activity report within five working days following receipt of the preliminary hearing findings from the hearing officer or five working days from the date the parolee waived or deferred the preliminary hearing. The report, along with the preliminary hearing forms and other documents, shall be forwarded to the committee.

3. Upon receipt of the activity report and other documentation, the case will be placed on the single-member action docket.

4. After the case has been acted upon, a decision notice will be forwarded to the Probation and Parole District Office where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

5. Upon receipt of the activity report, the case will be placed on the single-member action docket for a decision.

6. After the case has been acted upon, a decision notice will be forwarded to the probation and parole district office where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2304 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2272 (August 2013), LR 45:1067 (August 2019).

§1105. Preliminary Hearing for Detained Parole Violators—Preliminary Hearing

A. The preliminary hearing is a preliminary due process administrative hearing which is conducted by a hearing officer designated by the Division of Probation and Parole. The hearing officer will have no direct prior knowledge of the parolee and the circumstances surrounding the allegations.

1. The purpose of the preliminary hearing is to determine if there is probable cause that the parolee has violated the conditions of his parole.

2. A finding of probable cause may support the continued detention of the parolee pending a final revocation hearing.

3. The allegations and findings presented in the preliminary hearing documents will be the foundation for revocation or other specified action. The preliminary hearing will be conducted within a reasonable time following detention and in the locale or vicinity close to where the alleged violation occurred so that the offender has access to both favorable and adverse witnesses.

4. Prior to the preliminary hearing, written notification will be furnished to the parolee advising him of:

a. the charges pending against him;

b. his rights at the hearing; and

c. the date, time, and place of the hearing.

5. The parolee may request deferral of the preliminary hearing pending disposition of new felony charges. The parolee may also request the deferral of the preliminary hearing for a period of six months pending disposition of a misdemeanor domestic abuse battery.

6. The parolee may retain an attorney or, if eligible, be represented by appointed counsel.

7. Documentary evidence and oral testimony may be taken from all participants present at the hearing, including witnesses and the parolee's friends and family.

8. At the conclusion of the hearing, the hearing officer will issue a ruling as to probable cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2305 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2272 (August 2013), LR 45:1067 (August 2019).

§1107. Findings by Hearing Officer

A. The hearing officer who presides at the preliminary hearing will issue a finding of probable cause or no probable cause.

1. If no probable cause is found, the hearing officer shall order the parole violation detainer to be lifted and the alleged violator released from custody.

2. If probable cause is found, the Division of Probation and Parole will make one of the following recommendations to the committee:

a. that the parole violator be detained;

b. that the parole violator be allowed to make bond, if new charges are pending, while awaiting a final decision from the committee;

c. that the parole violator remain incarcerated, without bond, pending disposition of the charge;

d. that the parole violator be reprimanded and continued under parole supervision.

3. If probable cause is found, the parole revocation questionnaire will be completed and forwarded to the committee.

B. A copy of the finding will be given to the parolee and a copy forwarded to the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2305 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2273 (August 2013).

§1113. Revocation Hearing

A. When the Division of Probation and Parole has found probable cause and a preliminary hearing has been conducted, a revocation hearing shall be scheduled, unless the offender waives his right to a final revocation hearing. The revocation hearing shall be conducted within 60 calendar days after the offender's return to prison. Any delay for good cause must be approved by the chairman or designee. The purpose of the final revocation hearing is to determine if one or more conditions of parole have been violated by the offender, and if such violation(s) are serious enough to warrant re-incarceration of the offender to serve the balance of his sentence.

B. The revocation hearing is a public hearing and shall be conducted as outlined in Chapter 3 of these rules. The same procedural and substantive rights which are afforded to an offender at a preliminary hearing are afforded at the revocation.

C.1. The parolee:

a. must be present for the hearing;

b. may be represented by an attorney; and

c. may normally have one witness testify on his behalf.

2. For good cause shown, the panel may permit the parolee to present additional witnesses. Reliable documentary evidence is admissible at the hearing.

3. The offender may be allowed to present mitigating circumstances.

D. A copy of the violation report with attachments will be provided to each panel member prior to the hearing, along with any other pertinent documents which may be submitted to the panel prior to or at the hearing.

E.1. The chairman of the panel, or his designee, shall:

a. ensure the identification of the parolee; and

b. obtain an acknowledgment that the parolee understands his rights related to the hearing.

2. The alleged violations will be read and the parolee will be asked to respond to each with "guilty" or "not guilty."

F.1. The parolee will be encouraged to speak for himself and to make a statement on his own behalf.

2. The parolee's attorney may speak on his behalf and/or advise him at any time throughout the hearing.

3. The district attorney or his or her representative may speak on behalf of the prosecution.

4. The board may request oral testimony from all participants present who have specific knowledge of the revocation violation(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2273 (August 2013), LR 40:1528 (August 2014), repromulgated LR 40:1695 (September 2014).

§1115. Decision of the Parole Panel

A. The panel may make one of the following decisions:

1. revocation of parole;

2. reprimand and restore to parole supervision with or without special conditions imposed;

3. unsatisfactory termination of parole if full term date of parole supervision has passed;

4. participation in a transitional work program for up to six months in lieu of revocation;

5. as an alternative to incarceration, in lieu of revocation, be committed to a community rehabilitation center or a substance abuse treatment program operated by, or under contract with, the Department of Public Safety and Corrections for period of time not to exceed six months, provided that the period of such commitment does not extend beyond the full parole term;

6. as an alternative to incarceration, in lieu of revocation, participation in other specific therapeutic

programs as approved by the Department of Public Safety and Corrections and/or the Division of Probation and Parole;

7. do not revoke, continue on supervision.

B.1. The panel may elect to vote to continue or recess the hearing until certain testimony which was not available at the preliminary hearing can be heard or further evidence can be verified and presented.

2. The panel may also vote to recess and defer a decision until the outcome of pending charges. In this case, the parolee may be allowed to make bond on pending charges if so ordered by the panel. The board may then render a decision after receipt of additional evidence or after the disposition of the pending charge(s).

C.1. At the conclusion of the hearing, the panel will advise the offender orally of its decision and he will be furnished with a copy of the parole revocation decision form.

2. A copy of each parole revocation decision form will also be forwarded to the Probation and Parole district office assigned supervision of the offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2274 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:59 (January 2014), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 40:1529 (August 2014), repromulgated LR 40:1696 (September 2014).

§1117. Automatic Revocation for New Felony Conviction

A. A final revocation hearing will not be held if the parolee has been convicted of a new felony while on parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2274 (August 2013).

Chapter 13. Time Served

§1301. Time Must Be Served if Revoked

A.1. Offenders whose good time parole supervision or regular parole supervision is revoked by the Committee on Parole on or after January 1, 1992, shall receive good time on the jail credit awarded in accordance with R.S. 15:574.9(E).

2. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on supervision pursuant to R.S. 15:571.5. An offender may receive flat credit for good behavior while on parole supervision. Such credit may be awarded from the date of release on parole supervision until the date a warrant or detainer that causes revocation is issued by the Committee on Parole, pursuant to Act 792 of the 2010 Regular Legislative Session.

3. A parolee, offender who has been granted parole by the committee before August 15, 1997 for a crime committed on or after July 26, 1972, and who has been revoked for violating the terms of parole granted by the board committee, shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole, up to a maximum of 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., R.S. 15:540 et seq. and R.S. 15:571.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2274 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:59 (January 2014).

Chapter 15. Parole Suspension and Termination

§1501. Suspension of Supervised Parole

A. After a minimum of 18 months supervised parole and upon the recommendation of the Division of Probation and Parole, the committee may determine that a parolee merits unsupervised parole and may suspend a parolee's supervision.

1. A parole officer may recommend that an offender be placed in suspended status if the offender meets the following criteria:

a. completed a minimum of 18 months supervision;

b. is a first or second felony offender;

c. scored "minimum" on the LARNA;

d. has completed all special conditions ordered by the sentencing judge and/or committee;

e. has remained conviction free (excludes minor traffic and local municipal statutes) for the period of supervision and has no pending criminal matters;

f. is a non-DWI case;

g. is free of any conviction, deferred adjudication withheld for a sex offense as defined is R.S. 15:541;

h. is a current non-violent offender (a prior violent offense does not rule out the recommendation for suspended status if the current case meets eligibility requirements).

1. Exceptions to Subparagraph A.1.h:

a. parole case with a current violent offense that has been on supervision for at least five years and has remained arrest free;

b. parole case with a current violent offense with a medical or physical condition and is no longer considered a threat to public safety;

c. parole case with a current violent offense who has been displaced to another state due to emergency situation (i.e., hurricane or other natural disaster) and who do not have a residence plan in Louisiana.

B. A parolee in suspended status may be subject to revocation for parole violations committed prior to the expiration of his full term discharge date. The parolee may be returned to maximum supervision any time prior to the expiration of his full-term discharge date if the Division of Probation and Parole makes a report showing that such supervision is in the interest of either the public or the parolee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2269 (August 2013).

§1502. Inactive Parole Supervision

A. During the onset of parole supervision and development of the Supervision Plan, an offender who is free from any conviction for a sex offense as defined in R.S. 15:541, shall be advised of the incentive to be compliant with conditions of supervision in order to be recommended for Inactive Parole Supervision.

1. As determined by the District Manager or during the Annual Review, the officer shall review the offender's case based on the following eligibility requirements:

a. Offender's instant offense is not a crime of violence as defined by R.S. 14;2(B) and the offender has served a minimum of three years without a violation of the terms and conditions of parole.

b. Offender's instant offense is a crime of violence as defined by R.S. 14:2(B) and the offender has served a minimum of seven years without a violation of the terms and conditions of parole.

c. Upon the offender becoming eligible, the officer may shall submit an Activity Report to the Parole Board recommending the offender be placed on Inactive Parole Supervision.

d. Upon the Board's approval, the offender's supervision level will be changed to Administrative-Inactive Parole Supervision. At this effective date, the offender is no longer subject to the conditions of parole as defined in R.S.15:574.4.2(A)(2). Supervision fees will be inactivated in the DOC approved offender management system.

e. Should the parolee have a new arrest, the supervising officer will notify the Parole Board and request the parolee to be returned to active parole supervision where the offender will be subject to the conditions of parole as defined in R.S.15:574.4.2(A)(2). Supervision fees will be reactivated in the DOC approved offender management system. The supervising officer will follow normal procedures for the violation process.

f. Offenders convicted of a new felony conviction while under Inactive Parole supervision are subject to revocation under La. R.S. 15:574.10.

g. If the pending charges against the offender are rejected or dismissed, an Activity Report will be submitted to return the offender to Inactive Parole Supervision.

h. If the offender completes his period of supervision with no new arrests, the case will be closed at their earned compliance date or full term date as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, and 15:574.7.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 47:1109 (August 2021).

§1503. Termination of Parole

A. When a parolee has completed his sentence, he will be given a certificate of discharge from the Department of Public Safety and Corrections. The committee cannot terminate parole prior to the parolee's full-term discharge date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2269 (August 2013).

Chapter 17. Grievance Procedure

§1701. Right to File a Grievance

A. Any person may file a grievance under this procedure. However, no offender or parolee shall have the right to file a grievance against the board or committee members for the decisions enumerated in R.S. 15:574.11.

B. A grievance must be based upon a violation of the on Louisiana Committee Parole rules and procedures, Department of Public Safety and Corrections regulations, or the Louisiana *Revised Statutes*.

C. A person against whom a grievance is filed is entitled to be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2275 (August 2013).

§1703. Complaint Process

A. All grievances must be made in writing and submitted to the chairman of the Board of Pardons. Upon receipt, the chairman shall review the grievance and, if appropriate, forward it to the proper agency or authority for further action.

B. If the grievance relates to the board, or a member of the Committee on Parole, or the department staff assigned to the board or committee, the chairman or his or her designee will investigate to determine if it has a basis in fact.

1. If the complaint is determined to have a basis in fact, the chairman will attempt to resolve the grievance.

2. If the chairman is unable to resolve the grievance, it shall be referred to a grievance committee. The committee shall consist of:

a. the chairman of the board;

b. the vice chairman (unless the chairman or vice chairman is the subject of the grievance); and

c. any other person or persons jointly selected by the chairman and vice chairman.

C. If the grievance committee is unable to resolve the grievance, the matter will be forwarded together with any supporting documentation to the governor's executive counsel for resolution. Supporting documentation shall include the following information:

1. a reference to the relevant statute, rules, regulations and/or *Code of Ethics*, etc.;

2. a written summary of the attempts made to resolve the complaint; and

3. any other pertinent documentation.

D.1. In the event the grievance is against the chairman of the board, the complaint shall be submitted directly to the vice chairman. In this instance, the chairman will recuse himself or herself and shall not appoint a designee to the committee.

2. If the grievance is against the vice chairman, the vice chairman shall recuse himself or herself and shall not appoint a designee to the committee.

3. The remaining member of the grievance committee shall select a member of the committee to serve in place of the recused member.

4. If the complaint is against a committee member, that member shall not be selected to serve on the grievance committee.

E. The decision of the chairman, the grievance committee, or the executive counsel, whichever may apply, is final and not subject to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2275 (August 2013).

§1705. Resolution of Grievance

A. A written response to the grievance shall be mailed to the complaining party.

B. If it is determined that a board member has violated the Louisiana Committee on Parole rules and procedures, Department of Public Safety and Corrections regulations, or the *Louisiana Revised Statutes*, a letter shall be issued notifying the board member of the violation and a copy forwarded to the governor for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2307 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2275 (August 2013).

Chapter 19. Board of Parole Code of Ethics

§1901. General

A. All board members are governed by the *Code of Governmental Ethics* (R.S. 42:15 et seq.), as well as this Code of Ethics (LAC 22:XI.Chapter 19).

B. Since board members are in a position of public trust, they are not to engage in any activities, either privately or officially, where a conflict of interest may exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

§1902. Prohibitions

A. Board members are prohibited from accepting or giving gifts, gratuities or rewards for doing any service or thing pertaining to the duties expected in the performance of their jobs.

B. Board members are prohibited from using their positions to influence other decision-makers in the criminal justice system.

C. Board members are prohibited from allowing political influence to color their decisions.

D. The *Code of Governmental Ethics* prohibits board members from "serving two masters" (conflict of interest). Board members shall devote themselves full time to the duties of their office and shall not engage in any other business or profession or hold any other public office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

§1903. Integrity

A. Operational weaknesses and failure to achieve satisfactory performances are serious matters, but compromising integrity to achieve or report satisfactory performance is infinitely more serious.

B. Board members must set a good example at every opportunity. Their actions and direction should leave no avenue for doubt that they have completely and honestly performed their duties.

C. Board members must eliminate any appearance of impropriety, no matter how minor, toward violations or compromises of integrity. To achieve and maintain their objective, it is absolutely essential that board members be

continuously conscious of their personal responsibility to practice integrity as they conduct their daily activities.

D. From time to time, infractions of integrity may be uncovered. There is no excuse for such infractions and they will not be condoned. Personal integrity must be complete and above reproach. If and when detected, infractions shall be reported to the appropriate authorities, and those responsible should be dealt with, in the most severe manner possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2308 (December 1998).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XIII. Crime Victims Reparations Board

Chapter 1. Authority and Definitions

§101. Authority

A. Rules and regulations are hereby established by the Crime Victims Reparations Board by order of the Crime Victims Reparations Act, R.S. 46:1801 et seq., Act 250 of the 1982 Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:537 (May 1994).

§103. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Accessory—an accessory after the fact and also a principal, as defined by the Louisiana Criminal Code.

Board—Crime Victims Reparations Board.

Child—unmarried person under 18 years of age; includes a natural child, adopted child, stepchild, illegitimate child, any of the above who is a student not over 23 years of age, and a child conceived prior to but born after the personal injury or death of the victim.

Claimant—a victim or a dependent of a deceased victim, or the legal representative of either, an intervenor, the healthcare provider who provides healthcare services associated with a forensic medical examination as defined in R.S. 15:622, or in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime.

Collateral Source or Resource—source of benefits for pecuniary loss awardable, other than under these rules, which the claimant has received or which is readily available to him/her from any or all of the following:

a. the offender under an order of restitution to the claimant imposed by a court as a condition of probation or otherwise;

b. the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states;

c. Social Security, Medicare, and Medicaid;

d. Workers' Compensation;

e. wage continuation programs of an employer;

f. proceeds of a contract of insurance payable to the claimant for pecuniary loss sustained by the claimant by reason of the crime.

g. a contract providing prepaid hospital and other health care services, or benefits for disability.

Dependent—spouse or any person who is a dependent of a victim within the meaning of Section 152 of the United States Internal Revenue Code.

Healthcare Provider—either of the following:

a. a physician or other healthcare practitioner licensed, certified, registered or otherwise authorized to perform specified healthcare services consistent with state law;

b. a facility or institution providing healthcare services, including but not limited to a hospital or other licensed inpatient center, ambulatory surgical or treatment center, skilled nursing facility, inpatient hospice facility, residential treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other therapeutic health setting.

Healthcare Services—means services, including but not limited to items, supplies, or drugs for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease ancillary to a sexually-oriented offense.

Pecuniary Loss—amount of expense reasonably and necessarily incurred by reason of personal injury as a consequence of death, or a catastrophic property loss, and includes:

a. for personal injury:

i. medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;

ii. actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury; or the receipt of medically indicated services for a victim related to the personal injury.

iii. care of a child or dependent;

iv. counseling or therapy for the parent(s) or sibling(s) of a child who is the victim of a sexual crime;

v. Loss of support for a child victim of a sexual crime not otherwise compensated for as a pecuniary loss for personal injury;

b. as a consequence of death:

i. funeral, burial, or cremation expenses;

ii. loss of support to one or more dependents not otherwise compensated for as a pecuniary loss for personal injury;

iii. care of a child or children enabling the surviving spouse of a victim or the legal custodian or caretaker of the deceased victim's child or children to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury;

iv. counseling or therapy for any surviving family member of the victim or any person in close relationship to such victim;

v. *pecuniary loss* does not include loss attributable to pain and suffering;

vi. crime scene cleanup;

c. catastrophic property loss must be so great as to cause overwhelming financial effect on the victim or other claimant and shall be restricted to loss of abode;

d. any other expense associated with the collection and securing of crime scene evidence.

Reparations—payment of compensation in accordance with the provisions of the act for pecuniary loss resulting from physical injury, death, or catastrophic property loss by reason of a crime enumerated in the act.

Sexually-Oriented Criminal Offense—includes any offense listed as a sexual offense in R.S. 15:541(24).

Victim—

a. Any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter. This includes any person who is a victim of human trafficking as defined by R.S. 14:46.2, a victim of trafficking of children for sexual purposes as defined by R.S. 14:46.3, or a victim of any offense involving commercial sexual exploitation including but not limited to R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 194.1, 95 and 282.

b. a resident of Louisiana who is a victim of an act of terrorism (as defined in Section 2331 of Title 18, *United States Code*) occurring outside the U.S.; or

c. a Louisiana resident who suffers personal injury or death as a result of a crime described in R.S. 46:1805 except that the criminal act occurred outside of this state. The resident shall have the same rights under this Chapter as if the act had occurred in this state upon a showing that the state in which the act occurred does not have an eligible crime victims reparations program and the crime would have been compensable had it occurred in Louisiana. In this Subparagraph, *Louisiana resident* means a person who maintained a place of permanent abode in this state at the time the crime was committed for which reparations are sought.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 23:861 (July 1997), LR 24:327 (February 1998), LR 37:1605 (June 2011), LR 42:569 (April 2016).

Chapter 3. Eligibility and Application Process

§301. Eligibility

A. To be eligible for compensation, an individual must have suffered personal injury, death or catastrophic property loss as a result of a violent crime.

1. Victim Conduct and Behavior

a. The Crime Victims Reparations Board may vote to deny or reduce an award to a claimant who is a victim, or who files an application on behalf of a victim, when any of the following occurs:

i. The victim was assisting, attempting, or engaging in an illegal activity that substantially caused the injuries that are the basis for the claim.

ii. The victim contributed to or provoked the offense through his/her own misconduct.

b. Safety Belt Use by Vehicle Occupants

i. As Louisiana requires all vehicle occupants to use seat belts, victims not wearing a safety belt and injured or killed by a driver in violation of R.S. 14:98 (DWI), hit and run, or other intentional acts will have their award reduced, if found eligible otherwise.

ii. The total maximum award allowed under current policy will be reduced by 50 percent.

c. The following factors shall not be considered a reason for denying or reducing an award to a claimant who is a victim of a sexually oriented criminal offense, or who submits a claim on behalf of a victim of sexual assault:

i. the manner in which the victim was dressed at the time of the sexually oriented criminal offense;

ii. where the victim was located prior to the sexually oriented criminal offense;

iii. the time of the sexually oriented criminal offense;

iv. the occupation of the victim;

v. whether the victim:

(a). was or may have been under the influence of alcohol or drugs;

(b). had a previous sexual relationship with the alleged offender;

(c). was married to the alleged offender;

(d). was dating the alleged offender;

(e). consented to prior sexual activity with the alleged offender;

(f). has a history of being a victim of prior sexually oriented criminal offenses;

(g). has a criminal record;

(h). consented to the sexually oriented criminal offense if the victim is below the age of consent, mentally incapacitated or physically helpless;

(i). continued to live with an alleged offender after the assault;

(j). has a familial relationship to the alleged offender.

2. Collateral Sources

a. Restitution

i. The board reserves the right to make an award to a victim/claimant when a court of law has ordered restitution by the defendant;

ii. if the board makes an award, the court will be contacted with a request for a change in the court order to reflect that payments are to be made to the Crime Victims Reparations Fund for the amount paid by the board.

b. Insurance

i. The victim/claimant must process any potential insurance before applying for reimbursement of mental health claims, except for victims of sexually oriented criminal offenses.

ii. For claims that pertain to victims of sexually oriented criminal offenses, the victim has the discretion to choose whether or not to file for private insurance or Medicaid coverage.

3. Unjust Enrichment

a. When determining unjust enrichment or substantial economic benefit to offenders in applications involving domestic violence, the board will consider the following factors.

i. Has the victim reported the incident to the authorities and has the victim cooperated with their reasonable requests?

ii. In determining whether enrichment is substantial or inconsequential, factors to be considered include:

(a). the amount of the award;

(b). the total amount of income to the household; and

(c). whether a substantial portion of the award will be used directly by or on behalf of the offender.

b. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied.

c. The availability of collateral resources, including but not limited to court-ordered restitution and medical insurance, will be examined. A determination shall be made:

i. as to whether the offender has a legal responsibility to pay;

ii. whether the offender has resources to pay;

iii. whether payment is likely.

d. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.

e. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the program should attempt to meet the victim's needs to the extent allowed.

f. Payments to third-party providers will be made wherever possible.

g. Child victims will not be penalized by denying or delaying payment when offender or collateral resources are not forthcoming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 31:2009 (August 2005), LR 35:65 (January 2009), LR 36:2278 (October 2010), LR 37:1605 (June 2011), LR 41:1487 (August 2015), amended LR 44:2143 (December 2018), LR 47:364 (March 2021).

§303. Application Process

A. Claimant Responsibility

1. Applications for reparations must be submitted to the sheriff's office in the parish where the crime occurred except for claims involving an adult victim of a sexually-oriented criminal offense. Applications involving an adult victim of a sexually-oriented criminal offense are sent directly to the board office;

2. Applications:

a. must be signed and dated by the victim/claimant. If the victim is a minor, the parent or guardian is the claimant and must sign. If the victim is deceased, the person responsible for the expenses can be the claimant and must sign the application;

b. victims of sexual assault may assign their right to collect medical expenses associated with the sexual assault to a hospital/health care facility; however, the cost of the forensic medical examination is not reimbursable by the board as provided in §503.M.2. The hospital/health care facility may then apply for reparations for these expenses.

c. victims of sexual assault may assign their right to collect medical expenses associated with the sexual assault to a hospital/health care facility. The hospital/health care facility may then apply for reparations;

d. An adult victim of sexually-oriented criminal offense is not required to report the crime to any law enforcement officer in order to file an application. However, if the victim chooses to report the sexually-oriented criminal

offense, then the victim may take up to a year from the date of the crime to report it.

e. If a victim chooses not to report the crime to a law enforcement officer, he or she must submit a certification from a healthcare provider or coroner that a forensic medical examination of the victim was conducted.

3. The claimant must list each expense being claimed.

4. An itemized bill, not a billing statement, must accompany the application for each expense claimed.

5. All invoices, bills, etc. must indicate the victim/claimant as the guarantor, except for victims of a sexually-oriented criminal offense. Victims of a sexually-oriented criminal offense cannot be billed for costs associated with a forensic medical exam.

6. The victim/claimant is required to use claim forms to seek additional compensation after the original award is made.

B. Sheriff's Office Responsibility

1. Each sheriff will designate at least one staff member to handle the applications of crime victims for the board.

2. The sheriff's staff person, called the claim investigator, will distribute the most current applications, receive, process, and forward them to the board office in a timely manner.

C. Board Staff Responsibility

1. Check distribution will be as follows:

a. Provider checks will be issued directly to providers from the board office.

b. Victim/claimant checks will be mailed directly from the board office unless the sheriff specifies that he wishes to have them mailed directly to the sheriff's claim investigator for personal distribution.

D. Appeals

1. If an application is denied and the victim/claimant desires to appeal the board's decision, the victim/claimant must file the appeal within 60 days from the date of the denial letter.

2. The appeal letter should furnish the board with any new information not yet provided that the victim/claimant desires to have presented.

3. The appeal will be scheduled for the next available agenda.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), amended by the Office of the Governor, Crime Victims Reparations Board, LR 41:1668 (September 2015), LR 42:570 (April 2016), LR 42:743 (May 2016).

Chapter 5. Awards

§501. Payment of Awards

A. Only verified expenses can be reimbursed.

B. Verification of Claimed Expenses

1. Each type of claim form used by the board should identify the documents that must be submitted by the victim/claimant to support and verify a claimed expense.

2. When applications lack documentation necessary for a decision or award in total or in part, and adequate effort has been made to acquire that information, the application will be placed on an agenda and the decision and award will be based on that information available. Should the formerly sought information become available, a supplemental application can be filed.

C. Awards to eligible victims or claimants for expenses incurred but not yet paid may be made payable directly to the providers.

D. All checks to providers when paid at less than the full balance owing are marked "paid in full."

E. If a provider refuses a board check, the check will be reissued to the claimant for the same amount as approved.

F. In those instances in which:

1. an application has been approved for an award; and

2. payment is being made directly to the provider; and

3. the check either has not been sent or has not been negotiated by the provider; and

4. the claimant notifies the board that he has paid the bill, upon verification and return of the check, the check will be voided and reissued for the same amount to the claimant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:539 (May 1994), repromulgated LR 22:710 (August 1996), amended LR 24:328 (February 1998).

§503. Limits on Awards

A. General

1. There will be a $10,000 limit for awards for all victims with the exception of those primary victims who become totally and permanently disabled as a result of the crime. For those awards, the board may, at its discretion, award up to $25,000, depending on availability of funds its administrative rule limits for certain award benefits, and the extent, if any, of collateral resources. For purposes of this Section:

a. a victim is "totally and permanently disabled" if the victim has a physical or mental impairment that substantially precludes them from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout their life;

b. the board reserves the right to obtain an impartial medical expert, at its expense, if necessary, to assess the degree of disability of the victim.

2. All applications filed as the result of the death of a victim will be assigned one claim number with the deceased listed as the primary victim. Each additional claimant and/or secondary victim must submit a separate application with the appropriate claim form(s) and supporting documents. The aggregate claims arising out of the same crime will be subject to the maximum amount authorized by law.

3. Forensic medical examinations shall not exceed $1,000 for each case.

B. Attorney Fees

1. The board does not reimburse victims for fees charged by an attorney to prepare an application or represent the victim in any way unless the fees result from a hearing ordered by the board.

2. Those reimbursable charges are set at a maximum of $50 per hour for a total of five hours or $250.

3. The appeals process does not constitute a hearing. Thus, any fees charged by an attorney to represent a victim/claimant at an appeal are not compensable.

C. Funeral Expenses

1. The board will reimburse up to a maximum of $5,000 to cover reasonable expenses actually incurred for the funeral, burial, or cremation. (effective January 1, 2009).

2. Death and/or burial insurance taken out specifically for the purpose of burial must pay first. The amount of life insurance proceeds paid is no longer considered as a collateral source for funeral expenses.

D. Lost Wages/Earnings

1. When lost wages are part of a claim, lost wages will be considered before out-of-pocket or other medical expenses are considered.

2. The inability to work must be directly related to the victimization and documented by the appropriate medical doctor. That medical opinion is subject to professional review and audit.

3. Violently assaulted victims who do not require medical intervention (i.e., doctor visit, emergency room treatment) will be allowed a reimbursable recuperation period:

a. if no sick time or other compensation is available, the board may grant up to five working days of lost wages;

b. wage verification by the employer is required.

4. The board may reimburse lost wages/earnings as follows:

a. 80 percent of the gross weekly wage of the victim. For seasonal or part time wages, the amount shall be calculated at 80 percent of the average weekly wage;

b. for loss of income from work by the parent or legal guardian of a minor victim who must miss work to obtain or provide the medically indicated services or care for the personal injury.

5. If workers' compensation or other private disability/income protection insurance is available, those policies must be paid out first before the board considers a claim for lost wages.

6. If the victim cannot return to work, the lost wage period may include future lost wages.

7. If a person is not gainfully employed or is not receiving entitlement at the time of the crime, then no lost wages can be determined nor awarded. However, an award for loss of wages based on seasonal, nonsalaried or intermittent work, or a bona fide offer of employment may be based on an average net anticipated salary for the period of employment.

8. Only the following list of physicians can legally determine physical disability:

a. medical doctor;

b. oral surgeon;

c. psychiatrist;

d. physiatrist;

e. ophthalmologist;

f. surgeon.

9. If a victim is initially treated by one doctor and that doctor refers the victim to another doctor, the referral doctor can determine disability from the date of the incident.

E. Loss of Support

1. For loss of support for a surviving spouse or other dependent to be considered, the following documentation must be provided:

a. death certificate signed by the coroner;

b. individual federal and state tax return for year before the crime to show dependency of claimant;

c. employment/wage verification completed and signed by the victim's employer;

d. verification of life insurance claimed by dependent filing application; and

e. documentation that Social Security or other pension benefits are not available to surviving spouse or dependents.

2. Loss of support for a surviving spouse may be awarded at the discretion of the board when no other collateral resources exist and the inability to work exists or the opportunity to find work could be delayed due to age, frailty, and lack of previous work experience.

3. The board will reimburse loss of support with a maximum of $10,000.

a. The board may award loss of support up to the maximum amount per week authorized for lost wages in §503.D.4. That amount is based on net, after-tax, or take home pay.

b. When only gross income is provided by a claimant, then the board will award the loss of support at 80 percent of the amount authorized in §503.D.4 for lost wages.

F. Ambulance

1. A maximum of $300 for regular ambulance transport. A maximum of $500 exists for air medical transport.

2. Air transport services are considered ambulance services and reimbursed as such.

3. The medical portion of the ambulance bill is to be considered as a medical cost and paid at the medical per cent consistent with all other claims for that claimant.

4. If the ambulance bill is part of the total hospital bill and the total hospital bill is under $10,000, the ambulance transfer bills will be isolated and paid separately. If the total bill is over $10,000, the ambulance charges will not be isolated for payment.

G. Medical Expenses

1. The board reserves the right to audit any and all billings associated with medical care. All treatment must be considered "usual and customary" and be directly related to the victimization.

2. The board will not pay any interest, finance, or collection fees as part of the claim process.

3. The board will pay up to 70 percent of all outstanding charges after any third-party payment sources up to the statutory limits.

4. If the total outstanding charges exceed the case cap of $10,000, then all providers listed in the claim will be paid out at that actual percentage those bills are in relation to the available case funds.

5. Out-of-pocket paid monies will be reimbursed to the victim prior to applying this payment schedule.

6. Psychiatric Inpatient Hospitalization. It is the opinion of the board that any psychiatric inpatient hospitalization required by a crime victim would be very acute and crisis management in scope. Compensation for such care will require a peer review as described in §503.I.3.

a. The board will not reimburse for more than seven days of psychiatric inpatient hospitalization at a cost of no more than $700 per day. This is intended for an acute hospitalization with the goals of emotional stabilization and placement in outpatient treatment.

b. The board will not reimburse more than one psychological evaluation (as defined in §503.I.5).

i. The board will not reimburse for any intake evaluation or psychological testing.

ii. The board will not reimburse for any more than one in-patient treatment, group or individual, per day. Support or family day sessions and "community" meetings are not reimbursable.

iii. All provider/therapist/s charges are reimbursed at the same hourly rate as out-patient mental health services, that is:

(a). M.S./M.S.W. (O.P.C./B.C.S.W.): $75/hour

(b). Ph.D./M.D. (Board Certified): $85/hour

(c). Group therapy: $30/session

c. Therapeutic groups outside the per diem charge of the hospital will not be reimbursed.

d. All therapist charges that are outside the per diem charge of the hospital will be limited to no more than one session per day at a rate described in §503.I.8.

7. Only those medicines and drugs prescribed by a licensed physician are compensable.

8. Reimbursable providers include licensed medical doctors, dentists, eye doctors, chiropractors, osteopaths, pediatrists, psychiatrists psychologists, physical therapists, etc.

9. Compensable medical services include emergency ambulance service, medical examinations, X-ray and laboratory services, whirlpool baths ordered by a doctor.

10. Only services of a nurse as prescribed by a licensed physician are compensable.

11. Aids such as hearing aids, false teeth, eyeglasses, contact lenses, crutches, and wheelchairs needed as a direct result of the crime or that were damaged or destroyed during the crime are compensable.

H. Travel Expenses. Transportation costs other than the initial ambulance services are reimbursable only when required medical care is not locally available. Certification is required by the physician of record that local medical care is unavailable. Allowable private vehicle mileage for out-of-town travel is reimbursed at the rate published in the current state travel regulations.

I. Mental Health Counseling

1. It is the board's opinion that the majority of those directly victimized by violent crime (e.g., *primary victims*) can obtain significant improvement within the first six months of qualified counseling. The board recognizes that short-term crisis management counseling may also be needed for *secondary victims* (defined as *primary family members or cohabitors of the victim*).

2. Reimbursement of mental health services is limited to six months from the date of the first visit or after the first 26 qualified sessions/groups (whichever comes first).

3. Cases which extend beyond the allowable time limit will be subject to a peer review by a psychiatrist or psychologist, licensed by the state of Louisiana, consulting with the board. Peer review will involve an examination of the following:

a. complete progress notes for crime-related conditions(s) being treated;

b. any psychological evaluations/testing pertaining to the crime-related condition;

c. description of prior conditions or treatments;

d. current treatment and treatment response to date; and

e. updated treatment plan.

4. Limits on Charges

a. For the life of each claim, reimbursable charges may not exceed $2,500. These limits include the cost of all treatment services and psychological or neuropsychological evaluations/testing as described in §503.I.8. Victims/claimants may apply for an additional $2,500 in reimbursement when there is a documented need for long-term mental health services.

b. All applications for extended reimbursement will require a formal psychological or neuropsychological evaluation/testing that clearly documents the need for extended mental health treatment.

c. All applications for extended reimbursement of mental health expenses are subject to peer review by a psychiatrist or psychologist, licensed by the state of Louisiana, consulting with the board.

5. Limits on Evaluation/Testing

a. Psychological evaluation/testing may not exceed $800 and neuropsychological evaluation/testing may not exceed $1,500.

b. Any evaluation/testing must be conducted by a licensed psychologist and should include the following:

i. description of any structured interview used;

ii. description and results of testing administered;

iii. case formulation and DMS-IV diagnoses.

c. case formulation and DSM-IV diagnoses.

6. Treatment plans completed by the therapist of record (or primary therapist) are required for consideration of mental health expenses. The therapist must show that the psychological condition being treated is a direct result of the crime. Treatment plans must be fully documented in a "problem" and "intervention" format. Detail must be provided for both symptom and intervention. Single word descriptors such as "nightmares" or "supporting counseling" will not suffice. Insufficient treatment plans will be returned to the therapist and the case may be deferred or denied until revised.

7. All payments for services are subject to review and audit by the board.

8. Rates for Reimbursement

a. Only physicians, psychiatrists, state certified or state licensed psychologists, licensed professional counselors, or board-certified social works are eligible for reimbursement.

b. The rates for reimbursement shall be:

i. M.D./Psychiatrists $85/hour;

ii. Ph.D. or Psy.D. Licensed Psychologists; $85/hour

iii. Licenses Professional Counselors $75/hour;

iv. Board-Certified Social Worker $75/hour;

v. Group Therapy Rates (90 minute) $30/session.

9. It is the board's assessment that psychiatric inpatient hospitalization of crime victims is rarely required. If under unusual circumstances such treatment is required, compensation will be subject to a peer review as previously described. Reimbursement for such treatment is limited in amounts and procedures listed under "medical" services.

10. Any claim for injuries sustained may be denied if prescribed or preempted as a matter of law.

J. Catastrophic Property Loss

1. A maximum of $10,000 may be awarded if a victim's abode is owned and the abode/contents are destroyed by criminal act.

2. This must produce a "verifiable" overwhelming financial effect for that person.

3. This is considered when no insurance exists or the ability to rehabitate the structure is precluded due to lack of personal resources.

K. Vehicular Incidents

1. Eligible expenses include those resulting from death or personal injury as outlined in the statute if they are incurred resulting from DWI or hit and run offenses, fleeing felon incidents, or injuries intentionally inflicted with a motor vehicle, boat or aircraft.

2. Vehicular accident related injuries, other than those caused by the above are not compensable.

L. Child Care Expenses

1. Pre-existing child care costs are not reimbursable if those same costs were being incurred prior to the crime.

M. Crime Scene Evidence

1. Expenses associated with the collection and securing of crime scene evidence are limited to:

a. reasonable replacement costs for clothing;

b. bedding; or

c. property seized as evidence or rendered unusable as a result of a criminal investigation or lab test.

2. Medical Examination of Sexual Assault Victims

a. Costs of the forensic medical examination are reimbursable by the Crime Victims Reparations Board (CVR Board) under this Section and payable directly to the healthcare provider who provides the service. All other

expenses related to victims of sexual assault are reimbursable by the board subject to the maximum permitted by law and the provisions of the Crime Victims Reparations Act and its administrative rules.

b. In instances where the sexual assault victim assigns his or her rights to collect reparations for reimbursable medical expenses beyond those associated with the forensic medical examination to the hospital/health care facility, the hospital/health care facility must submit the following items directly to the CVR Board within one year of the date of service in order to receive reimbursement:

i. victim of sexual assault assignment of rights form, signed by the victim;

ii. hospital/health care CVR application;

iii. itemized bill for services rendered.

c. The sexual assault victim may submit these expenses to his or her private insurance or other third-party payor. If these expenses are paid by insurance or other third-party payor, the hospital/health care facility may file an application with the CVR Board for any unreimbursed expenses.

d. Nothing in this Section shall preclude a sexual assault victim or claimant from filing a regular or emergency application for additional benefits.

3. Healthcare providers shall be reimbursed for expenses associated with providing a forensic medical exam in the same amount as provided for in the fee schedule in §503.M.5. The total amount reimbursable to all providers per forensic medical exam (FME) is limited to $1000. All x-rays, ultrasounds, CT scans, extensive dental work, and lab/diagnostic test not listed in the schedule below related to the sexual assault must have supporting documentation to support testing.

4. Non scheduled FME expenses will be reimbursed at a rate of 55 percent. (eff. 1/1/22).

5. Forensic Medical Exam Reimbursement for Sexual Assault Cases

Examination Fee	**Maximum Reimbursement**
Forensic Medical Exam Incl. Rape Kit, MD/SANE Nurse Exam, Anogenital Exam, Supplies, Toxicology Kit, Facility Fee	$1000
Physician Fees	**Maximum Reimbursement**
Anogenital Exam	$150
Anoscopy	$120
Follow-Up Office Visit	$150
Mental Health Office Visit-Initial Eval	$150
Mental Health Office Visit-Follow-Up	$90
Laboratory Testing	**Maximum Reimbursement**
CBC	$65
Chlamydia	$110
CMP	$90
Gonorrhea	$80
Hepatitis Panel	$160
Herpes	$30
HIV	$80
Lab Pregnancy Test	$30
Syphilis/RPR/Treponema Pallidum	$25
Trichomonas	$40
Urinalysis	$30
Urine Culture	$50
Venipuncture	$50
Wet Mount	$50
Medications	**Maximum Reimbursement**
Antimicrobials	$100
Antiretroviral/HIV/nPEP	$500/5 Doses
Emergency Contraception	$50.00
Hepatitis B Vaccine	$70/Dose {up to 3 doses}
HPV Vaccine-Females age 9-26 and Males age 9-21	$150/Dose {up to 3 doses}
Injection Fee	$50
Tetanus Vaccine with injury	$40

6. The reimbursement schedule above is not a physician's order, nor does it replace one. Reimbursement may vary based on the information received from the treating facility, physician, and/or victim.

N. Crime Scene Cleanup

1. Crime scene cleanup means the removal or attempted removal of blood, stains, odors, broken glass, impurities or other debris caused by the crime or the processing of the crime scene where the crime occurred.

2. Expenses for crime scene cleanup may not exceed total costs of $2500.

3. Types of allowable expenses for clean up include:

a. equipment rental;

b. disinfecting and cleaning supplies;

c. professional cleaning services insured for that purpose.

4 Expenses for crime scene cleanup cannot be used for:

a. property repair;

b. replacement of personal property;

c. costs not directly billed to victim and/or claimant.

O. Loss of Support for Child Victim in Sexual Crimes

1. Loss of support may be paid on behalf of a child victim of a sexual offense if the offender was providing support through employment or a benefits program before the date the crime was committed.

2. Claimant qualifications:

a. must be a parent, or legal guardian of the minor child(ren);

b. must provide documented proof that offender supported the home and minor child victim;

c. is only eligible if the offender is incarcerated.

3. The board may award loss of support up to:

a. $7500 maximum per victim;

b. maximum amount per week for loss of support is the same authorized for lost wages in §503.D.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR 24:328 (February 1998), LR 25:26 (January 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:1330 (June 2005), LR 32:242 (February 2006), LR 35:65 (January 2009), LR:37:1605 (June 2011), LR 39:1042 (April 2013), LR 41:1668 (September 2015), LR 42:570 (April 2016), LR 42:743 (May 2016), LR 44:270 (February 2018), LR 48:40 (January 2022).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XV. Public Defender Board

Chapter 1. Purpose and Definitions

§101. Purpose

A. The purpose of these guidelines is to effectuate an equitable distribution of state funds to the 41 judicial district indigent defender boards based on articulated, quantifiable, and verifiable criteria and improve the delivery of defense services to the poor within the authority of the Constitution of the United States and the Constitution and laws of the State of Louisiana. The Louisiana Indigent Defense Assistance Board has adopted these rules pursuant to R.S. 15:151.2 (F).

1. The purpose of these guidelines is to effectuate a program of legal representation to indigent individuals sentenced to death within the authority of the Constitution of the United States and the Constitution and laws of the state of Louisiana.

2. These rules and guidelines are designed to provide for prompt representation on appeal and curb the acute problems of unnecessary delay in the filing of an application for post-conviction relief in capital cases; to instill public confidence in the process of appellate and post-conviction review; to construct a financially sound and publicly accountable programmatic approach for the delivery of defense services to indigent individuals sentenced to death; and, to efficiently and effectively provide for judicial review and finality of capital appellate and post-conviction proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151 through 15:151.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1200 (June 2002).

§103. Definitions

A. For the purposes of this rule, the following definitions shall apply.

Appellate Case—a criminal proceeding in which a review as of right is exercised by or on behalf of an individual seeking judicial redress of a final judgment in accordance with Const. Art. I, Sec. 19 (1974), C.Cr.P. Arts. 911-913, and Ch.C. Arts. 330 and 710(B).

Arrest—the taking of one person into custody by another. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him or her.

Capital Case—a criminal proceeding involving the arrest or indictment of an individual whereby the accused, if found guilty, may be sentenced to death.

Case—a statistical construct used to report the number of defendants to be represented by a judicial district indigent defender board for a period of time exceeding one hour in a single proceeding of the number of bills of information, indictments, charges, or petitions brought against an individual in a single proceeding.

Caseload—the total number of cases handled by a district indigent defender board or individual attorney. Caseloads are reported to the LIDAB in the caseload categories established by the LIDAB. These categories include, but are not limited to: Capital Trial Cases; Capital Appellate Cases; Capital Post-Conviction Cases; Non-Capital Felony Trial Cases; Non-Capital Felony Appeal Cases; Non-Capital Felony Post-Conviction Cases; Misdemeanor Trial Cases; Traffic Trial Cases; Juvenile Delinquency Cases; Child In Need of Care Cases; Families In Need of Services Cases; Juvenile Appellate Cases; Mental Health Cases; Probation Revocation Cases; and Other Cases.

Certification Program—the combination of all procedures, regulations, guidelines and rules of the LIDAB mandated by La. S.Ct. Rule XXXI. Unless otherwise indicated, this term applies to both the Capital and Appellate Certification Programs.

Certified Counsel—an attorney that has been authorized through the appropriate certification program to serve as lead or associate counsel in capital trial cases and/or felony appellate cases on behalf of an indigent client.

Confinement—the placement of an individual into physical custody by authority of law pursuant to Titles 14, 15, 32, and 40 of the Louisiana Revised Statutes, the Louisiana Code of Criminal Procedure, the Louisiana Children's Code, and all other laws providing criminal penalties for violation of their provisions. Confinement shall include physical custody arising from an arrest, a conviction, a finding of delinquency, an order of commitment to a juvenile shelter or detention facility, or an order of commitment to a public or private mental institution or institution for the mentally retarded.

Criminal Proceeding—any litigation involving the investigation or commission of any offense punishable by imprisonment, confinement, or custody.

Custody—the detention or confinement of an individual as a result of, or incidental to, an instituted or anticipated criminal, mental health, or juvenile proceeding.

Defense Services—include all reasonable and necessary steps involved in representing an individual in accordance with constitutional and statutory law, rules of the Louisiana Supreme Court, and the Louisiana State Bar Association Rules of Professional Conduct.

Direct Assistance—financial aid provided to a judicial indigent defender board by the Louisiana Indigent Defense Assistance Board, including grant-in-aid programs, technical assistance grants, and reimbursement of expenses for defense experts and specialized scientific tests.

Expert Witness—an individual recognized as an authority on a subject based on the person's knowledge, skill, experience, training, or education. To be considered an expert witness under this rule, it is not necessary that the individual be called to testify at a criminal, mental health, or juvenile proceeding.

Grant Application—the formal process whereby a judicial district indigent defender board requests assistance from the LIDAB for financial or technical assistance for a specific need or purpose.

Grant-in-Aid Program—formal procedures, rules, and regulations established by the LIDAB to provide direct financial assistance to a judicial district indigent defender board based on the LIDAB's funding levels, the judicial district indigent defender board's demonstrated need, and compliance with the LIDAB's guidelines.

Imprisonment—confinement of a person in a jail or state correctional facility.

Independent Financial Audit—a formal review of all financial records of a judicial district indigent defender board by an independent certified public accountant in accordance with government approved accounting practices.

Indigency Standards—those procedures provided in R.S. 15:147-149.

Indirect Assistance—non-financial support provided by the LIDAB to a judicial district indigent defender board. Such support includes, but is not limited to, assistance in the development and improvement of administrative and management practices, the sharing of technical information, and the provision of specialized continuing legal education programs.

Judicial District Indigent Defender Board—a public entity established pursuant to R.S. 15:144-146.

Juvenile Proceedings—those proceedings instituted pursuant to provisions of the Louisiana Children's Code wherein the services of a judicial district indigent defender board are specifically required.

Local Counsel—counsel that is certified by the Louisiana Indigent Defense Assistance Board as qualified to represent indigents in capital cases within a judicial district wherein he or she resides or regularly practices law.

Louisiana Indigent Defense Assistance Board—a nine-member board established within the office of the governor pursuant to R.S. 15:151, et seq. for the purpose of providing supplemental assistance to judicial district indigent defender boards to the extent required by the Constitution and laws of Louisiana or the Constitution of the United States of America.

May—permissive.

Regional Defense Service Centers—regional service centers established pursuant to R.S. 15:151.

Shall—mandatory.

Specialized Continuing Legal Education—includes courses and seminars primarily focused on criminal defense-oriented issues and skills and approved by the mandatory continuing legal education committee for continuing legal education credit.

Specialized Scientific Testing—includes any specialized testing outside the ken of lay persons that is carried out on behalf of an indigent person and authorized by a court of competent jurisdiction as necessary to the defense.

Supplemental Assistance—includes direct and indirect financial support and non-financial support of defender programs, including, but not limited to, improvement of administrative procedures, exchange of information, budgetary management and continuing legal education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1200 (June 2002).

Chapter 2. Funding of Expert Witness, Specialized Scientific Testing, and Other Ancillary Services for Indigents Convicted of Capital Crimes

§201. Eligibility Criteria

A. To the extent funds are available, funding of expert witnesses, specialized scientific testing and other ancillary services is limited to persons who meet indigency standards pursuant to R.S. 15:147.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:836 (May 2006).

§203. Application

A. Applications on behalf of indigents sentenced to death for funding of reasonably necessary services of expert witnesses, cost of specialized scientific testing and other ancillary services associated with legal representation mandated by the Constitution of the United States and the Constitution and laws of the state of Louisiana shall be in writing and include the following:

1. name of indigent seeking funding;

2. a statement of justification of the need for services of an expert witness, specialized scientific testing, and/or other ancillary services;

3. name of expert witness or entity conducting specialized scientific testing or other ancillary services; and

4. estimated cost of fees for the services requested.

B. Any applications made by private counsel on behalf of a defendant sentenced to death for funding of reasonably necessary services of expert witnesses, cost of specialized scientific testing and other ancillary services based on partial indigency shall make application in accordance with Subsection A above. Additionally, counsel for the applicant must reveal all financial arrangements regarding representation.

C. All information contained in applications for funding that are subject to attorney client privilege shall remain privileged and confidential.

D. All applications are subject to guidelines for compensation of expert witnesses, cost of specialized scientific testing and other ancillary services set by the Louisiana Indigent Defense Assistance Board.

E. All applications made pursuant to this Section are subject to the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

§205. Review of Applications for Funding of Expert Witness and Specialized Scientific Testing

A. The review of applications for funding of expert witnesses specialized scientific testing and/or other ancillary services by indigents sentenced to death will be conducted by a non-profit corporation specializing in the representation of indigents in capital post-conviction proceedings designated by the Louisiana Indigent Defense Assistance Board, hereinafter referred to as Capital Post-Conviction Program. The Capital Post-Conviction Program shall take action upon an application for funding within 30 days of receipt of the application either by approval of the application, denial of the application, or by the request of additional information regarding the application. Should the Capital Post-Conviction Program request additional information from the applicant, the Capital Post-Conviction Program shall take action by approval or denial of the application within 30 days of the receipt of the additional information requested. The Capital Post-Conviction Program will use the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003) for evaluation of all applications. Final approval of applications under this provision is subject to the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

§207. Appeals Procedure

A. Should an application for funding under §205.A be denied in part or full, the applicant has 30 days from the date of the letter notifying applicant of denial to request in writing that the application be reviewed by the director of the Louisiana Indigent Defense Assistance Board. Decisions of the director are final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

Chapter 3. Guidelines and Eligibility Criteria

§301. Eligibility Criteria for Direct and Indirect Supplemental Assistance

A. A district indigent defender board shall not be eligible to receive supplemental assistance from the Indigent Defense Assistance Board unless the following criteria are met.

1. All courts within the judicial district are assessing at least $25 in court costs in accordance with R.S. 15:146, provided the amount of court costs being assessed shall not bar supplemental assistance to cover the costs of defense services in capital cases.

2. The judicial district indigent defender board has instituted and is complying with a system to assure that defense services are limited only to those who meet indigency standards after reasonable inquiry, including compliance with R.S. 15:147. In all proceedings where defense services are provided by a judicial district indigent defender board, the board shall file, in the record of the proceedings, a written certification attesting to the individual's indigency, signed by the client or a representative of the judicial district indigent defender board.

3. A judicial district indigent defender board is providing legal services and related expenses only to the extent required by the Constitution of Louisiana or the Constitution of the United States of America or specific statutory provisions affording the right of counsel to indigents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

§303. Guidelines for Direct and Indirect Supplemental Assistance

A. The Louisiana Indigent Defender Assistance Board provides direct and indirect supplemental assistance to the state's 41 judicial district indigent defender boards in accordance with R.S. 15:151 et seq., and the following guidelines.

1. Supplemental assistance to be provided shall take into account the provision of defense services by the judicial district indigent defender board for indigent persons arrested or detained in connection with the investigation or commission of any offense or charged with an offense punishable by imprisonment, custody, or confinement.

2. Supplemental assistance to be provided shall take into account the employment by the judicial district indigent defender board of other than trial counsel or counsel from

within the judicial district to provide services for appeals. A district indigent defender board shall institute and comply with a policy for providing certified counsel in appellate cases in accordance with S.Ct. Rule XXXI.

3. Supplemental assistance to be provided shall take into account the failure of the judicial district indigent defender board to provide local counsel in capital cases. A judicial district indigent defender board shall institute and comply with a policy for providing certified counsel in capital cases in accordance with S.Ct. Rule XXXI.

4. Supplemental assistance to be provided shall consider the cost to a judicial district indigent defender board of specialized scientific testing and expert witnesses.

5. Supplemental assistance to be provided shall consider the administrative expenses and management practices and efficiencies of the judicial district indigent defender board, including its level of cooperation with the Louisiana Indigent Defense Assistance Board.

6. Supplemental assistance to be provided shall consider compensation rates set by the judicial district indigent defender board to remunerate an attorney retained to handle a specific case or class of cases.

7. Supplemental assistance to be provided shall consider the provision by the judicial district indigent defender board of financial, caseload, staffing, and other information reasonably necessary to carry out the enumerated powers of the Louisiana Indigent Defense Assistance Board.

8. Supplemental assistance to be provided shall consider the number of capital and appellate cases, the use of expert witnesses and specialized testing, and other clearly demonstrated needs of a judicial district indigent defender board. The provision of these defense services by a judicial district indigent defender board shall be handled in accordance with the certification programs mandated by S.Ct. Rule XXXI.

9. Supplemental assistance to be provided shall consider the participation of a judicial indigent defender board in regional defense service centers as provided in R.S. 15:150.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D), (F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

§305. General Certification Guidelines for Capital Appellate and Post-Conviction Counsel

A. The following standards shall be applied to contract attorney certification under any part of this rule.

1. The attorney shall be familiar with the practice and procedure of the criminal courts of Louisiana and shall be a member in good standing of Louisiana State Bar Association or admitted to practice pro hac vice.

2. The attorney shall be familiar with the use of expert witnesses and evidence, including but not limited to, psychiatric and forensic evidence.

3. Within one year of an initial application for certification by the Louisiana Indigent Defense Assistance Board, the attorney shall complete a minimum of 12 hours of board-approved training primarily involving advocacy in the field of capital appellate or post-conviction defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

§307. Certification Guidelines for Capital Appellate Counsel

A. To be certified to serve as counsel in the appeal of a capital case, an attorney shall satisfy the following minimum standards:

1. be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases and the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases;

2. be an experienced and active trial or appellate practitioner with at least five years experience in the field of criminal defense;

3. have prior experience within the last five years as counsel of record in the appeal of no fewer than three felony convictions in federal or state court; and

4. have prior experience within the last five years as counsel of record in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed;

5. in cases in which applicants lack the requirements of Paragraphs 1-4 above, the chair of the board of the Louisiana Indigent Defense Assistance Board may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

§309. Certification Guidelines for Capital Post-Conviction Counsel

A. To be certified to serve as counsel for purposes of state post-conviction, an attorney shall satisfy the following minimum standards:

1. be familiar with the substantive law and the practice and procedure of the courts of Louisiana in the review of capital post-conviction applications;

2. be familiar with federal habeas corpus statutory law, practice and procedure, particularly including federal review of state capital post-conviction procedures;

3. be an experienced and active trial, appellate, or post-conviction practitioner with at least three years experience in the field of criminal defense; and

4. have prior experience within the last three years as counsel of record in a capital post-conviction application, in state or federal court, or at least one case where a sentence of death was imposed, demonstrating clear competence and diligence in the representation provided;

5. in cases in which applicants lack the requirements of Paragraphs 1-4 above, the chair of the board of the Louisiana Indigent Defense Assistance Board or Director of the Capital Post-Conviction Project of Louisiana may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

Chapter 5. Procedure for Supplemental Assistance and Appointment of Counsel for Indigent Defendants Sentenced to Death

§501. Grant-in-Aid Programs

A. The Louisiana Indigent Defense Assistance Board may provide direct assistance to judicial district indigent defender boards based on the LIDAB's funding levels, a judicial district indigent defender board's demonstrated need, and compliance with the following guidelines. Grant-in-aid programs established by the LIDAB are intended to provide supplemental assistance to qualifying district indigent defender boards for all criminal and juvenile proceedings where the right to the assistance of counsel provided by the state has been established. All judicial district indigent defender boards willing to comply with the standards, guidelines, and policies of the Louisiana Indigent Defense Assistance Board are eligible to apply for supplemental assistance.

1. Supplemental assistance is available to a judicial district indigent defender board to assist it in improving the quality of indigent defense on a continuing basis. The major goals of these programs are the following:

a. to lower public defender workloads to levels consistent with recognized standards of professionalism and national caseload standards;

b. to increase the availability of trained and qualified attorneys certified to handle capital and appellate matters on behalf of indigent clients;

c. to provide more effective attorney unit support in the form of investigators, paralegals, secretaries, technology, and other forms of office support;

d. to improve criminal defense knowledge and skill through training, specialized continuing legal education, and improved supervision;

e. to defray the costs of expert witnesses and specialized scientific testing; and

f. to improve the process by which an individual is determined to be in need of state-provided defense services.

2. Supplemental assistance provided to a judicial district indigent defender board under these programs may be used for any or all of the following purposes:

a. hiring or retaining attorneys for the provision of defense services;

b. adjusting attorney salaries in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;

c. defraying the costs of attorney unit support in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;

d. defraying the costs of expert witnesses and specialized scientific testing in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board; and

e. defraying the costs of defense-oriented continuing legal education and specialized training programs.

3. Supplemental assistance provided to a judicial district indigent defender board under these programs may not be used for any of the following purposes:

a. the acquisition of land and/or buildings;

b. the construction or renovation of buildings;

c. the purchasing of furnishings and/or decorations;

d. the payment of non-defense-oriented continuing legal education or specialized training programs;

e. the provision of defense services to an individual not eligible to receive state-provided services;

f. the payment for out-of-state travel, food, and/or lodging not relating to the defense of a client in a particular case;

g. the payment for automobile rental, purchase, maintenance, or repair;

h. the payment for lobbying efforts in the legislature or any other governmental body for funding or changes in the law; and

i. the payment for any item or service not specifically approved by the Louisiana Indigent Defense Assistance Board in a judicial district indigent defender board's grant application.

4. A judicial district indigent defender board applying for supplemental assistance shall certify the following to the Louisiana Indigent Defense Assistance Board:

a. that a minimum of $25 in court costs is assessed and being collected within the district in accordance with R.S. 15:146;

b. that the district board is willing to comply with the guidelines, policies, and procedures of the Louisiana Indigent Defense Assistance Board relative to the management and administrative practices of district indigent defender boards;

c. that the district indigent defender board is maintaining monthly, verifiable caseload statistics and will provide them to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;

d. that the district indigent defender board is maintaining monthly financial statements, providing total revenues by type, total expenditures by type, fund balances by type, and the amount of compensation paid to staff, contract, and/or appointed counsel and will provide this information to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;

e. that the district indigent defender board has prepared an independent financial audit on an annual basis and will provide this audit report to the Louisiana Indigent Defense Assistance Board in a timely manner; and

f. that the district indigent defender board has submitted complete and accurate information in its application for supplemental assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

§503. Appointment of Appellate and Post-Conviction Counsel in Death Penalty Cases

A. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of formal notice from a court having jurisdiction over the appeal of the capital case of an indigent, cause to have counsel enrolled to represent the defendant on direct appeal.

B. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of finality of an indigent capital defendant's appeal, cause to have counsel enrolled to represent the defendant for purposes of state post-conviction proceedings.

C. To the extent funding is available, the Louisiana Indigent Defense Assistance Board may create, manage, and/or contract with a separate entity, with such staff and support personnel as are necessary, to provide counsel to represent capital defendants on direct appeal to the Supreme Court of Louisiana and/or to seek post-conviction relief, if appropriate, in state and federal court, subject to Subsection E below.

D. In the event staff counsel of said separate entity is not available for appointment on an appeal or in post-conviction proceedings, the Louisiana Indigent Defense Assistance Board shall cause to have counsel enrolled certified by it in accordance with the applicable provisions of §§305-309 above, provided that in no event shall contract counsel be remunerated at a rate in excess of salary levels of any staff attorneys of said entity as determined by the Louisiana Indigent Defense Assistance Board.

E. Counsel appointed by the Louisiana Indigent Defense Assistance Board may accept appointments from a federal court to represent capital defendants, provided funding for these defense services is provided by the appointing federal court and provided no state-appropriated funds are expended for the representation of capital defendants in federal court.

F. Any attorney who desires to be certified under the guidelines of this rule shall do so in accordance with the policies and procedures established by the Louisiana Indigent Defense Assistance Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1204 (June 2002).

§505. Monitoring and Removal of Certification of Capital Appellate and Post-Conviction Counsel

A. Attorneys certified by the Louisiana Indigent Defense Assistance Board within the guidelines of this rule shall be monitored to ensure eligibility.

1. An attorney who fails to maintain his or her status and educational requirements as defined in §305 above shall not be considered certified for purposes of appointment in capital cases, provided an attorney may seek re-certification once the criteria of that section are satisfied.

2. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to an indigent client's case, the attorney shall not be considered certified for purposes of appointment in capital cases. In this instance, an attorney shall be given an opportunity to respond in writing to specific charges of ineffectiveness.

3. Representation of a capital client establishes an inviolable attorney-client relationship. Thus, an attorney's eligibility to represent an indigent client may not be reviewed, except by a court of proper jurisdiction, on the basis of conduct involving a case in which the attorney is presently actively representing the client.

4. An attorney decertified under this rule shall not be re-certified unless the decertification is shown to have been erroneous or it is established to the satisfaction of a majority of the board that the cause of the failure to meet basic responsibilities has been identified and corrected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1204 (June 2002).

§507. Workload

A. The following standards shall serve as guides to attorneys eligible for appointment as capital appellate or post-conviction counsel.

1. Attorneys accepting appointments pursuant to this rule should provide each indigent client with quality representation in accordance with constitutional and

professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

2. To determine maximum workload, an attorney should consider, among other factors, quality of representation, speed of turnover of cases, percentage of cases being litigated, extent of support services available, court procedures, and involvement in complex litigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1205 (June 2002).

§509. Support Services in Capital Appellate and Post-Conviction Cases

A. Counsel appointed in accordance with this rule shall secure all proper and necessary support services, including, but not limited to, investigative, expert, mitigation, and any other support services necessary to prepare and present an adequate defense. An attorney should use all available support services and facilities needed for an effective performance at every stage of the proceedings. Counsel should seek financial and technical assistance from all possible sources, provided expenses are within the guidelines established by the Louisiana Indigent Defense Assistance Board.

B. Funds to pay for reasonably necessary services, to the extent funds are available, shall be provided only upon a written showing to the director or supervisor of any entity responsible for capital appellate or capital post-conviction representation pursuant to §503, specifically identifying the nature of the services, the cost of such services, and the need for such services.

C. A written application for support services which requests funding in excess of the Louisiana Indigent Defense Assistance Board's established guidelines must be submitted to the Louisiana Indigent Defense Assistance Board, through its director, for review and must be accompanied by specific justification for additional funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board. LR 28:1205 (June 2002).

Chapter 7. Trial Court Performance Standards

§701. Purpose

A. The standards are intended to serve several purposes, first and foremost to encourage public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants.

B. The standards are intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that must be taken in each case to ensure that the client receives the best representation possible. The standards are also intended to provide a measure by which the performance of individual attorneys and district public defender offices may be evaluated, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate." In those instances where a particular action is absolutely essential to providing quality representation, the standards use the words "should" or "shall." Even where the standards use the words "should" or "shall," in certain situations the lawyers' best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. The standards may or may not be relevant to such a judicial determination, depending upon all of the circumstances of the individual case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:663 (April 2009).

§703. Obligations of Defense Counsel

A. The primary and most fundamental obligation of a criminal defense attorney is to provide zealous and effective representation for his or her clients at all stages of the criminal process. The defense attorney's duty and responsibility is to promote and protect the best interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct and to act in accordance with the Louisiana Rules of Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:663 (April 2009).

§705. Training and Experience of Defense Counsel

A. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the state of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation in a criminal matter, counsel should have sufficient experience or training to provide effective representation.

C. Attorneys who are being considered for appointment to represent individuals who are charged with capital offenses in which the state is seeking death must meet the special criteria as adopted by the Supreme Court of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§707. General Duties of Defense Counsel

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

E. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director, the court or courts before whom counsel's cases are pending. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§709. Obligations of Counsel Regarding Pretrial Release

A. Counsel or a representative of counsel have an obligation to meet with incarcerated defendants within 72 hours of appointment, and shall take other prompt action necessary to provide quality representation including:

1. Counsel shall invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

2. Where possible, counsel shall represent an incarcerated client at the La.C.Cr.P. Art. 230.1 First Appearance hearing (*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)) in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full pretrial release hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

B. Counsel has an obligation to attempt to secure the pretrial release of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§711. Counsel's Initial Interview with Client

A. Preparing for the Initial Interview

1. Prior to conducting the initial interview the attorney should, where possible:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and

b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available.

2. In addition, where the client is incarcerated, the attorney should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail.

B. Conducting the Interview

1. The purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

2. Information that should be acquired from the client, includes, but is not limited to:

a. the facts surrounding the charges leading to the client's arrest, to the extent the client knows and is willing to discuss these facts;

b. the client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client

was interrogated and if so, was a statement given; client's physical and mental status at the time the statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or body fluids;

c. the names and custodial status of all co-defendants and the name of counsel for co-defendants (if counsel has been appointed or retained);

d. the names and locating information of any witnesses to the crime and/or the arrest; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state (when appropriate, counsel should take steps to insure this evidence is preserved);

e. the client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or alias used, family relationships, immigration status (if applicable), employment record and history, and Social Security number;

f. the client's physical and mental health, educational, vocational and armed services history;

g. the client's immediate medical needs including the need for detoxification programs and/or substance abuse treatment;

h. the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation (including the nature of the probation, such as "first offender") or parole and the client's past or present performance under supervision;

i. the names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals);

j. the ability of the client to meet any financial conditions of release (for clients who are incarcerated); and

k. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:

a. a general overview of the procedural progression of the case, where possible;

b. an explanation of the charges and the potential penalties;

c. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; and

d. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. an explanation of the procedures that will be followed in setting the conditions of pretrial release;

b. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense; and

c. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

C. Counsel must be alert to a potential plea based on client's incompetency, insanity, mental illness or mental retardation. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or mental retardation, and should become familiar with the procedures related to the evaluation and to subsequent proceedings.

1. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals that such a plea is appropriate.

2. Where appropriate, counsel should advise the client of the potential consequences of the plea of incompetency, the defense of insanity, or a plea of guilty but mentally ill or guilty but mentally retarded. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client, should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate.

D. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§713. Counsel's Duty in Pretrial Release Proceedings

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:665 (April 2009).

§715. Counsel's Duties at Preliminary Hearing

A. Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;

2. the law of the jurisdiction for establishing probable cause;

3. factual information which is available concerning probable cause; and

4. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§717. Duty of Counsel to Conduct Investigation

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, insure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.

B. Sources of investigative information may include the following.

1. Arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

a. the elements of the offense(s) with which the accused is charged;

b. the defenses, ordinary and affirmative, that may be available;

c. any lesser included offenses that may be available; and

d. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

2. Information from the Defendant. If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to obtain information as described above under the performance standards applicable to the initial interview of the client. Information relevant to sentencing should also be obtained from the client, when appropriate.

3. Interviewing Witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that is not possible, by sending the investigator to conduct the interview.

4. The Police and Prosecution Reports and Documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain NCIC or other states criminal history records for the client and for the prosecution witnesses.

5. Physical Evidence. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

6. The Scene of the Incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

7. Securing the Assistance of Experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:

a. the preparation of the defense;

b. adequate understanding of the prosecution's case; or

c. rebut the prosecution's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§719. Formal and Informal Discovery

A. Counsel has a duty to pursue as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

B. Counsel should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;

2. potential mitigating information;

3. the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;

4. all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;

5. the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;

6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;

8. statements of co-defendants;

9. all investigative reports by all law enforcement and other agencies involved in the case; and

10. all records of evidence collected and retained by law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§721. Development of a Theory of the Case

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case. Counsel, during the investigatory stages of the case preparation must understand and develop strategies for advancing the appropriate defenses on behalf of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§723. The Duty to File Pretrial Motions

A. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a pretrial motion are:

1. the pretrial custody of the accused;

2. the constitutionality of the implicated statute or statutes;

3. the potential defects in the charging process;

4. the sufficiency of the charging document;

5. the propriety and prejudice of any joinder of charges or defendants in the charging document;

6. the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;

7. the suppression of evidence gathered as a result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional provisions, including:

a. the fruits of illegal searches or seizures;

b. involuntary statements or confessions;

c. statements or confessions obtained in violation of the accused's right to counsel or privilege against self-incrimination;

d. unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification;

8. suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;

9. access to resources which, or experts, who may be denied to an accused because of his or her indigence;

10. the defendant’s right to a speedy trial;

11. the defendant’s right to a continuance in order to adequately prepare his or her case;

12. matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;

13. matters of trial or courtroom procedure.

D. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

1. the time deadline for filing pretrial motions warrants filing a motion to preserve the client’s rights, pending the results of further investigation;

2. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;

3. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§725. Preparing, Filing, and Arguing Pretrial Motions

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

1. investigation, discovery and research relevant to the claim advanced;

2. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

3. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and

4. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§727. Continuing Duty to File Pretrial Motions

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§729. Performance Standard 6.A Duty of Counsel in Plea Negotiation Process

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§731. The Process of Plea Negotiations

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

1. the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system; and counsel should make the client aware that a guilty plea may have adverse impact upon;

2. the possibility of forfeiture of assets;

3. other consequences of conviction including but not limited to deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office; and the registration and notification requirements for sexual offenders;

4. any possible and likely sentence enhancements or parole consequences.

B. In developing a negotiation strategy, counsel should be completely familiar with:

1. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

a. not to proceed to trial on merits of the charges;

b. to decline from asserting or litigating any particular pretrial motions;

c. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and

d. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

2. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

a. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

b. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

c. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;

d. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

e. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

f. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and

g. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and he information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

3. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:

a. consider whether interviewing the alleged victim or victims is appropriate and if so, who is the best person to do so and under what circumstances;

b. consider to what extent the alleged victim or victims might be involved in the plea negotiations;

c. be familiar with any rights afforded the alleged victim or victims under the Victim's Rights Act or other applicable law; and

d. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:

1. the various types of pleas that may be agreed to, including but not limited to a plea of guilty, not guilty by reason of insanity, a plea of nolo contendere, a conditional plea of guilty, (*State v. Crosby,* 338 So.2d 584 (La. 1976)), and a plea in which the defendant is not required to personally acknowledge his or her guilt (*North Carolina v. Alford* plea);

2. the advantages and disadvantages of each available plea according to the circumstances of the case; and

3. whether the plea agreement is binding on the court and prison and parole authorities.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:668 (April 2009).

§733. The Decision to Enter a Plea of Guilty

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

C. If the client is a juvenile, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed to writing whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:668 (April 2009).

§735. Entering the Negotiated Plea before the Court

A. Prior to the entry of the plea, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the plea and that the clients decision to waive those rights is knowing, voluntary and intelligent;

2. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and

4. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

C. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:669 (April 2009).

§737. Counsel's Duty of Trial Preparation

A. The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

B. Where appropriate, counsel should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;

2. relevant documents prepared by investigators;

3. voir dire questions;

4. outline or draft of opening statement;

5. cross-examination plans for all possible prosecution witnesses;

6. direct examination plans for all prospective defense witnesses;

7. copies of defense subpoenas;

8. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;

9. prior statements of all defense witnesses;

10. reports from defense experts;

11. a list of all defense exhibits, and the witnesses through whom they will be introduced;

12. originals and copies of all documentary exhibits;

13. proposed jury instructions with supporting case citations;

14. where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions:

15. copies of all relevant statutes and cases; and

16. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the trial process counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing. If necessary, counsel should file pre-trial motions to insure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:669 (April 2009).

§739. Jury Selection

A. Preparing for Voir Dire

1. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

2. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

3. Prior to jury selection, counsel should seek to obtain a prospective juror list.

4. Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

a. to elicit information about the attitudes of individual jurors, which will inform counsel and defendant about peremptory strikes and challenges for cause;

b. to convey to the panel certain legal principles which are critical to the defense case;

c. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

d. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

e. to establish a relationship with the jury.

5. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

6. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

7. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors

1. Counsel should personally voir dire the panel.

2. Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, filing a copy of the proposed voir dire questions or reading proposed questions into the record.

3. If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and counsel should consider requesting that the court, rather than counsel, conduct the voir dire as to those sensitive questions.

4. In a group voir dire, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause

1. Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35669 (April 2009).:

§741. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.

D. Counsel's objective in making an opening statement may include the following:

1. to provide an overview of the defense case;

2. to identify the weaknesses of the prosecution's case;

3. to emphasize the prosecution's burden of proof;

4. to summarize the testimony of witnesses, and the role of each in relationship to the entire case;

5. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

6. to clarify the jurors' responsibilities;

7. to state the ultimate inferences which counsel wishes the jury to draw; and

8. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

1. the significance of the prosecutor's error;

2. the possibility that an objection might enhance the significance of the information in the jury’s mind;

3. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:670 (April 2009).

§743. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

1. consider the need to integrate cross-examination, the theory of the defense and closing argument;

2. consider whether cross-examination of each individual witness is likely to generate helpful information;

3. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

4. consider a cross-examination plan for each of the anticipated witnesses;

5. be alert to inconsistencies in a witness' testimony;

6. be alert to possible variations in witnesses' testimony;

7. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

8. have prepared a transcript of all audio or video tape recorded statements made by the witness;

9. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

10. be alert to issues relating to witness credibility, including bias and motive for testifying; and

11. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:670 (April 2009.

§745. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the defendant’s testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;

2. determine the implications that the order of witnesses may have on the defense case;

3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented; and

7. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:671 (April 2009).

§747. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

1. highlighting weaknesses in the prosecution's case;

2. describing favorable inferences to be drawn from the evidence;

3. incorporating into the argument:

a. helpful testimony from direct and cross-examinations;

b. verbatim instructions drawn from the jury charge; and

c. responses to anticipated prosecution arguments;

4. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

1. whether counsel believes that the case will result in a favorable verdict for the client;

2. the need to preserve the objection for appellate review; or

3. the possibility that an objection might enhance the significance of the information in the jury's mind.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:671 (April 2009).

§749. Jury Instructions

A. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide citations to case law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, filing a written copy of proposed instructions.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§751. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are:

1. where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial and collateral implications;

2. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;

4. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

5. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the pre-sentence investigation report before distribution of the report; and

6. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§753. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

1. any sentencing guideline structure;

2. deferred sentence, judgment without a finding, and diversionary programs;

3. expungement and sealing of records;

4. probation or suspension of sentence and permissible conditions of probation;

5. the potential of recidivist sentencing;

6. fines, associated fees and court costs;

7. victim restitution;

8. reimbursement of attorneys' fees;

9. imprisonment including any mandatory minimum requirements;

10. the effects of "guilty but mentally ill" and "not guilty by reason of insanity" pleas; and

11. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

1. credit for pre-trial detention;

2. parole eligibility and applicable parole release ranges (if applicable);

3. place of confinement and level of security and classification criteria used by Department of Corrections;

4. eligibility for correctional and educational programs;

5. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;

6. deportation and other immigration consequences;

7. loss of civil rights;

8. impact of a fine or restitution and any resulting civil liability;

9. possible revocation of probation, possible revocation of first offender status, or possible revocation of parole status if client is serving a prior sentence on a parole status;

10. suspension of a motor vehicle operator's permit;

11. prohibition of carrying a firearm; and

12. other consequences of conviction including but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender, loss of public housing and the loss of the right to hold public office.

C. Counsel should be familiar with the sentencing procedures, including:

1. the effect that plea negotiations may have upon the sentencing discretion of the court;

2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;

3. the use of "victim impact" evidence at any sentencing hearing;

4. the right of the defendant to speak prior to being sentenced;

5. any discovery rules and reciprocal discovery rules that apply to sentencing hearings; and

6. the use of any sentencing guidelines.

D. Where the court uses a pre-sentence report, counsel should be familiar with:

1. the practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;

2. the access to the pre-sentence report by counsel and the defendant;

3. the prosecution's practice in preparing a memorandum on punishment; and

4. the use of a sentencing memorandum by the defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§755. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:

1. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;

2. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

3. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, family obligations, and obtain from the client sources through which the information provided can be corroborated;

4. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;

5. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;

6. prepare the client to be interviewed by the official preparing the pre-sentence report; and ensure the client has adequate time to examine the pre-sentence report, if one is utilized by the court;

7. inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

8. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and

9. inform the client of the operation of the Louisiana Sentence Review Panel and the procedures to be followed in submitting any possible sentence to the Panel for review, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§757. The Prosecution's Sentencing Position

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§759. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will beheld, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§761. Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. the likelihood of success of the motion, given the nature of the error or errors that can be raised; and

2. the effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§763. The Defendant's Right to an Appeal

A. Following conviction, counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the defendant wants to file an appeal but is unable to do so without the assistance of counsel, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant’s right to appeal, such as ordering transcripts of the trial proceedings.

B. Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§765. Bail Pending Appeal

A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

B. Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with retained appellate counsel in providing information to pursue the request for bail. Pursuant to the contracts between the Louisiana Appellate Project and the district defender offices, district defenders are responsible for pursuing bail pending appeal for those clients requesting bail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§767. Expungement or Sealing of Record

A. Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§769. Children Prosecuted as Adults

A. Counsel representing a child as an adult should be familiar with the law and procedure covering children prosecuted as adults and the law and procedure of the juvenile courts. Counsel should, where possible, have received specialized training in the defense of children in the adult and juvenile courts.

B. When representing a child who is prosecuted as an adult a transfer to Juvenile Court may be a desirable defense goal; counsel should consider involving the Juvenile Court in plea negotiations.

C. The use of experts in evaluating juvenile sex offenders should be strongly considered.

1. Developing issues of competency, developmental disability, Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder should also be explored.

D. The Juvenile Courts have, unlike the adult courts, treatment resources for children. Counsel should be familiar with Juvenile Court, Office of Juvenile Justice and the resources and policies at the parish, district and regional levels regarding treatment programs and funding.

E. Counsel should, whenever a child is eligible, pursue expungement of the child's criminal record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

Chapter 9. Capital Defense Guidelines

§901. Objective and Scope of Guidelines

A. Objective of the Guidelines and Performance Standards

1. The objective of these guidelines and associated performance standards is to create mandatory statewide guidelines and performance standards for the defense of capital cases as required by R.S. 15:148(B)(10) in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in a manner that is uniformly fair and consistent throughout the state.

2. The guidelines are principally intended to focus on the structure of capital defense service delivery. The associated performance standards are principally intended to focus on the tasks involved in the delivery of capital defense services by attorneys, investigators, mitigation specialists and supervisors.

3. These guidelines are intended to adopt and apply the guidelines for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated Commentary and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.* In these guidelines, the ABA guidelines have been adapted and applied to meet the specific needs and legal requirements applicable in Louisiana while seeking to give effect to the intention and spirit of the ABA guidelines.

4. These guidelines and associated performance standards are intended to provide capital defenders and responsible agencies with specific guidance on the performance of their functions and to allow the state public defender and the Public Defender Board to more efficiently evaluate the delivery models and performance of the capital defense services provided throughout the state.

B. Scope of the Guidelines

1. These guidelines and associated performance standards apply from the moment the client is taken into custody and extend to all stages of every case in which the state may be entitled to seek the death penalty, including pre-indictment proceedings, the initial and ongoing investigation, pretrial proceedings, trial, motion for new trial, sentencing, the direct appeal, state and federal post-conviction review, clemency proceedings, and any connected litigation. The guidelines and performance standards also apply to any services rendered prior to the client being taken into custody, such as where counsel assists the client in surrendering.

2. Unless specifically mentioned, these guidelines shall apply only in the case of capital defendants who are eligible for public defender services. The word “defendant”

is used broadly to describe the client at all stages of every case covered by these guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:993 (May 2010).

§903. Adoption and Implementation of Capital Representation Plans

A. Adoption of Capital Representation Plans

1. The state public defender shall adopt and implement a plan formalizing the means by which high quality legal representation in death penalty cases is to be provided in accordance with these guidelines (the Louisiana Capital Representation Plan).

2. Each district public defender (or regional director where a service region has been established) shall adopt and implement a plan formalizing the means by which high quality legal representation in death penalty cases is to be provided in accordance with these guidelines and the Louisiana Capital Representation Plan (the District Capital Representation Plan).

3. The state public defender may publish a form for the District Capital Representation Plan.

B. Capital Representation Plans to Provide for Compliance with the Guidelines

1. The Louisiana Capital Representation Plan and the District Capital Representation Plans shall set forth how each jurisdiction will conform to each of these guidelines and meet the standards established by the performance standards.

C. Capital Representation Plans to Provide for Zealous Advocacy

1. All elements of the Capital Representation Plan should be structured to ensure that counsel defending death penalty cases are able to do so free from political influence, judicial interference, conflicts of interest and under conditions that enable them to provide zealous advocacy in accordance with the Louisiana Rules of Professional Conduct. The Capital Representation Plans should be structured to allow these goals to be achieved in a cost-effective and fiscally responsible manner.

2. While ensuring that the performance of the defense function is free from judicial interference, defense counsel should:

a. maintain adherence to the Rules of Professional Conduct;

b. manifest a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom; and

c. should not knowingly disobey an obligation under the rules or rulings of a court, except for an open refusal based on an assertion that no valid obligation exists.

D. Capital Representation Plans to Provide for Case Supervisor in Every Case

1. The Capital Representation Plan shall provide that for each capital case a case supervisor will be specifically identified. Each case supervisor must be certified as lead counsel under these guidelines.

2. Where lead counsel in the case is an employee of a public defender office or defender organization, the supervisor will be the director of that office or organization, or a person he or she assigns to that role.

3. Where lead counsel in the case is acting under contract, the supervisor will be the director of the contracting agency, or a person he or she assigns to that role.

4. Where the director of an office, organization or contracting agency is counsel in the case, the supervisor shall be the trial level compliance officer or a person assigned by the trial level compliance officer.

5. The case supervisor is not counsel in the case but is responsible for assisting and supporting each attorney to provide representation in compliance with these guidelines. The case supervisor must monitor the representation in the case for compliance with these guidelines and associated performance standards.

6. The case supervisor may make recommendations to the defense team, resolve workload questions pursuant to §919 and report non-compliance with the guidelines to the district public defender and state public defender. The case supervisor does not have the authority to act on behalf of the defendant or to direct members of the defense team to take any action or refrain from taking any action.

E. Transitional provisions for capital representation plan

1. Each district public defender and the state public defender is to complete and submit to the board a capital representation plan within three months of the adoption of these guidelines by the board. The state public defender is to provide technical assistance to district public defenders to assist in completing their capital representation plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:993 (May 2010).

§905. Designation of Responsible Agencies

A. Responsibility for Ensuring High Quality Legal Representation in Capital Cases

1. Subject to R.S. 15:165, the district public defender is responsible within his or her jurisdiction for:

a. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at trial level;

b. ensuring the continuing cooperation of trial counsel and defense team members with appellate and post-conviction counsel;

c. recruitment and development of attorneys to represent capital defendants at trial level, including assisting attorneys in meeting certification requirements;

d. assigning the attorneys who will represent the defendant throughout the trial level of the case, except to the extent that the defendant has private attorneys and has not sought assistance as a partially indigent defendant;

e. monitoring the performance of all attorneys providing trial level capital representation in the jurisdiction;

f. periodically reviewing the roster of qualified attorneys in his or her jurisdiction and recommending to the state public defender the withdrawal of certification from any attorney who fails to provide high quality legal representation consistent with these guidelines; and

g. investigating and maintaining records concerning complaints about the performance of attorneys providing representation in death penalty cases within his or her jurisdiction and taking appropriate corrective action without delay.

2. The district public defender may assign these responsibilities to the state public defender by agreement with the state public defender and upon execution of an appropriate District Capital Representation Plan. Where a service region is established, the responsibilities vested in the district public defender in these guidelines may be assigned to the regional director as a part of a service delivery method for the region established under R.S. 15:160(B)(7).

3. The state public defender is responsible for:

a. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at post-sentencing, appellate level and upon any remand;

b. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at state post-conviction level;

c. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at clemency level;

d. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at trial level where defense services are provided by a capital defense organization acting pursuant to a contract with the board;

e. ensuring that each capital defendant in the jurisdiction receives high quality legal representation consistent with these guidelines and associated performance standards at trial level where responsibility is assigned to the state public defender by agreement with the district public defender or where such responsibility is assigned pursuant to R.S. 15:165;

f. investigating and maintaining records concerning complaints about the performance of attorneys providing representation in cases for which he or she has responsibility under §905.A and take appropriate corrective action without delay; and

g. performing or ensuring the performance of all the duties listed in Subsection E of this Section.

B. Independence from the Judiciary

1. The district public defender, regional director and state public defender are to be independent of the judiciary and they, not the judiciary or elected officials, shall select lawyers for specific cases.

C. Delegation of Responsibility for Ensuring High Quality Legal Representation in Capital Cases

1. If the district public defender, regional director or state public defender assigns, contracts or delegates performance of its responsibilities under this Section, it shall clearly identify within the Capital Representation Plan to whom responsibility is assigned, contracted or delegated.

2. Performance of responsibilities under this Section may only be assigned, contracted or delegated to:

a. the state public defender;

b. a defender organization, that is:

i. a jurisdiction-wide capital trial office, relying on staff attorneys, members of the private bar or both to provide representation in death penalty cases. This may include a regional death penalty center as described in R.S. 15:164;

ii. a jurisdiction-wide capital appellate and/or post-conviction defender office, relying on staff attorneys, members of the private bar or both to provide representation in death penalty cases; or

iii. an independent authority, that is, an entity run by defense attorneys with demonstrated knowledge and expertise in capital representation.

3. Regardless of any contract, assignment or delegation (save for an assignment of responsibility to the state public defender or the regional director) the district public defender, regional director or state public defender remain ultimately responsible for ensuring that the responsibilities described under this Section are met.

D. Conflict of Interest

1. In any circumstance in which the performance of a duty under this Section would result in a conflict of interest, the relevant duty should be performed by the state public defender, a defender organization or independent authority free of a conflict of interest and identified for this purpose in the Capital Representation Plan.

2. The Capital Representation Plan shall identify an effectual system to identify and resolve such conflicts. The

system will include provisions to ensure that no organization or person responsible for representing a capital defendant shall be responsible for assigning or supervising counsel for another defendant with an antagonistic defense.

3. In order to ensure that the state public defender's office remains free of conflicts in all cases, no attorney who holds a formal role in the office of the state public defender shall represent a capital defendant in the jurisdiction during the term of his or her service.

E. Duties of State Public Defender

1. The state public defender should, in accordance with these guidelines, perform the following duties:

a. recruit and certify attorneys as qualified to be appointed to represent defendants in death penalty cases;

b. draft and periodically update rosters of certified attorneys;

c. periodically publish the certification standards, the procedures by which attorneys are certified and how attorneys are assigned to particular cases in each district;

d. assign the attorneys who will represent the defendant at each stage of every case where the state public defender has responsibility for ensuring that the capital defendant receives high quality legal representation under §905.A;

e. monitor the performance of all attorneys and defender organizations providing representation in capital proceedings;

f. periodically review the roster of qualified attorneys and withdraw certification from any attorney who fails to provide high quality legal representation consistent with these guidelines;

g. conduct, sponsor, or approve specialized training programs for attorneys representing defendants in death penalty cases;

h. recruit and support the professional development of mitigation specialists in the state of Louisiana; and

i. ensure that each district public defender and regional director complies with his or her responsibilities under these guidelines and associated performance standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:994 (May 2010).

§907. Case tracking of Capital Cases

A. Obligation of District Public Defender to Track All Capital Cases within Jurisdiction

1. Each district public defender should track the arrest, indictment, procedural posture and disposition in all capital cases in his or her district up to and including sentencing stage. Tracking should include the cases of those defendants who are not currently indigent. Information gathered from the tracking of capital cases is to be promptly provided to the state public defender.

2. The district public defender's obligations under this Section remain even where the district has assigned responsibility for capital representation to the state public defender.

B. Obligation of State Public Defender to Track Capital Cases Post-sentencing

1. The state public defender should track the appeal, state post-conviction, federal post-conviction and clemency proceedings of every capital case in the jurisdiction.

C. Obligation of State Public Defender to Maintain Statewide Caseload Data

1. The state public defender should maintain and make available to the Board data describing the statewide capital caseload at each stage of a capital case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:995 (May 2010).

§909. Eligibility for Public Defender Services

A. Eligible for Services if Financially Unable to Secure Appropriate Representation

1. A person will be eligible for public defender services if he or she is unable, without substantial financial hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own.

2. Substantial financial hardship is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, resides in public housing, or earns less than two hundred percent of the federal poverty guideline. A defendant is presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

3. Capital defendants not falling below the presumptive threshold will be eligible to receive public defender services if their particular circumstances, including seriousness of the charges being faced, monthly expenses, local private counsel rates for counsel qualified to handle capital cases, would result in a "substantial hardship" were they to seek to retain private counsel. Relevant considerations may include such factors as income or funds from employment or any other source, including public assistance, to which the accused is entitled, property owned by the accused or in which he or she has an economic interest, outstanding obligations, the number and ages of dependents, employment and job training history, and level of education. Release on bail alone shall not disqualify a person from eligibility.

4. A capital defendant meeting the above criteria will be eligible for public defender services notwithstanding that he or she has retained counsel through a collateral funding

source or on a pro bono basis. A capital defendant who has retained counsel at his own expense may be eligible for public defender services subject to careful examination of his or her financial status and the possibility of seeking an order under R.S. 15:176.

B. Determination of Eligibility

1. The district public defender shall be responsible for determining eligibility for public defender services in each case in his or her jurisdiction. Should the district public defender be prevented from making such a determination by a conflict of interest, responsibility for the determination of eligibility will transfer to the state public defender.

2. The determination of eligibility shall not be subject to judicial or political interference.

3. A determination of eligibility in capital cases should be made as soon as possible after arrest or after the issue of eligibility has been raised.

4. Once a capital defendant is determined to be eligible for public defender services he or she shall be presumed to remain eligible through each stage of the capital case unless a formal determination of ineligibility is made.

5. Where, as a result of a change of circumstances or new information, the district public defender or state public defender believes that a defendant may not be eligible, the question of eligibility shall be investigated and a new determination made.

6. A capital defendant may be found to be eligible for public defender services notwithstanding a judicial finding that the defendant is not indigent pursuant to R.S. 15:175.

C. Eligibility in Capital Cases Presumed until Investigation of Eligibility Complete

1. All capital defendants are presumed eligible for public defender services until the completion of any investigation of eligibility and a formal determination of ineligibility.

D. Finding of Ineligibility

1. Where a capital defendant is found to be ineligible for public defender services under this Section, the defendant may apply to the court for a determination of indigency under R.S. 15:175. If found by the court to be indigent, the defendant shall be deemed to be eligible for the purposes of this Section.

2. No capital defendant shall be found ineligible where he or she is able to provide some but not all of the funds necessary for an adequate defense. Instead, the defendant should be found eligible and an application for partial reimbursement pursued under R.S. 15:176.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:995 (May 2010).

§911. Assignment of Counsel

A. Assignment of Specific Attorneys to Each Capital Case

1. In each capital case the person or organization responsible for assigning counsel pursuant to §905 shall assign specific attorneys to each case and not an office, organization or group of attorneys. At least one appropriately certified attorney shall be assigned as lead counsel and at least one appropriately certified attorney shall be assigned as associate counsel. Additional counsel may be assigned when necessary or appropriate and assignments may be changed, subject to maintaining continuing compliance with these guidelines.

B. Assignment to be Consistent with Requirements of Guidelines

1. An attorney may only be assigned if he or she is currently certified in the appropriate role, is conflict free, meets the workload requirements of these guidelines and can be compensated in accordance with these guidelines. Assignments of attorneys must be made so as to meet the requirements of these guidelines, including §913.

C. Assignment of Counsel to Eligible Defendant Desiring Public Defender Services

1. Counsel shall be assigned to each defendant who is eligible to receive public defender services at the earliest possible opportunity following arrest and, wherever possible, prior to appearance under C. Cr. P. art. 230.1. Counsel shall be assigned no later than 48 hours after the time for appearance under C. Cr. P. art. 230.1.

2. Where an eligible capital defendant is arrested outside of Louisiana, the district public defender in the district in which the offense is alleged to have occurred will immediately assign counsel.

3. Counsel may be assigned prior to arrest where the capital defendant is an existing client of a public defender service or where the defendant seeks assistance in surrendering him or herself to police.

4. Counsel shall not be assigned to a defendant who indicates that he does not wish to receive public defender services. With the consent of the defendant, public defender services may be provided while a defendant considers whether he or she desires to receive public defender services.

D. Assignment of Counsel prior to Formal Finding of Eligibility

1. Where counsel is assigned prior to a formal finding of eligibility it is counsel's responsibility to immediately confer with the defendant to confirm his or her desire to receive public defender services unless this has already occurred.

E. Assignment of Counsel in Conflict Cases

1. Assignments in cases where there exists a conflict of interest will occur in accordance with the Capital

Representation Plan and §905. Any person or organization unable to perform the assignment function due to a conflict of interest must immediately act to ensure that the appropriate non-conflicted authority may make the assignment.

F. Assignment of Counsel in Overflow Cases

1. Assignments in cases where the responsible person or organization is unable to assign counsel due to a lack of appropriately qualified and available counsel will occur in accordance with the Capital Representation Plan. Any person or organization unable to make an assignment due to a lack of available counsel must immediately act under the Capital Representation Plan to ensure that the appropriate authority may make the assignment.

G. Self-representation and Assignment of Standby Counsel

1. Where a capital defendant seeks to proceed without counsel, counsel is obliged to continue to represent the client in accordance with these guidelines and the performance standards until the motion for self-representation is granted. This obligation will include: investigating the competency of the client; the capacity of the client to knowingly, voluntarily and intelligently waive the right to the assistance of counsel; and the capacity of the client to engage in self-representation. Where appropriate, counsel should oppose the defendant's motion. Where appropriate, counsel should seek review of a trial court decision granting a capital defendant's motion for self-representation.

2. Where a capital defendant is proceeding pro se and the court permits or requires standby counsel, attorneys shall be assigned under these guidelines. Where attorneys are assigned to act as standby counsel a defense team shall be assembled consistent with §913 and be prepared to assume representation of the defendant should the court so order. Standby counsel has an ongoing obligation to monitor the capital defendant's competency, the quality of his waiver and his ability to represent himself and to bring such matters to the attention of the court where appropriate.

H. Unavailability of Counsel for Assignment

1. Where the persons or organizations identified in the capital representation plan responsible for assignment of counsel are unable to assign counsel, the district public defender and the state public defender shall be immediately notified. Where the district public defender and the state public defender are also unable to assign counsel, the state public defender shall immediately cause to be filed with the relevant court a notice that counsel cannot be assigned at this time.

2. In such cases, the state public defender shall assign capitally certified counsel for the limited purpose of protecting the capital defendant's rights, including pursuing a halt of the prosecution.

3. Where counsel cannot be assigned to a case under this Section, the state public defender and district public defender shall have an ongoing responsibility to identify counsel suitable for assignment to the case.

I. Transitional Provisions for Assignments Made Prior to Adoption of Guidelines

1. The district public defender or state public defender, as appropriate, shall review all assignments of attorneys in open capital cases made within his or her jurisdiction prior to the adoption of these guidelines by the board. Within six months of the adoption of these guidelines the district public defender or state public defender, as appropriate, shall take such action as is necessary to ensure that the assignment of attorneys in each such case has been brought into compliance with these guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:996 (May 2010).

§913. The Defense Team and Supporting Services

A. Minimum Components of the Defense Team

1. For all capital defendants, a defense team that will provide high quality legal representation must be assembled.

a. The defense team should consist of no fewer than two attorneys certified in accordance with §915 of these guidelines (with at least one qualified as lead counsel), an investigator, and a mitigation specialist.

b. The defense team must include individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's life history.

c. At least one member of the team must have specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma.

d. The two attorneys, investigator and mitigation specialist described above are the minimum components of any defense team. The emphasis in assembling a defense team is to ensure that the team possesses the skills, experience and capacity to provide high quality representation in the particular case.

e. Additional team members will be appropriate in many cases in order to:

i. reflect the seriousness, complexity or amount of work in a particular case;

ii. meet legal or factual issues involving specialist knowledge or experience;

iii. ensure that the team has the necessary skills, experience and capacity available to provide high quality representation in the particular case;

iv. provide for the professional development of defense personnel through training and case experience; and

v. for any other reason arising in the circumstances of a particular case.

B. Expert, Investigative and Other Ancillary Professional Services

1. Counsel shall have access to the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings.

2. The state public defender shall provide funds for the assistance of experts, including mitigation specialists, and extraordinary investigative services. Such services will be provided by persons independent of the government and confidentiality of communications with the persons providing such services is to be maintained throughout the funding process. Funds for ordinary investigative services will be provided by the district public defender unless responsibility for the case under §905 is vested in the state public defender.

C. Defendants with Retained or Pro Bono Counsel

1. A capital defendant who is eligible for public defender services under §909 is entitled to public funds for the minimum components of a defense team and expert, investigative and other ancillary services notwithstanding that he or she has retained or pro bono counsel.

2. In such a case the district public defender, regional director or state public defender, as appropriate, shall be responsible for supplementing existing services available to the defendant to meet the requirements of this Section.

3. In such a case, the district public defender, regional director or state public defender, as appropriate, shall be responsible for ensuring that the capital defendant receives high quality legal representation in his or her capital case. In the absence of specific agreement with the district public defender, regional director or state public defender, counsel assigned to the case shall operate as lead counsel.

4. If a retained attorney becomes unable to continue representing a capital defendant because the defendant or any third party cannot fulfill the terms of the financial agreement between the attorney and the defendant or any third party, that attorney is not eligible to be appointed to represent the defendant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:997 (May 2010).

§915. Qualifications of Defense Counsel

A. Certification Standards Intended to Ensure High Quality Legal Representation

1. The certification standards and mechanisms established by these guidelines should be construed and applied in such a way as to further the overriding goal of providing each client with high quality legal representation.

B. Goals of Certification Standards

1. In formulating certification standards, the Public Defender Board seeks to insure:

a. that every attorney representing a capital defendant has:

i. obtained a license or permission to practice in the state of Louisiana;

ii. the skills, experience and capacity available to provide high quality capital defense representation;

iii. demonstrated a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases; and

iv. satisfied the training requirements set forth in §923;

b. that the pool of defense attorneys as a whole is such that each capital defendant in Louisiana receives high quality legal representation. Accordingly, the certification standards are meant to insure that the pool includes sufficient numbers of attorneys who have demonstrated:

i. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;

ii. skill in the management and conduct of complex negotiations and litigation;

iii. skill in legal research, analysis, and the drafting of litigation documents;

iv. skill in oral advocacy;

v. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;

vi. skill in the investigation, preparation, and presentation of evidence bearing upon mental status, including mental retardation;

vii. skill in the investigation, preparation, and presentation of mitigating evidence;

viii. skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and

ix. skill in maintaining a strong working relationship with a capital defendant.

C. Standard Process for Certification

1. Certification is available for the roles of Trial Lead Counsel, Trial Associate Counsel, Appellate Lead Counsel, Appellate Associate Counsel, Post-Conviction Lead Counsel, or Post-Conviction Associate Counsel.

2. Attorneys seeking certification must submit a detailed application to the state public defender with the overall purpose of establishing their experience and knowledge in each of the categories in §915.B.1.b, as well as the minimum requirements for the particular role for which they seek certification as outlined in §915.D, and have satisfied the training requirements outlined in §923.

3. The information in an application for certification shall include:

a. to the extent possible, a list of all capital cases in which the attorney has served as defense counsel, including the name of the defendant, judicial district court, trial judge, prosecuting attorneys, co-counsel, the result or verdict and any reported appellate decisions in the case;

b. any other experiences the attorney believes will establish his or her qualifications, including but not limited to:

i. non-capital trial or appellate experience;

ii. experience as a public defender or prosecutor, or as an attorney in a capital defense organization;

iii. observation of complete capital trials; and/or

iv. extensive research and/or training in the field of capital defense;

c. at least two samples of substantial written legal work product including analysis of complex legal issues, preferably filed in a capital case, prepared by the attorney at the trial, appellate or post-conviction level;

d. the names and phone numbers of two district court judges (or appellate judges in the case of appellate certification) or capital defense attorneys familiar with the attorney's work as an advocate;

e. written statement by the applicant describing the extent and source of relevant proficiencies in each of the categories in §915.B.1.b;

f. an authorization to permit the state public defender to obtain CLE records for the attorney both prior to and during any period of certification;

g. a signed undertaking that the attorney will comply with the continuing obligations of certified counsel detailed in §915.I;

h. a listing of the number of active trial, appellate or post-conviction cases the attorney has, and any non-active cases that may become active in the next year;

i. any other relevant background or specializations which might inform the state public defender of the attorney's qualifications for certification or the assignment of particular cases;

j. proof that the attorney is licensed to practice in Louisiana or has been granted permission to practice in a capital case or cases in Louisiana;

k. information relevant to assessing the applicant's professional, physical and mental fitness for certification, including:

i. any findings of professional misconduct in this or any other jurisdiction, including any findings of contempt of court;

ii. any matter affecting the applicant's physical health that would substantially impair the applicant's capacity to meet the requirements of certified capital counsel in these guidelines and associated performance standards; and/or

iii. any matter affecting the applicant's mental health that would substantially impair the applicant's capacity to meet the requirements of certified capital counsel in these guidelines and associated performance standards.

4. The state public defender may develop and publish an application form. Where an applicant is unable to supply one or more of the items required above, the application should provide an explanation for this and the state public defender may waive the requirement or require other material to be supplied in lieu of that listed in this Section.

D. Minimum Experience Requirements for Certification

1. The following minimum required experience levels apply for each of the roles for which certification is available:

a. Qualified Trial Lead Counsel shall:

i. have at least five years of criminal trial litigation experience;

ii. have prior experience as lead counsel in no fewer than nine jury trials tried to completion; of these, at least five must have involved felonies or two must have involved the charge of murder; and

iii. have prior experience as lead counsel or associate counsel in at least one case in which the death penalty was sought and was tried through the penalty phase or have prior experience as lead counsel or associate counsel in at least two cases in which the death penalty was sought and where, although resolved prior to trial or at the guilt phase, a thorough investigation was performed for a potential penalty phase.

b. Qualified Trial Associate Counsel shall:

i. have at least three years of criminal trial experience; and

ii. have prior experience as lead counsel in no fewer than three felony jury trials which were tried to completion, including service as lead or associate counsel in at least one homicide trial.

c. Qualified Appellate Lead Counsel shall:

i. have at least five years of criminal appellate litigation experience;

ii. have prior experience within the last three years as lead counsel in the appeal of no fewer than three felony convictions in federal or state court; and

iii. have prior experience within the last three years as lead counsel or associate counsel in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed; and

iv. be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases; the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases; and the law controlling the scope of and entitlement to state post conviction and federal habeas corpus review.

d. Qualified Appellate Associate Counsel shall:

i. have demonstrated adequate proficiency in appellate advocacy in the field of felony defense; and either have at least:

(a). three years of criminal trial or appellate litigation experience; or

(b). two years experience as a full time attorney at a capital defense organization in Louisiana.

e. Qualified Post-Conviction Lead Counsel shall:

i. have at least five years of criminal post-conviction litigation experience; and

ii. have demonstrated clear competence and diligence in representation provided as:

(a). counsel of record for defendant in at least five felony post-conviction relief/habeas corpus proceedings (including at least one murder conviction); and

(b). counsel of record for defendant as lead or associate counsel in two death penalty related post-conviction/habeas corpus proceedings in which petition has been filed; and

iii. have been lead counsel in a capital post-conviction proceeding which had an evidentiary hearing or been lead counsel in at least two felony post-conviction evidentiary hearings or trials; and

iv. be familiar with the substantive law and the practice and procedure of the courts of Louisiana in the review of capital post-conviction applications; and

v. be familiar with federal habeas corpus statutory law, practice and procedure, particularly including federal review of state convictions in capital cases.

f. Qualified Post-Conviction Associate Counsel shall:

i. have demonstrated adequate proficiency in post-conviction/habeas advocacy in the field of felony defense and either:

(a). have at least three years of criminal trial, appellate or post-conviction/habeas litigation experience; or

(b). have at least two years experience as a full time attorney at a capital defense organization in Louisiana.

g. Waiver of Experience Qualification Due to Equivalent Alternative Experience

i. Having appropriate regard to the goals of these certification standards, the state public defender may waive formal compliance with the minimum experience requirements contained in this Section where satisfied that the applicant has equivalent alternative experience. However, in all cases lead counsel must have been admitted to the bar for at least five years.

E. Minimum Training Requirements for Certification

1. Prior to certification, the applicant must have satisfactorily completed within the preceding two years a comprehensive training program as described in §923.B. This requirement is non-waivable, though counsel not meeting this requirement will be eligible for provisional certification.

F. Consideration of Certification Applications

1. Subject to §915.H, the decision to certify or not certify an applicant under §915 rests in the sole discretion of the state public defender and shall not be subject to political or judicial interference.

2. The state public defender shall promptly review each application, investigate the contents of the submission, make any further enquiries that will assist in deciding whether certification is appropriate, and determine whether the attorney should be certified as Trial Lead Counsel, Trial Associate Counsel, Appellate Lead Counsel, Appellate Associate Counsel, Post-Conviction Lead Counsel, Post-Conviction Associate Counsel or provisionally certified under §915.G.

3. The state public defender may request that the applicant submit any further information required to allow a full consideration of the application.

4. The state public defender shall not certify any applicant unless he or she:

a. is licensed or has been granted permission to practice in Louisiana;

b. meets the requirements of §915.D and E; and

c. has submitted an application complying with §915.C, including an undertaking to comply with the requirements of §915.I.

5. In determining whether certification is appropriate, the state public defender shall have regard to:

a. the goals of certification;

b. the experience of the applicant;

c. the prior training of the applicant;

d. the proficiency of the applicant in the provision of capital defense services; and

e. the extent to which the applicant has the commitment, skill and capacity to provide zealous advocacy and high quality legal representation in the defense of capital cases.

6. If the applicant is not certified, or not certified for the role requested, the state public defender shall inform him or her of the reasons for the denial of certification in writing. The applicant shall be given the opportunity to supplement the initial application or, where appropriate, to submit a further application upon meeting any deficiency.

G. Provisional Certification

1. An attorney whom the state public defender has found to be not appropriate or eligible for certification in a particular role may be granted provisional certification in that role subject to such conditions as may be set by the state public defender.

2. Conditions attached to provisional certification may include but are not limited to:

a. undertaking and satisfactorily completing further training as determined by the state public defender;

b. working with resource counsel assigned by the state public defender;

c. working only on a specific case or cases;

d. working only with a specific attorney or attorneys as determined by the state public defender;

e. limiting responsibility in work on a case to a particular area or areas as determined by the state public defender;

f. working only as a part of a defense team that includes a member or members with a particular skill, experience or expertise as determined by the state public defender;

g. achieving or maintaining a caseload or workload of a level and type determined by the state public defender.

3. A provisionally certified attorney shall be regarded as being certified for the purposes of §913 and Rule XXXI, La. S. Ct. Rules, but may not be assigned to any case without the prior approval of the state public defender and under circumstances that ensure that the conditions set for provisional certification are met and will continue to be met.

H. Appeal from Denial of Certification

1. After being notified of the final decision of the state public defender, an attorney who has been denied certification can make a written request within 21 calendar days of the notification to appeal the decision to the board or an appeals review committee designated by the board. The decision of the board or appeals review committee shall not be subject to judicial or political interference.

I. Obligations of Certified Counsel

1. It will be a continuing obligation of certified counsel to:

a. comply with these guidelines and associated performance standards;

b. comply with the Louisiana Rules of Professional Conduct;

c. maintain caseloads and workloads within the limits established by the guidelines established by the Louisiana Public Defender Board, except as specifically authorized by the state public defender;

d. cooperate with case monitoring and case reviews by the case supervisor, district public defender and state public defender;

e. attend and successfully complete continuing capital legal education as described in §923.C;

f. notify the state public defender of any change of address or contact information;

g. immediately notify the state public defender of any change in his or her licensure or permission to practice in the state of Louisiana;

h. immediately notify the state public defender of any change in the information contained in his or her application for certification relating to professional, physical, mental fitness to be certified as capital counsel;

i. promptly respond to any request for information from the state public defender, regional director or district public defender, as appropriate, relevant to the attorney's performance as capitally certified counsel or satisfaction of the obligations of capitally certified counsel; and

j. notify every court in which he or she is counsel in a capital case of any reduction in the level or extent of his certification.

J. Maintaining Certification

1. Certified attorneys must apply to the state public defender for re-certification by January 31 of each calendar year following the year of initial certification under these guidelines.

2. When applying for re-certification, counsel must certify continued compliance with the obligations established under the guidelines, including the requirement for continuing capital legal education. The attorney must advise the state public defender of any previously undisclosed failure to comply with these guidelines.

3. The state public defender shall publish an application form for re-certification. The state public defender shall distribute re-certification application forms to all certified counsel each year.

4. Following submission of an application for certification, an attorney will remain certified until such time as the state public defender determines to re-certify or not re-certify the attorney.

5. The state public defender will promptly consider each application for re-certification and determine whether to re-certify the attorney. Consideration of re-certification

and any appeal from the decision will be handled in a manner consistent with §915.F, G and H. An attorney will remain provisionally certified during any appeal from a refusal to re-certify the attorney.

6. Where an attorney fails to timely apply for re-certification, he or she shall be reduced to provisional certification status. The state public defender shall investigate the failure to apply for re-certification and either de-certify the attorney or consider an out of time application for certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:998 (May 2010).

§917. Certification Transitional Provision

A. Re-certification for Attorneys on the Roster Prior to the Promulgation of these Guidelines

1. All attorneys on the Public Defender Board's Capital Certification Roster at the time of the adoption of these guidelines shall be deemed to be certified under these guidelines on the date of adoption subject to the following.

a. All attorneys deemed to be certified under this Section must apply for certification under these guidelines within six months of the guidelines being adopted by the board or be de-certified. An attorney de-certified in this way may subsequently apply for certification.

b. Attorneys deemed to be certified under these guidelines must satisfy the comprehensive training program requirement contained in §923.B within two years of the adoption of these guidelines. Where an attorney fails to satisfy this provision he or she shall be immediately reduced to provisional certification status and the state public defender shall determine whether the attorney should be de-certified.

c. The state public defender will inform any court in which the attorney is acting for a capital defendant of the de-certification of the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1001 (May 2010).

§919. Workload

A. Workloads Should be Low Enough to Allow High Quality Legal Representation

1. Workloads of defense team members shall be maintained at a level that enables counsel to provide each client with high quality legal representation in accordance with these guidelines and associated performance standards, including the ability of counsel to devote full time effort to the case as circumstances will require.

B. Caseloads and Workloads

1. Attorneys shall maintain workloads in compliance with any policy or rule adopted by the board under R.S. 15:148(B)(l)(a).

2. Pending the adoption by the board of a policy or rule under R.S. 15:148(B)(l)(a), attorneys shall maintain caseloads in compliance with Chapter 12, Louisiana Standards on Indigent Defense.

C. Responsibility for Maintaining Appropriate Workload Levels

1. The state public defender, regional director and district public defender shall be responsible for ensuring that the attorneys in each case for which they have responsibility under §905 are in compliance with this Section and shall assist the attorneys to achieve and maintain appropriate workloads.

2. Each supervisor of a capital attorney has a responsibility to ensure that the attorneys he or she supervises maintain compliance with this Section and assist the attorneys to achieve and maintain appropriate workloads.

3. Each attorney has an individual responsibility to ensure that he or she maintains compliance with this Section.

D. Obligation to Refuse New Cases in Excess of Workload Limits

1. An attorney should not be assigned new case assignments that will result in his or her workload exceeding that allowed by §919.A after accepting a capital case.

2. Where an attorney believes that accepting a new case will result in a workload in violation of §919.A, the attorney must bring this to the attention of the case supervisor for reasonable resolution of the question of professional duty created. Where the question of whether the workload is excessive is reasonably arguable, the responsibility to ensure compliance with these guidelines rests with the case supervisor. Where the workload is excessive, this may include but is not limited to ensuring that no new assignment is made; reallocating other responsibilities; and providing additional personnel on new or existing cases.

3. Where the attorney believes that the resolution of the question has been inadequate he or she must raise the question progressively with the district public defender, regional director and state public defender, as appropriate, for reasonable resolution.

4. Where the question of whether the workload is excessive is not reasonably arguable or where the attorney has exhausted all available avenues for a reasonable resolution of the question and no reasonable resolution has been provided, the attorney should decline to accept any new cases.

5. An attorney should decline to accept new cases, rather than withdraw from existing cases, if the acceptance of a new case will result in his or her workload exceeding that allowed by §919.A.

E. Obligation to Respond to Excessive Workloads

1. Where an attorney believes that his or her workload is in violation of §919.A, the attorney must bring this to the attention of the case supervisor for reasonable resolution of

the question of professional duty created. Where the question of whether the workload is excessive is reasonably arguable, the responsibility to ensure compliance with these guidelines rests with the case supervisor.

2. Where a case supervisor becomes aware that an attorney's workload may exceed that allowed by §919.A, he or she shall immediately investigate the attorney's workload and take appropriate steps to bring the attorney's workload into compliance with this Section. Such action may include:

a. assigning additional members to the defense team on particular cases to reduce the workload demands on the attorney;

b. assisting the attorney in moving to withdraw from a particular case or cases;

c. counseling the attorney to withdraw from a case or cases that are not the subject of supervision;

d. assisting the attorney in managing non-representational responsibilities by reassigning those responsibilities or providing additional support for the attorney in meeting those responsibilities.

3. Where the attorney believes that the resolution of the question of excessive workload has been inadequate, he or she must raise the question progressively with the district public defender, regional director and state public defender, as appropriate, for reasonable resolution.

4. Where the question of whether the workload is excessive is not reasonably arguable and where the attorney has exhausted all available avenues for a reasonable resolution of the question and no reasonable resolution has been provided, the attorney should move to withdraw from the case or cases in which capital defense services in compliance with these guidelines and associated performance standards cannot be provided. The state public defender must be provided reasonable notice prior to the filing of any motion to withdraw under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1001 (May 2010).

§921. Monitoring of Certified Counsel; Removal

A. Monitoring Performance of Defense Counsel

1. The state public defender is responsible for monitoring the performance of all capital defense counsel to ensure that each client is receiving high quality legal representation.

2. The district public defender is responsible for monitoring the performance of all capital defense counsel in his or her jurisdiction, when not precluded from doing so by a conflict of interest.

3. Where there is evidence that an attorney is not providing high quality legal representation consistent with these guidelines and associated performance standards, the state public defender and district public defender, as appropriate, should take necessary action to protect the interests of the attorney's current and potential clients.

B. Complaints Procedure

1. The state public defender shall establish and publicize a complaints procedure.

C. Capital Case Review

1. Whenever a capital case has been closed at trial, appellate, state post-conviction, federal post-conviction or clemency level the state public defender shall receive a briefing from counsel regarding the course of the representation. The state public defender may publish a form for the provision of case briefings.

2. At the discretion of the state public defender and in every case in which a death sentence is imposed or affirmed, post-conviction relief is denied or a defendant is executed, a case review committee shall be convened by the state public defender to review the course of the representation. The purpose of the review is to gather information to assist in the ongoing provision of high quality representation in capital cases.

D. Periodic Review of Certification and Service Provision

1. The state public defender shall review the roster of attorneys certified on an annual basis to ensure that attorneys listed remain capable of providing high quality legal representation.

2. The state public defender shall review the service delivery of each district public defender and defender organization each year to ensure that each remains capable of providing high quality legal representation.

E. Decertification

1. The state public defender may decertify, reduce the role for which counsel is certified or reduce to provisional certification any attorney who has: failed, without good cause, to meet the requirements of these guidelines and associated performance standards; has failed, without good cause, to satisfy the obligations of certified counsel under §915.I; has become unsuitable for capital certification under §915; has failed to continue to demonstrate that he or she has the required legal knowledge and skill necessary for capital defense representation; or has failed to continue to demonstrate that he or she is willing to apply that knowledge and skill with appropriate thoroughness and preparation.

2. The state public defender may also remove an attorney from the roster if, as part of a periodic review of the roster, the state public defender determines that a smaller roster of attorneys will better serve the goals of ensuring the best possible representation of indigent capital defendants and of delivering quality services in the most efficient and cost-effective manner.

3. Where counsel is decertified the state public defender shall ensure that each court in which the attorney represents a capital defendant is advised of this fact. The responsible agency under §905 will assign new counsel to

represent the defendant in order to ensure that the defendant receives representation in compliance with these guidelines and the associated performance standards. Counsel who are decertified shall not be paid for work performed after decertification except for such work as is necessary to provide for an effective transition of case responsibility to successor counsel.

4. Where there is substantial evidence that an attorney has failed to provide high quality legal representation, the attorney shall be reduced by the state public defender to provisional certification and the state public defender shall promptly investigate the circumstances of the representation.

5. Following the investigation, the state public defender may restore the attorney's original level of certification, reduce the role for which the attorney is certified, confirm the provisional certification or decertify the attorney.

6. Where there is substantial evidence that a systemic defect in a defender organization has caused the office to fail to provide high quality legal representation, the state public defender and district public defender shall ensure that the organization does not receive additional assignments of cases. The state public defender shall promptly investigate the existence of a systemic defect.

7. Following the investigation the state public defender may direct that the defender organization continue to receive case assignments, require that remedial action be taken or take action to ensure that the defender organization does not receive any further assignments and that existing clients receive representation consistent with these guidelines and associated performance standards.

8. Any attorney or defender organization that may be the subject of an adverse decision under §921.E shall be provided written notice of any action being contemplated and an opportunity to respond in writing before any final action is taken.

9. Any attorney or defender organization adversely affected by a decision under §921.E may appeal that decision in the manner described in §915.H.

F. Protection of Zealous Advocacy

1. The state public defender must ensure that this Section is implemented consistently with §903, so that an attorney's zealous representation of a client cannot be cause for the imposition or threatened imposition of sanctions pursuant to this Section.

G. Inherent Regulatory Authority of Louisiana Supreme Court

1. Nothing in this Section is intended to derogate from the inherent regulatory authority of the Louisiana Supreme Court provided for in Article V, Section 5 of the Constitution of Louisiana regarding the regulation of the practice of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1002 (May 2010).

§923. Training

A. Funding of Capital Defense Trainings

1. Funds should be made available by the Public Defender Board for the effective training, professional development, and continuing education of capital defense attorneys, investigators and mitigation specialists.

B. Comprehensive Training Program

1. Attorneys seeking to qualify for capital defense certification shall satisfactorily complete a comprehensive training program, approved by the state public defender, in the defense of capital cases. Such a program should include, but not be limited to, presentations and training in the following areas:

a. relevant state, federal, and international law;

b. pleading and motion practice;

c. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;

d. jury selection;

e. trial preparation and presentation, including the use of experts;

f. the investigation, preparation, and presentation of mitigating evidence;

g. investigation, preparation, and presentation of evidence bearing upon mental status, including mental retardation;

h. ethical considerations particular to capital defense representation;

i. preservation of the record and of issues for post-conviction review;

j. counsel's relationship with the client and his family;

k. post-conviction litigation in state and federal courts;

l. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.

2. The state public defender shall develop and provide a comprehensive training program to assist attorneys in meeting the mandatory training requirements established by §923.B. The state public defender shall offer the comprehensive training program on at least an annual basis.

C. Continuing Capital Legal Education

1. Attorneys seeking to remain on the certification roster must continue to attend and successfully complete specialized training program approved by the state public defender that focuses on the defense of death penalty cases. Attorneys must complete at least eighteen hours of training at an approved course or courses every two years.

D. Continuing Professional Education—Non-attorneys

1. All non-attorneys wishing to be eligible to participate on defense teams should receive continuing professional education appropriate to their areas of expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1003 (May 2010).

§925. Funding and Compensation

A. Responsibility for Funding Capital Defense

1. Except as otherwise provided in these guidelines, the district public defender shall be responsible for funding capital defense services in each case for which he or she has responsibility under §905. The state public defender shall be responsible for funding capital defense services as provided for in these guidelines and in each case for which he or she has responsibility under §905.

2. Where a district public defender or the state public defender has insufficient funds to provide for capital defense services for which it has responsibility, the Board shall have responsibility for making available sufficient funds to permit the funding of capital defense services consistent with these guidelines and associated performance standards.

3. Where the board is unable to provide sufficient funds to permit representation consistent with these guidelines and associated performance standards it shall be the obligation of defense counsel in each case so affected to take all necessary steps to preserve and protect the defendant's rights until adequate funding is provided, including, in a trial level case, move for a halt of prosecution.

B. Allocation of Funds

1. Within the constraints of available funds, the board, the state public defender and each district public defender responsible for capital representation shall endeavor to make adequate budgetary allowance for the funding of capital defense services consistent with these guidelines and associated performance standards and in a cost-effective and fiscally responsible manner.

2. The board, the state public defender and each district public defender responsible for capital representation must balance the responsibility to fund capital representation with the obligation to fund representation in other cases and within the constraints provided by available funds, must endeavor to provide adequate funds for all required indigent defense services and make budget allocations accordingly.

3. Similarly, the board, the state public defender and each district public defender responsible for capital representation must balance the responsibility to fund capital representation across all of the districts in the state and at each stage of capital representation and must endeavor to provide adequate funds for all required capital defense services and make budget allocations accordingly.

4. Where the demand for capital defense services exceeds the available funds, the board, the state public defender and each district public defender shall ensure that funds are allocated consistent with the following principles:

a. funds allocated for and necessary for services other than capital defense services shall not be re-allocated to capital defense services, provided that the budget has reasonably sought to balance funding for the capital and non-capital funding responsibilities of the board, state public defender and district public defender;

b. funds allocated for different districts, regions or stages of representation in capital cases shall not be re-allocated to another district, region or stage of representation provided that the budget has reasonably sought to balance funding for all required capital defense services;

c. funds should be made available to capital cases only to the extent that each case can be funded at a level that can provide for representation consistent with these guidelines and associated performance standards. Capital cases should not be partially funded at a level below that necessary to achieve compliance with these guidelines and associated performance standards;

d. notwithstanding the above, where a capital case cannot be adequately funded, funds may be used for the limited purposes of:

i. preserving the rights of the defendant, including the right to a halt of prosecution; and

ii. minimizing any irremediable prejudice arising from the lack of adequate funds, for example, by preserving available evidence;

e. within each stage of representation (trial, appeal, post-conviction, clemency), funds are to be allocated and expended on cases in the order in which the obligation to provide representation began, or the order in which the need for particular funds has been presented; and

f. decisions regarding the allocation of funds are to be made free from political or judicial interference.

C. Compensation of Capital Defense Counsel

1. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation. Salary and other compensation should be comparable to other positions of similar stature throughout the state.

2. Flat fees, caps on compensation, and lump-sum contracts with attorneys are improper in death penalty cases.

3. No distinction between rates for services performed in or out of court should be maintained.

4. Periodic billing and payment should be available to capital defense counsel.

D. Compensation of Non-attorney Team Members

1. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the

provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases. Salary and other compensation should be comparable to other positions of similar stature throughout the state.

2. No distinction between rates for services performed in or out of court should be maintained.

3. Periodic billing and payment should be available to non-attorney team members and experts.

E. Roster of Presumptively Reasonable Compensation

1. The state defender shall draft and publish a roster of presumptively reasonable rates of compensation for defense counsel, investigators, mitigation specialists and experts across the state, making provision for different rates for different regions of the state where necessary.

F. Funding in Unusually Protracted or Extraordinary Cases

1. Additional compensation should be available in unusually protracted or extraordinary cases.

G. Reasonable Incidental Expenses

1. Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

H. Documentation of Resource and Funding Allocation

1. It shall be the responsibility of counsel to request all resources and funds necessary to provide representation consistent with these guidelines and the performance standards. Counsel must ensure that all requests for and decisions regarding the allocation of resources and funds are clearly documented in the client file.

2. The board, the state public defender and each district public defender shall also ensure that all requests for and decisions regarding the allocation of resources and funds are clearly documented and preserved.

3. The requirement to clearly document decisions regarding resource and funding allocations operates even where counsel is also the person responsible for making the decision, for example, where the district public defender is lead counsel. Where counsel's obligation to the client creates a conflict with the obligation to make a decision regarding resource and funding allocations, the decision may be referred to the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1003 (May 2010).

§927. Establishment of Performance Standards

A. Establishing Performance Standards

1. The Public Defender Board shall establish performance standards for all counsel in death penalty cases.

2. Pending the adoption of these performance standards, counsel in death penalty cases should meet the standards adopted by the American Bar Association.

B. Standards Shall Operate as a Benchmark for Performance and Qualifications

1. The standards of performance should be formulated and interpreted so as to insure that all counsel provide high quality legal representation in capital cases in accordance with these guidelines. The performance standards shall serve as a benchmark when assessing the performance of counsel.

C. Interim Performance Standards

1. Pending the formal adoption of capital performance standards by the board the following shall, with any necessary modification to reflect Louisiana nomenclature and prevailing legal obligations, be deemed to operate as relevant performance standards under these guidelines:

a. Guidelines 10.2-10.15.2 of the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*; and

b. State of Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court (adopted June 20, 2006).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:1005 (May 2010).

Chapter 11. Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care Cases

§1101. Purpose

A. The standards for parent representation in child in need of care cases are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of parents in child in need of care and termination of parental rights cases.

B. The standards are also intended to alert defense counsel to courses of action which may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the Standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular

action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations, the lawyer's best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:321 (January 2011).

§1103. Obligations of Defense Counsel

A. The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of Court, and to properly document case files to reflect adherence to the standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:321 (January 2011).

§1105. General Duties of Defense Counsel

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a parent in a child in need of care or termination of parental rights proceeding. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel shall be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a parent. Counsel shall not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even potential for conflict of interest. In situations involving allegations of domestic violence, the attorney shall not represent both parents. When appropriate, counsel may be obliged to seek an advisory opinion from the Office of Disciplinary Counsel on any potential conflicts.

C. If a conflict is discovered during the course of representation, counsel has a duty to notify the parent and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

D. Counsel has the obligation to take all reasonable steps to keep the parent informed of the progress of the case.

E. Counsel has the obligation to ensure that the case file is properly documented to demonstrate adherence to the standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

F. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

G. Lawyers initially appointed should continue their representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the client from the point of the initial court proceedings through disposition, post-disposition review hearings, and any other related proceedings until the case is closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:322 (January 2011).

§1107. Training and Experience of Defense Counsel Representing a Parent in a Child in Need of Care or Termination of Parental Rights Proceeding

A. In order to provide quality legal representation, counsel shall be familiar with the substantive juvenile law and the procedure utilized in child in need of care proceedings, including but not limited to Title VI of the Louisiana Children's Code (La. Ch.C. Articles 601 et seq.), Title X of the Louisiana Children's Code (La. Ch.C. Articles 1001 et seq.) and their applications in the State of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation of a parent in a child in need of care or termination of parental rights proceeding, counsel shall have sufficient experience or training to provide effective representation. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney should be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

1. Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357;

2. Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351;

3. Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36;

4. Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979);

5. State Indian Child Welfare Act laws;

6. Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998);

7. Interstate Compact on Placement of Children (ICPC);

8. Foster Care Independence Act of 1999 (FCIA), P.L. 106-169;

9. Individuals with Disabilities Education Act (IDEA), P.L. 91-230;

10. Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g;

11. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);

12. Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2;

13. Louisiana Administrative Code, Title 28, Part XLIII (Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508—Pupil Appraisal Handbook);

14. immigration laws relating to child welfare and child custody;

15. state laws and rules of evidence;

16. state laws and rules of civil procedure;

17. state laws and rules of criminal procedure;

18. state laws concerning privilege and confidentiality, public benefits, education, and disabilities;

19. state laws and rules of professional responsibility or other relevant ethics standards;

20. state laws regarding domestic violence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:322 (January 2011).

§1109. Obligations of Counsel Regarding Parent's Rights

A. Counsel should understand and protect the parent's rights to information and decision-making while the child is in the custody of the state. The parent's attorney shall explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in custody of the state.

B. The parent's attorney should seek updates and reports from any service provider working with the child/family and help the client obtain information about the child's safety, health, education and well-being when the client desires.

C. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services.

D. If necessary, the parent's attorney should intervene with the Department of Children and Family Services, provider agencies, medical providers and the school to ensure the parent has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:323 (January 2011).

§1111. Obligations of Counsel Prior to Filing of Petition

A. Counsel, upon notice of appointment, should actively represent a parent prior to the filing of the petition in a case.

1. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the Department of Children and Family Services (e.g., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing).

2. The parent's attorney should acknowledge that the parent may be justifiably emotional that the agency is involved with the client's family, and help the client develop strategies so the client does not express that emotion toward the caseworker in ways that may undermine the client's goals.

3. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate.

4. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

5. The attorney should gather and forward to the agency the names and contact information of any potential temporary placements for the children that the client would like the agency to consider.

6. The attorney should assess whether the Department of Children and Family Services made the reasonable efforts required before removing the child from the home and the attorney should be prepared to argue a lack of reasonable efforts to the court, whenever appropriate.

B. Counsel should avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.

C. Counsel should cooperate and proactively communicate regularly with other professionals in the case, including but not limited to all agency (Department of Children and Family Services) personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:323 (January 2011).

§1113. Counsel's Initial Interview with Client

A. Preparing for the Initial Interview

1. Prior to conducting the initial interview the attorney should, where possible:

a. be familiar with the allegations against the client;

b. obtain copies of any relevant documents which are available, including copies of any reports made by law enforcement, medical personnel or Department of Children and Family Services personnel; and

c. determine if any criminal charges have been or are likely to be filed against the client.

2. In addition, where the client is incarcerated, the attorney should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. where applicable, determine if a criminal defense attorney has been appointed regarding the related criminal charges, and develop as soon as is feasible with that attorney a joint strategy for addressing both the criminal charges and the child in need of care proceedings.

B. Conducting the Interview

1. The purpose of the initial interview is to acquire information from the client concerning the case and the client, and to provide the client with information concerning the case. Counsel should ensure at all interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

2. Information that should be acquired from the client, such as:

a. the facts surrounding the allegations leading to the initiation of a child in need of care proceeding, to the extent the client knows and is willing to discuss these facts;

b. where applicable, the client's version of the removal of the child(ren); whether client was interrogated and if so, whether a statement was given; client's physical and mental status at the time the statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on client's body or bodily fluids;

c. the name(s) and marital status of all parents of the subject child(ren) and the name of counsel for the other parents (if a conflict has been determined and counsel has been appointed or retained);

d. the names and locating information of any witnesses to the alleged abuse and/or neglect; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state and/or Department of Children and Family Services (when appropriate, counsel should take steps to insure this evidence is preserved);

e. the client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status (if applicable), employment record and history, and social security number;

f. the client's physical and mental health, educational, vocational and armed services history;

g. the client's immediate medical needs, including the need for detoxification programs and/or substance abuse treatment;

h. the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; the client's past involvement, if any, with a child in need of care case or the Department of Children and Family Services or, more specifically, the Child Welfare Section; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies, whether he or she is on probation (including the nature of the probation) or parole, and the client's past or present performance under supervision;

i. the names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals); and

j. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the alleged abuse and/or neglect, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:

a. taking care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests, an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;

b. a general overview of the procedural progression of the case, the legal issues related to the case, including

specific allegations against the client, the case plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with case plans, as well as the general expectations of the court and the agency, and potential consequences of the client failing to meet those expectations;

c. an explanation of the persons involved in a child in need of care case and in any subsequent termination of parental rights proceeding and the role and responsibility each person has;

d. contact information in writing and a message system that allows regular attorney-client contact. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney shall respond to client messages in a reasonable time period; and

e. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. communicate with the client on a regular and ongoing basis, including conferring with the client within 72 hours of being appointed and prior to every court appearance;

b. where appropriate, explain how the criminal proceedings will relate to the child in need of care and any subsequent termination of parental rights proceedings;

c. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials; and

d. assist client in obtaining services such as substance abuse treatment, parenting skills, or job training while incarcerated.

5. The parent's attorney and client should discuss timelines that reflect projected deadlines and important dates and a calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The timeline should reflect court deadlines and Department of Children and Family Services deadlines.

6. Counsel should make available to the client copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order. Counsel should continue throughout the proceedings to provide client all relevant documents. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:323 (January 2011).

§1115. Counsel's Duties Regarding Client Communication

A. Counsel shall act in accordance with the duty of loyalty owed to the client. Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

B. Counsel shall adhere to all laws and ethical obligations concerning confidentiality. Attorneys representing parents shall understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client.

C. Counsel shall meet and communicate regularly with the client well before court proceedings.

D. Counsel should advocate for the client's goals and empower the client to direct the representation and make informed decisions.

E. Counsel should identify any potential barriers to the client's cooperation in the proceedings.

1. The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

2. The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, housing and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

3. The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

F. Counsel should act with regard to the cultural background and socioeconomic position of the parent throughout all aspects of representation. The parent's attorney should learn about and understand the client's background, and consider how cultural and socioeconomic differences impact interaction with clients.

G. Counsel should be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case in accordance with Louisiana Rule of Professional Conduct 1.14 (Client with Diminished Capacity). The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also

explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney.

H. When appointed as a curator, counsel should undertake diligent efforts to locate a missing parent, including but not limited to investigation and attempts to contact persons who may have information regarding the location of the parent. If the missing parent is found, notify him or her of the pendency and nature of the proceedings. If the missing parent is not found, the defender should stay involved throughout the case, object when necessary to preserve the missing parent's rights, and make periodic attempts to find the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:324 (January 2011).

§1117. Counsel's Duty to Investigate

A. Counsel has a duty to conduct a prompt, reasonable and independent investigation at every stage of the proceeding of each case. Counsel should investigate whether the allegations of abuse and/or neglect and disposition are factually and legally correct and the client is aware of potential defenses to the allegations. The parent's attorney cannot rely solely on what the agency caseworker reports about the parent. The attorney could consider contacting service providers who work with the client, relatives who can discuss the parent's care of the child, and the child's teachers or other people who can clarify information relevant to the case.

B. Counsel should interview the client well before each hearing, in time to use client information for the case investigation. The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not just at the courthouse before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case.

C. Counsel should consider the necessity to interview the potential witnesses, including any adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that is not possible, by sending the investigator to conduct the interview.

D. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain National Crime Information Center or other states' criminal history records for the client and for the prosecution witnesses.

E. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

F. Counsel should secure the assistance of experts where it is necessary or appropriate to:

1. the preparation of the defense;

2. adequate understanding of the agency's case; or

3. rebut the agency's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:325 (January 2011).

§1119. Informal Discovery

A. The parent's attorney should review the child welfare agency case file as early during the course of representation as possible and periodically thereafter.

B. The parent's attorney should obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:325 (January 2011).

§1121. Formal Discovery

A. The parent's attorney should use formal discovery methods to obtain information and inspect evidence as permitted by La. Ch.C. Art. 652.

B. Counsel should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;

2. potential mitigating information;

3. the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;

4. all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;

5. the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;

6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;

8. all investigative reports by all law enforcement and other agencies involved in the case; and

9. all records of evidence collected and retained by law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:326 (January 2011).

§1123. Court Preparation

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and strategy to follow at hearings and negotiations.

B. Counsel for parents should engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

1. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney should determine whether the client has access to the necessary services to overcome the issues that led to the case.

2. The attorney should actively engage in case planning, including attending major case meetings and family team conferences, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case.

3. Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's “team” to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

C. Counsel for parents should research applicable legal issues and advance legal arguments when appropriate.

D. Counsel for parents shall timely file all appropriate pleadings, motions, and briefs.

1. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the parent is entitled to relief which the court has discretion to grant.

2. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

3. Among the issues that counsel should consider addressing in a pretrial motion are:

a. the constitutionality of the implicated statute or statutes;

b. the potential defects in the charging process;

c. the sufficiency of the charging documents;

d. the discovery obligations of the prosecution/agency and the reciprocal discovery obligations of the defense; and

e. access to resources which, or experts, who may be denied to an accused because of his or her indigence.

E. Counsel for parents should aggressively advocate for regular visitation in a family-friendly setting. Factors to consider in visiting plans include:

1. frequency;

2. length;

3. location;

4. supervision;

5. types of activities; and

6. visit coaching—having someone at the visit who could model effective parenting skills.

F. With the client's permission, and when appropriate, counsel for parents should engage in settlement negotiations and mediation to resolve the case. Counsel should adhere to all laws and ethical obligations concerning confidentiality and participate in such proceedings in good faith.

1. Counsel should keep the client fully informed of any continued discussion concerning stipulating and related negotiations and promptly convey to the accused any offers made by the prosecution/agency for a negotiated settlement.

2. Counsel shall not accept any stipulation agreement without the client's express authorization. Prior to entering any stipulation, counsel should ensure that client understands the potential consequences of certain stipulations, particularly the potential for a subsequent termination of parental rights.

3. The existence of ongoing tentative stipulation negotiations with the prosecution/agency should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing stipulation negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

4. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

a. the conditions proposed by the Department of Children and Family Services;

b. the spectrum of possible outcomes;

c. other consequences of adjudication, including but not limited to the impact on any potential criminal investigation or subsequent termination of parental rights proceeding;

d. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

i. not to proceed to adjudication;

ii. decline from asserting or litigating any particular pretrial motions; and

iii. an agreement to fulfill specified, written conditions; and

e. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. to enter into an informal adjustment agreement;

ii. reunification with particular conditions;

iii. to dismiss or reduce one or more charged criminal offenses either immediately, or upon completion of a deferred prosecution agreement; and

iv. that the respondent will not be subject to further investigation or prosecution for uncharged alleged criminal conduct.

5. In conducting stipulation negotiations, counsel should be familiar with:

a. the advantages and disadvantages of stipulation according to the circumstances of the case; and

b. the various types of stipulations that may be agreed to, including but not limited to a stipulation without admitting the allegations.

6. In conducting negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and Department of Children and Family Services personnel which may affect the content and likely results of negotiated agreements.

G. Counsel for parents should thoroughly prepare the client to testify at the hearing;

H. Counsel for parents should identify, locate and prepare all witnesses; and

I. Counsel for parents should identify, secure, prepare and qualify expert witness when needed. When permissible, counsel should interview opposing counsel's experts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:326 (January 2011).

§1125. Entering the Negotiated Stipulation before the Court

A. Prior to the entry of a stipulation, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the stipulation and that the client's decision to waive those rights is knowing, voluntary and intelligent;

2. make certain that the client receives a full explanation of the conditions and limits of the stipulation and the potential outcomes and collateral consequences the client will be exposed to by entering a stipulation; and

3. explain to the client the nature of the stipulation and prepare the client for the role he or she will play in the proceeding, including answering questions of the judge and, where appropriate, providing a statement concerning the allegations.

B. When entering the stipulation, counsel should make sure that the full content and conditions of the stipulation agreement are placed on the record before the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:327 (January 2011).

§1127. Counsel's Duties at Continued Custody Hearing

A. At the continued custody hearing, counsel for a parent should take steps to see that the hearing is conducted in a timely fashion pursuant to La. Ch. C. Art. 624, unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the alleged abuse and/or neglect;

2. the law of establishing grounds of abuse and neglect (La. Ch. C. Art. 606);

3. the requirement that the department made reasonable efforts to prevent or eliminate the need for the child(ren)'s removal before taking custody of the child(ren); and

4. the subpoena process for obtaining compulsory attendance of witnesses at the continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

C. Counsel for a parent should be prepared, in keeping with an overall case strategy, to present reasonable terms of return/reunification of children, with potential conditions, at the continued custody phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:327 (January 2011).

§1129. Counsel's Duty of Preparation for Adjudication

A. Where appropriate, counsel should have the following materials available at the time of adjudication:

1. copies of all relevant documents filed in the case;

2. relevant documents prepared by investigators;

3. cross-examination plans for all possible prosecution witnesses;

4. direct examination plans for all prospective defense witnesses;

5. copies of defense subpoenas;

6. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;

7. prior statements of all defense witnesses;

8. reports from defense experts;

9. a list of all defense exhibits, and the witnesses through whom they will be introduced;

10. originals and copies of all documentary exhibits; and

11. copies of all relevant statutes and cases.

B. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the adjudication process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise at adjudication.

C. Counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the adjudication process counsel should endeavor to establish a proper record for appellate review. Counsel shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing.

G. Counsel should plan with the client the most convenient system for conferring throughout the adjudication hearing. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:327 (January 2011).

§1131. Right to Closed Proceedings (or a Cleared Courtroom)

A. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

B. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:328 (January 2011).

§1133. Preparation for Challenging the Prosecution's/Agency's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's case and consider researching and preparing corresponding motions to dismiss.

B. Counsel should consider the advantages and disadvantages of entering into factual stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

1. consider the need to integrate cross-examination, the theory of the defense and closing argument;

2. consider whether cross-examination of each of the individual witnesses is likely to generate helpful information;

3. anticipate those witnesses the prosecution might call in its case-in-chief or in rebuttal;

4. consider a cross-examination plan for each of the anticipated witnesses;

5. be alert to inconsistencies in a witnesses' testimony;

6. be alert to possible variations in witnesses' testimony;

7. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

8. have prepared a transcript of all audio or video tape recorded statements made by the witnesses;

9. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

10. be alert to issues relating to witnesses' credibility, including bias and motive for testifying; and

11. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case, counsel should move for a finding that the child is not in need of care. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:328 (January 2011).

§1135. Presenting the Respondent's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its burden of proving its case by a preponderance of the evidence.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

C. In preparing for presentation of a defense case, counsel should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;

2. determine the implications that the order of witnesses may have on the defense case;

3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented; and

7. review all tangible evidence that must be presented.

D. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

E. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

F. Counsel should conduct redirect examination as appropriate.

G. At the close of the defense case, counsel should renew the motion for a finding that the child is not in need of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1137. Obligations of Counsel at Disposition Hearing

A. Counsel for a parent, regarding the disposition process, should:

1. where a respondent chooses not to proceed to adjudication, ensure that a stipulation agreement is negotiated with consideration of the dispositional implications;

2. ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the disposition;

3. ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court; and

4. develop a plan which seeks to achieve the least restrictive and burdensome disposition that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1139. Preparation for Disposition

A. In preparing for disposition, counsel should consider the need to:

1. inform the client of the dispositional alternatives, and the likely and possible consequences of those alternatives;

2. maintain regular contact with the client prior to the disposition hearing, and inform the client of the steps being taken in preparation for same;

3. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition,

financial status, family obligations, and sources through which the information provided can be corroborated;

4. inform the client of his or her right to testify at the disposition hearing and assist the client in preparing the testimony, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal;

5. inform the client of the effects that admissions and other statements may have upon an appeal, termination of parental rights proceedings, or other judicial proceedings, such as criminal proceedings; and

6. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the disposition hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1141. The Prosecution's Position at Disposition

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution/agency will advocate that a particular disposition be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1143. The Disposition Process

A. Counsel should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the client's interest.

B. In the event there will be disputed facts before the court at the disposition hearing, counsel should be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

C. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

D. Where appropriate, counsel should prepare the client to personally address the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1145. Termination of Parental Rights Proceedings

A. Counsel should be aware of and advise the client of the gravity and potential permanent effects of a termination of parental rights petition. A termination of parental rights ruling has a serious impact as the parent can lose all rights to visitation, custody, and contact with the child. Counsel should treat any termination hearings with the respect, dedication, and commitment such a serious matter deserves.

B. Counsel should meet or exceed the standards set forth below.

1. Preparation for termination of parental rights hearing:

a. where appropriate, counsel should have the following materials available at the time of the termination hearing:

i. copies of all relevant documents filed in the case;

ii. relevant documents prepared by investigators;

iii. cross-examination plans for all possible prosecution witnesses;

iv. direct examination plans for all prospective defense witnesses;

v. copies of defense subpoenas;

vi. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video-taped witness statements;

vii. prior statements of all defense witnesses;

viii. reports from defense experts;

ix. a list of all defense exhibits, and the witnesses through whom they will be introduced;

x. originals and copies of all documentary exhibits; and

xi. copies of all relevant statutes and cases;

b. counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the termination process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise at termination hearings;

c. counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case;

d. counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings;

e. throughout the termination hearing process, counsel should endeavor to establish a proper record for appellate review. Counsel shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so;

f. where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing;

g. counsel should plan with the client the most convenient system for conferring throughout the termination hearing. Where necessary, counsel should seek a court order to have the client available for conferences;

h. counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client;

i. counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

2. Right to Closed Proceedings (or a Cleared Courtroom)

a. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

b. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

3. Preparation for Challenging the Prosecution's/Agency's Case

a. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment denying termination of parental rights.

b. Counsel should consider the advantages and disadvantages of entering into factual stipulations concerning the prosecution's case.

c. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

d. In preparing for cross-examination, counsel should:

i. consider the need to integrate cross-examination, the theory of the defense and closing argument;

ii. consider whether cross-examination of each of the individual witnesses is likely to generate helpful information;

iii. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

iv. consider a cross-examination plan for each of the anticipated witnesses;

v. be alert to inconsistencies in witness testimony;

vi. be alert to possible variations in witness testimony;

vii. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

viii. have prepared a transcript of all audio or video tape recorded statements made by the witnesses;

ix. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

x. be alert to issues relating to witness credibility, including bias and motive for testifying; and

xi. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

e. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

f. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

g. Where appropriate, at the close of the prosecution's case, counsel should move for a judgment upholding the parental rights of the client. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

4. Presenting the Respondent's Case

a. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its burden of proving its case by a preponderance of the evidence.

b. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

c. In preparing for presentation of a defense case, counsel should, where appropriate:

i. develop a plan for direct examination of each potential defense witness;

ii. determine the implications that the order of witnesses may have on the defense case;

iii determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

iv. consider the possible use of character witnesses;

v. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

vi. review all documentary evidence that must be presented; and

vii. review all tangible evidence that must be presented.

d. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

e. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

f. Counsel should conduct redirect examination as appropriate.

g. At the close of the defense case, counsel should renew the motion for a judgment upholding the parental rights of the client.

C. Whenever appropriate, counsel should consider an appeal of an unfavorable verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

§1147. Review Court Orders to Ensure Accuracy and Clarity and Review with Client

A. After any hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order.

B. If the order is incorrect, the attorney should take whatever steps are necessary to correct it.

C. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

§1149. Motion for Rehearing

A. Counsel should be familiar with the procedures available to request a rehearing including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When the court has adjudicated the subject child(ren) a child in need of care or has ordered a termination of parental rights, counsel should consider whether it is appropriate to file a motion for rehearing with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. the likelihood of success of the motion, given the nature of the error or errors that can be raised; and

2. the effect that such a motion might have upon the respondent's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the respondent's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

§1151. Take Reasonable Steps to Ensure the Client Complies with Court Orders

A. The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order.

B. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client.

C. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

§1153. Consider and Discuss the Possibility of Appeal with the Client

A. The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests.

B. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal.

C. The attorney shall also comply with all ethical rules and rules of courts of appeal concerning the attorney's determination that there is a reasonable basis for the appeal.

D. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

§1155. Appeals

A. If the client decides to appeal, counsel should timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's rules of appellate procedure.

B. The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's position.

C. If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

§1157. Expedited Appeals

A. The attorney should request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

B. The attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

§1159. Communication with Client Pending and After Appeal

A. The parent's attorney should communicate the result of the appeal and its implications.

B. The parent's attorney should provide the client with a copy of the appellate decision.

C. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

Chapter 13. Trial Court Performance Standards for Attorneys Representing Children in Delinquency—Detention through Adjudication

§1301. Purpose

A. The Standards for Attorneys Representing Children in Delinquency Proceedings are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of children in delinquency proceedings.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations the lawyer’s best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011), amended LR 45:403 (March 2019).

§1303. Obligations of Defense Counsel

A. The primary and most fundamental obligation of the attorney representing a child client in a delinquency case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney’s duty and responsibility is to promote and protect the expressed interests of the child client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of the Court, and to properly document case files to reflect adherence to these standards.

B. The attorney who provides legal services for a child client owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child client's guilt is not relevant to the defense of the case.

C. The attorney should communicate with the child client in a manner that will be effective, considering the child client's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney shall file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011), amended LR 45:404 (March 2019).

§1305. Child's Expressed Preferences

A. The attorney shall represent the child client's expressed preferences and follow the child client's direction throughout the course of litigation. In addition, the attorney has a responsibility to counsel the child client and advise the client as to potential outcomes of various courses of action. The attorney shall refrain from substitution of his or her own view or the parents' wishes for the position of the child client. The use of the word *parent* hereafter refers to the parent, guardian, custodial adult or person assuming legal responsibility for the juvenile.

B. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011), amended LR 45:404 (March 2019).

§1307. Allocation of Authority between Child Client and Attorney

A. Certain decisions relating to the conduct of the case are ultimately for the child client and other decisions are ultimately for the attorney. The child client, after full consultation with counsel, is ordinarily responsible for determining:

1. whether to admit or deny the charges in the petition;

2. whether to accept a plea agreement;

3. whether to participate in a diversionary program;

4. whether to testify on his or her own behalf; and

5. whether to appeal.

B. The attorney should explain that final decisions concerning trial strategy, after full consultation with the child client and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child client's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decisions.

C. If a disagreement on significant matters of tactics or strategy arises between the lawyer and the child client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner that protects the confidentiality of the attorney-client relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011), amended LR 45:404 (March 2019).

§1308. Scope and Continuity of Representation

A. The attorney should consult with the child client and provide representation at the earliest stage of proceedings possible and, whenever possible, the same attorney should continue representing the child client through case closure, including in the post-disposition phase of proceedings. Whenever possible, the same attorney who represented a child client in a previous petition or matter should be assigned to represent the same child client in subsequent petitions.

B. The attorney should engage in holistic advocacy to the extent possible by counseling, advocating for or representing the child client in ancillary matters outside the delinquency system involving issues such as educational, mental health, or public benefits rights that may have a direct or indirect impact on the outcome of the delinquency proceedings. When direct advocacy is not possible due to a lack of expertise, time or other resources, counsel should attempt to refer the child client to qualified advocates specializing in those ancillary matters if doing so is in keeping with the child client's expressed interests, and strategically does not jeopardize confidentiality or otherwise do harm to the child client's goals of representation.

C. The attorney should consider engaging the services of a diverse defense team including a social service practitioner to assess the client's and the client's family's social service needs, to counsel the child client, and to plan and coordinate services that will advance the child client's express interests in the case. Social service practitioners may be beneficial in presenting alternatives to detention, negotiating access to diversionary programs, presenting alternatives to custodial or probationary dispositions, modifying dispositions, and preventing recidivism.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 45:404 (March 2019).

§1309. Basic Competency in Juvenile Proceedings

A. Before agreeing to defend a child client, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer quality representation to the child client. Before an attorney defends a child client, the attorney should observe juvenile court, including every stage of a delinquency proceeding, and have a working knowledge of juvenile law and practice.

B. Prior to representing a child client, at a minimum, the attorney should receive training or be knowledgeable in the following areas:

1. relevant federal and state statutes, court decisions and the Louisiana court rules, including but not limited to:

a. Louisiana Children's Code and Code of Criminal Procedure;

b. Louisiana statutory chapters defining criminal offenses;

c. Louisiana Rules of Evidence;

d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.;

e. The Prison Rape Elimination Act of 2003, 42 U.S.C. §15601 et seq.;

f. Prison Rape Elimination Act National Standards, 28 C.F.R. §115.5 et seq.*;*

g. state laws concerning privilege and confidentiality, public benefits, education and disabilities;

h. state laws and rules of professional responsibility or other relevant ethics standards; and

i. the Uniform Rules of the Courts of Appeal and any applicable local appellate rules.

2. overview of the court process and key personnel in the delinquency process, including the practices of the specific judge before whom a case is pending;

3. placement options for detention and disposition;

4. trial and appellate advocacy;

5. ethical obligations for juvenile representation including these guidelines for representation and the special role played in juvenile courts; and

6. child development, including the needs and abilities of juveniles.

C. The attorney should also be familiar with the subject matter of, and be prepared to research when necessary, the following areas of law when necessary and appropriate:

1. Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g;

2. Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);

3. *Louisiana Administrative Code*, Title 28, Part XLIII (Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508—Pupil Appraisal Handbook).

D. An attorney representing juveniles shall annually complete six hours of training relevant to the representation of juveniles. Additional training may include, but is not limited to:

1. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

2. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

3. normative childhood development (including brain development), developmental delays and mental retardation;

4. information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;

5. information on educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to those related to consent and competency issues;

6. school suspension and expulsion procedures;

7. skills for communicating with children;

8. information gathering and investigative techniques;

9. use and application of the current assessment tool(s) used in the applicable jurisdiction and possible challenges that can be used to protect child clients;

10. immigration issues regarding children;

11. gang involvement and activity;

12. factors leading children to delinquent behavior, signs of abuse and/or neglect, and issues pertaining to status offenses; and

13. information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity, sexual orientation, and gender identity.

E. Individual lawyers who are new to juvenile representation should take the opportunity to practice under the guidance of a senior lawyer mentor. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.

F. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011), amended LR 45:405 (March 2019).

§1311. Basic Obligations

A. The attorney should obtain copies of all pleadings and relevant notices.

B. The attorney shall participate in all negotiations, discovery, pre-adjudication conferences, and hearings.

C. The attorney should confer with the juvenile within 48 hours of being appointed and prior to every court appearance to counsel the child client concerning the subject matter of the litigation, the child client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.

D. The attorney should promptly inform the child client of his or her rights and pursue any investigatory or procedural steps necessary to protect the child client's interests throughout the process.

E. Upon initial review of the petition and initial communication with the client, the attorney should determine whether legal issues exist that warrant the filing of pretrial motions and file appropriate pleadings.

F. The attorney should refrain from waiving substantial rights or making stipulations that are inconsistent with the child client's expressed interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011), amended LR 45:405 (March 2019).

§1313. Conflicts of Interest

A. The attorney shall be alert to all potential and actual conflicts of interest that would impair his or her ability to represent a child client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a child client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the Louisiana Rules of Professional Conduct, particular facts and circumstances of the case, and the child client in mind. Where appropriate, attorneys may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Co-defendants are presumed to have a conflict of interest. Representation of co-defendants where the representation of one client will be directly adverse to another client, or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer is a per se violation of the constitutional guarantee of effective assistance of counsel and the Louisiana Rules of Professional Conduct.

C. The attorney's obligation is to the child client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child client. With the child client's permission, the attorney should maintain rapport with the child client's parent or guardian but should not allow that rapport to interfere with the attorney's duties to the child client or the expressed interests of the child client. Where there are conflicts of interests or opinions between the client and the client's parent or custodian, the attorney should not discuss the case with parents and shall not represent the views of a parent that are contrary to the child client's wishes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011), amended LR 45:405 (March 2019).

§1315. Client Communications

A. The attorney shall keep the child client informed of the developments in the case and the progress of preparing the defense and should promptly comply with all reasonable requests for information.

B. Where the attorney is unable to communicate with the child client or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client is able to communicate his or her understanding of the proceedings. Such steps should, if necessary and appropriate, include obtaining funds for an interpreter to assist with pre-adjudication preparation, interviews, and investigation, as well as in-court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011), amended LR 45:406 (March 2019).

§1317. Client Confidentiality

A. Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that the attorney owes the child client is coextensive with the duty of confidentiality that attorneys owe their adult clients.

B. The attorney should seek from the outset to establish a relationship of trust and confidence with the child client. The attorney should explain that full disclosure to counsel of all facts known to the child client is necessary for effective representation and, at the same time, explain that the attorney's obligation of confidentiality makes privileged the client's disclosures relating to the case.

C. There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Juvenile defense counsel has an affirmative obligation to safeguard a child client's information or secrets from parents or guardians. Absent the child client's informed consent, the attorney's interviews with the client shall take place outside the presence of the parents or guardians. Parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's express consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the child client's secrets. Information relating to the representation of the child client includes all information relating to the representation, whatever its source. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the child client's confidences, unless the client gives the attorney explicit permission to reveal the information to get the particular services or disclosure is impliedly authorized to carry out the client's case objectives.

D. In accordance with Louisiana Rule of Professional Conduct 1.6(b), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

1. to prevent reasonably certain death or substantial bodily harm;

2. to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

4. to secure legal advice about the lawyer's compliance with the rules of professional conduct;

5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

6. to comply with other law or a court order.

E. Attorneys who use the services of a mental health or social service practitioner should be familiar with the practitioner's legal duties to report instances of child abuse, and the extent to which the attorney's duty of confidentiality or the attorney-client privilege extends to the mental health or social service practitioner. The attorney should also be familiar with the practitioner's obligations to report abuse under the codes of professional ethics that govern the practitioner's professional licensing. The attorney should use professional judgment in engaging the assistance of a mental health or social service practitioner, and when so engaged should take appropriate action to minimize the practitioner's obligation to report information that would otherwise be protected by the attorney client privilege or the attorney's duty of confidentiality.

F. In the event that the attorney or a member of the defense team discloses information relating to the representation of the client without the client's express or implied authorization pursuant to a professional obligation, mandatory reporting statute, or other reason, the attorney should document the disclosure and the reasons therefor, should inform the client of the disclosure in an age- and developmentally-appropriate manner, and should consider whether the disclosure will render the attorney's continued representation of the client ineffective or whether the disclosure creates an actual or potential conflict of interests in continuing the representation, and take appropriate action pursuant to §1313 of this Part.

G. To observe the attorney's ethical duty to safeguard the child client's confidentiality, attorney-client interviews shall take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case specifics with the child client in the hallways; in detention facilities, juvenile defense counsel should have means to talk with the child client out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the child client and speak with the child client out of range of any microphones or recording devices.

H. An attorney shall exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the child client's history or condition. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the child client and the child client's family, the revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

I. An attorney should ensure that communications with a client in an institution, including a detention center, are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011), amended LR 45:406 (March 2019).

§1318. Confidentiality of Proceedings

A. The attorney should be familiar with the rules pertaining to the closure of proceedings. If necessary to protect the client's interests, an attorney shall ensure that any juvenile proceeding which is meant to be closed to the

public remains so and, if necessary, shall request that the court order the courtroom cleared of any unnecessary individuals.

B. In cases where delinquency proceedings are public, to protect the confidential and sometimes embarrassing information involved, the attorney, in consultation with the child client, should move to close the proceedings or request the case to be called last on the docket when the courtroom is empty.

C. The media may report on certain delinquency cases. If a decision is made to speak to the media, the attorney should be cautious due to confidentiality, other Rules of Professional Conduct, the potential for inaccurate reporting and strategic considerations. The attorney representing a child client before the juvenile court should avoid personal publicity connected with the case, both during adjudication and thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 45:407 (March 2019).

§1319. Case File

A. The attorney has the obligation to ensure that the case file is properly documented to demonstrate adherence to these standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

§1323. Stand-In Counsel

A. Any attorney appointed to stand in for another at any delinquency proceeding shall:

1. represent the child zealously as if the child is his or her own client;

2. request continuances if asked to conduct contradictory hearings or contested summary hearings for which the stand-in counsel is unprepared or for which the client has not consented to having stand-in counsel in place of regular counsel, and object on the record to holding such hearing;

3. ensure that the child knows how to contact stand-in counsel in case the child does not hear from the attorney of record;

4. immediately communicate with the attorney of record regarding upcoming dates/hearings, how to contact the child, placement of the child, nature of charges, and other timely issues that the attorney of record may need to know or address; and

5. immediately or within a reasonable time thereafter provide to the child's attorney of record all notes, documents, and any discovery received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011), amended LR 45:407 (March 2019).

§1325. Caseloads

A. The attorney should not have such a large number of cases that he or she is unable to comply with these guidelines and the Louisiana Rules of Professional Conduct. Before agreeing to act as the attorney or accepting appointment by a court, the attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that the attorney is unable to offer effective representation, the attorney should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011), amended LR 45:407 (March 2019).

§1327. Social Work and Probation Personnel

A. Attorneys should cooperate with social workers and probation personnel and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011), amended LR 45:407 (March 2019).

§1329. Detention

A. For purposes of appointment of counsel, children are presumed to be indigent. The attorney shall meet with a detained child client within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall take other prompt action necessary to provide quality representation, including:

1. personally reviewing the well-being of the child client and the conditions of the facility, and ascertaining the need for any medical or mental health treatment;

2. ascertaining whether the child client was arrested pursuant to a warrant or a timely determination of probable cause by a judicial officer;

3. making a motion for the release of the child client where no determination of probable cause has been made by a judicial officer within 48 hours of arrest or where the child client is held for on misdemeanor allegations committed before the age of 13; and

4. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child client, and revoking any waivers of these protections purportedly given by the child client, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

B. Where the child client is detained, the attorney shall:

1. be familiar with the legal criteria for determining pre-adjudication release and conditions of release, and the procedures that will be followed in setting those conditions, including but not limited to the use and accuracy of any risk assessment instruments;

2. be familiar with the different types of pre-adjudication release conditions the court may set and whether private or public agencies are available to act as a custodian for the child client's release; and

3. be familiar with any procedures available for reviewing the judge's setting of bail.

C. The attorney shall attempt to secure the pre-adjudication release of the child client under the conditions most favorable and acceptable to the client unless contrary to the expressed wishes of the child client.

D. If the child client is detained, the attorney should try to ensure, by oral or written motion prior to any initial court hearing, that the child client does not appear before the judge in inappropriate clothing, shackles or handcuffs. If a juvenile court persists in the indiscriminate shackling of juvenile delinquents, the attorney should consider seeking supervisory review from an appellate court.

E. The attorney should determine whether a parent or other adult is able and willing to assume custody of the child client. Every effort should be made to locate and contact such a responsible adult if none is present at the continued custody hearing.

F. The attorney should identify and arrange the presence of to have witnesses to testify in support of release. This may include a minister or spiritual advisor, teacher, relative, other mentor or other persons who are willing to provide guidance, supervision and positive activities for the youth during release.

G. If the juvenile is released, the attorney should fully explain the conditions of release to the child client and advise him or her of the potential consequences of a violation of those conditions in developmentally appropriate language. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client shall be advised of the legal consequences of failure to comply with such conditions in developmentally appropriate language.

H. The attorney shall be familiar with the detention facilities, particularly with any deficiencies related to the conditions of confinement and services available therein, and with the availability of community placements and services that could serve as alternatives to detention available for placement.

I. Where the child client is detained and unable to obtain pre-adjudication release, the attorney should be aware of any special medical, mental health, education and security needs of the child client and, in consultation with the child client, request that the appropriate officials, including the court, take steps to meet those special needs.

J. Following the continued custody hearing, the attorney should continue to advocate for release or expeditious placement of the child client. If the child client is not released, he or she should be advised of the right to have the placement decision reviewed or appealed.

K. Whenever the child client is held in some form of pre-adjudication detention, the attorney should visit the child client at least every two weeks and personally review his or her well-being, the conditions of the facility, and the opportunities to obtain release. Attorneys representing a child client who is held in a facility outside of the jurisdiction should consider using alternative methods of communication to the extent appropriate.

L. Whenever the child client is held in some form of pre-adjudication detention, the attorney should be prepared for an expedited adjudicatory hearing.

M. Where the child client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

N. If the court sets conditions of release which require the posting of monetary bond or the posting of real property as collateral for release, counsel should strongly advocate that the court consider the presumptive indigent status of the juvenile and set a reasonable monetary bond within the family's ability to pay. Counsel should argue for an individualized bail amount, as opposed to a preset bail schedule used for adult offenders, and argue the bail criteria found in Children's Code article 824.

O. If the court sets conditions of release which require the posting of monetary bond or the posting of real property as collateral for release, counsel should make sure the child client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the child client and others acting in his or her behalf how to properly post such assets.

P. The lawyer should never personally guarantee the attendance or behavior of the child client or any other person, whether as surety on a bail bond or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011), amended LR 45:407 (March 2019).

§1331. Initial Interview with Child

A. The attorney should conduct a client interview as soon as practicable in order to obtain the information

necessary to provide quality representation at the early stages of the case and to provide the child client with information concerning the representation and the case proceedings. Establishing and maintaining a relationship with the child client is the foundation of quality representation. Irrespective of the child client's age, the attorney should consult with the child client well before each court hearing. The attorney shall explain to the client how to contact the attorney and should promptly comply with child client's requests for contact and assistance.

B. A meeting or conversation conducted in a hallway or holding cell at the courthouse is not a substitute for a thorough interview conducted in private and may waive confidentiality.

C. Prior to conducting the initial interview, the attorney should, where possible:

1. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

2. obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports concerning pre-adjudication release, and law enforcement reports that might be available;

3. request mental health, juvenile assessment center, detention center or educational records, including any screenings or assessments, that may help in the initial interview with the client;

D. The purposes of the initial interview are to provide the child client with information concerning the case and to acquire information from the child client concerning the facts of the case.

1. To provide information to the client, the attorney should specifically:

a. explain the nature of the attorney-client relationship to the child client, including the requirements of confidentiality;

b. explain the attorney-client privilege and instruct the child client not to talk to anyone about the facts of the case without first consulting with the attorney;

c. ensure the child client understands that he or she has the right to speak with his or her attorney;

d. explain the nature of the allegations, what the government must prove, and the likely and maximum potential consequences;

e. explain a general procedural overview of the progression of the case;

f. explain the role of each player in the system;

g. explain the consequences of non-compliance with court orders;

h. explain how and when to contact the attorney;

i. provide the names of any other persons who may be contacting the child client on behalf of the attorney;

j. obtain a signed release authorizing the attorney and/or his or her agent to obtain official records related to the client, including medical and mental health records, school records, employment records, etc.;

k. discuss arrangements to address the child client's most critical needs (e.g., medical or mental health attention, request for separation during detention, or contact with family or employers); and

l. assess whether the child client is competent to proceed or has a disability that would impact a possible defense or mitigation.

2. For a child client who is detained, the attorney should also:

a. explain the procedures that will be followed in setting the conditions of pre-adjudication release;

b. explain the type of information that will be requested in any interview that may be conducted by a pre-adjudication release agency, explain that the child client should not make statements concerning the offense, and explain that the right to not testify against oneself extends to all situations, including mental health evaluations; and

c. warn the child client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by detention officials.

3. The attorney or a representative of the attorney should collect information from the child client including, but not limited to:

a. the facts surrounding the charges leading to the child client's detention, to the extent the child client knows and is willing to discuss these facts;

b. the child client's version of the arrest, with or without a warrant; whether the child client was searched and if anything was seized, with or without warrant or consent; whether the child client was interrogated and if so, whether a statement was given; the child client's physical and mental status at the time any statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on the child client's body or bodily fluids;

c. the existence of any tangible evidence in the possession of the state (when appropriate, the attorney shall take steps to ensure that this evidence is preserved);

d. the names and custodial status of all co-defendants and the names of the attorneys for the co-defendants (if counsel has been appointed or retained);

e. the names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense;

f. the child client's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current

and former addresses, as well as the child client's supervision when at home;

g. any prior names or aliases used, employment record and history, and social security number;

h. the immigration status of the child client and his or her family members, if applicable;

i. the child client's educational history, including current grade level, attendance and any disciplinary history;

j. the child client's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;

k. the child client's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;

l. whether there are any other pending charges against the child client and the identity of any other appointed or retained counsel;

m. whether the child client is on probation (and the nature of the probation) or post-release supervision and, if so, the name of his or her probation officer or counselor and the child client's past or present performance under supervision;

n. the options available to the child client for release if the child client is in secure custody;

o. the names of individuals or other sources that the attorney can contact to verify the information provided by the child client and the permission of the child client to contact those sources;

p. the ability of the child client's family to meet any financial conditions of release (for clients in detention); and

q. where appropriate, evidence of the child client's competence to participate in delinquency proceedings and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

E. Throughout the delinquency process, the attorney should take the time to:

1. keep the child client informed of the nature and status of the proceedings on an ongoing basis;

2. maintain regular contact with the child client during the course of the case and especially before court hearings;

3. review all discovery with the child client as part of the case theory development;

4. promptly respond to telephone calls and other types of contact from the child client, where possible, within one business day or a reasonable time thereafter;

5. counsel the child client on options and related consequences and decisions to be made; and

6. seek the lawful objectives of the child client and not substitute the attorney's judgment for that of the child client in those case decisions that are the responsibility of the child client. Where an attorney believes that the child client's desires are not in his or her best interest, the attorney should discuss the consequences of the child client's position. If the child client maintains his or her position, the attorney should defend the child client's expressed interests vigorously within the bounds of the law.

F. In interviewing a child client, it is proper for the lawyer to question the credibility of the child client's statements or those of any other witness. The lawyer shall not, however, suggest expressly or by implication that the child client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor shall the lawyer intimate that the child client should be less than candid in revealing material facts to the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011), amended LR 45:408 (March 2019).

§1333. Transfer to Adult Proceedings

A. The attorney shall be familiar with laws subjecting a child client to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the child client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

B. Upon learning that transfer will be sought or may be elected, the attorney should fully explain the nature of the proceeding and the consequences of transfer to the child client and the child client's parents. In so doing, counsel may further advise the child client concerning participation in diagnostic and treatment programs that may provide information material to the transfer decision.

C. The attorney should be aware when an indictment may be filed directly in adult court by a district attorney and take actions to prevent such a filing including:

1. promptly investigating all circumstances of the case bearing on the appropriateness of filing the case in adult court and seeking disclosure of any reports or other evidence that the district attorney is using in his or her consideration of a direct filing;

2. moving promptly for appointment of an investigator or expert witness to aid in the preparation of the defense when circumstances warrant; and

3. where appropriate, moving promptly for the appointment of a competency or sanity commission prior to the transfer.

D. Where a district attorney may transfer the case either through indictment filed directly in adult court or by a finding of probable cause at a continued custody hearing in juvenile court, the attorney should present all facts and mitigating evidence to the district attorney to keep the child

client in juvenile court. When a finding of probable cause triggers waiver of juvenile court jurisdiction automatically or at the discretion of the prosecutor, the attorney shall seek a postponement of the continued custody hearing and waive any time delays necessary to prepare adequately in order to mount an effective challenge to waive or to negotiate an alternative to waiver.

E. Where the district attorney makes a motion to conduct a hearing to consider whether to transfer the child client, the attorney should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child client;

2. identify, locate and interview exculpatory or mitigating witnesses;

3. consider obtaining an expert witness to testify to the amenability of the child client to rehabilitation; and

4. present all facts and mitigating evidence to the court to keep the child client in juvenile court.

F. In preparing for a transfer hearing, the attorney should be familiar with all the procedural protections available to the child client including but not limited to discovery, cross-examination, compelling witnesses.

G. If the attorney who represented the child client in the delinquency court will not represent the child client in the adult proceeding, the delinquency attorney should ensure the new attorney has all the information acquired to help in the adult proceedings. If possible, the delinquency attorney should assist the new attorney, particularly if certain juvenile issues are to be litigated.

H. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011), amended LR 45:410 (March 2019).

§1335. Mental Health Examinations

A. Throughout a delinquency proceeding, either party may request or the judge may order a mental health examination of the child client. Admissions made during such examinations may not protected from disclosure. The attorney should ensure the child client understands the consequences of admissions during such examinations and advise the client that personal information about the child client or the child client's family may be revealed to the court or other personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011), amended LR 45:410 (March 2019).

§1337. Mental Incapacity to Proceed

A. The attorney should be familiar with procedures for a determination of mental incapacity to proceed under the Louisiana Children's Code and other provisions of Louisiana law.

B. Although the client's expressed interests ordinarily control, the attorney should question capacity to proceed without the child client's approval or over the child client's objection, if necessary.

C. If, at any time, the child client's behavior or mental ability indicates that he or she may be incompetent, the attorney should consider filing a motion for a competency commission.

D. The attorney should prepare for and participate fully in the competency hearing.

E. Prior to the evaluation by the commission, the attorney should request from the child client and provide to the commission all relevant documents including but not limited to the arrest report, prior psychological/psychiatric evaluations, school records and any other important medical records.

F. Where appropriate, the attorney should advise the client of the potential consequences of a finding of incompetence. Prior to any proceeding, the attorney should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. If the competency commission's finding is that the child client is competent, where appropriate, the attorney should consider calling an independent mental health expert to testify at the competency hearing.

G. The attorney should be aware that the burden of proof is on the child client to prove incompetency and that the standard of proof is a preponderance of the evidence.

H. If the child client is found incompetent, the attorney should continue to represent the child client's expressed interest until the matter is resolved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011), amended LR 45:410 (March 2019).

§1339. Insanity

A. The attorney should be familiar with the procedures for determination of sanity at the time of the offense and notice requirements under the Louisiana Children's Code and other provisions of Louisiana law when proceeding with an insanity defense.

B. If the attorney believes that the child client did not appreciate the consequences of his or her actions at the time of the offense, the attorney should consider filing for a sanity commission.

C. The attorney should advise the child client that if he or she is found not delinquent by reason of insanity, the court may involuntarily commit the child client to the

Department of Health for treatment. The attorney should be prepared to advocate on behalf of the child client against involuntary commitment and provide other treatment options such as outpatient counseling or services.

D. The attorney should be prepared to raise the issue of sanity during all phases of the proceedings, if the attorney's relationship with the child client reveals that such a plea is appropriate.

E. The attorney should be aware that the child client has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011), amended LR 45:410 (March 2019).

§1341. Manifestation of a Disability

A. Where the child client's actions that are the subject of the delinquency charge suggest a manifestation of a disability, the attorney should argue that the disability prevented the client from having the mental capacity or specific intent to commit the crime. Where appropriate, for school-based offenses, the attorney should argue that that the school did not follow the child client's individual education program, which could have prevented the client's behavior. The attorney should seek a judgment of dismissal or a finding that the juvenile is not delinquent. This information may also be used for mitigation at the time of disposition following a plea or a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011), amended LR 45:411 (March 2019).

§1343. Ensure Official Recording of Court Proceedings

A. The attorney should take all necessary steps to ensure a full official recording of all aspects of the court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011), amended LR 45:411 (March 2019).

§1345. Investigation

A. The child client's attorney shall conduct a prompt and diligent independent case investigation. The child client's admissions of responsibility or other statements to counsel do not obviate the need for investigation.

B. The attorney should ensure that the charges and disposition are factually and legally correct and the child client is aware of potential defenses to the charges.

C. The attorney should examine all charging documents to determine the specific charges that have been brought against the child client, including the arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case. The relevant statutes and precedents should be examined to identify the elements of the offense(s) with which the child client is charged, both the ordinary and affirmative defenses that may be available, any lesser included offenses that may be available, and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

D. The attorney should seek investigators and experts, as needed, to assist the attorney in the preparation of a defense, in the understanding of the prosecution's case, or in the rebuttal of the prosecution's case. The attorney should avoid making herself the sole witness to information he or she anticipates introducing or needing to rebut at trial.

E. Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the child client and child client's family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011), amended LR 45:411 (March 2019).

§1347. Diversion/Alternatives

A. The attorney should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a child client's case being dismissed or handled informally. When appropriate and available, the attorney shall advocate for the use of informal mechanisms that could divert the client's case from the formal court process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011), amended LR 45:411 (March 2019).

§1349. Continued Custody Hearing

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion consistent with the prescribed time limits in the Children's Code unless there are strategic reasons for not doing so (e.g., when the offense charged would warrant an automatic transfer upon a finding of probable cause).

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;

2. the law for establishing probable cause;

3. factual information that is available concerning probable cause;

4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;

5. the child client's custodial situation, including all persons living in the home;

6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and

7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

C. If the child client is retained in custody and a petition not filed within the time period prescribed by the Children's Code, the attorney should request immediate release of the child client and other appropriate remedy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:411 (March 2019).

§1351. Appearance to Answer

A. The attorney should take steps to see that the answer hearing is conducted in a timely fashion consistent with the prescribed time limits in the Children's Code unless there are strategic reasons for not doing so.

B. The attorney should preserve the child client's rights at the appearance to answer on the charges by requesting a speedy trial, preserving the right to file motions, demanding discovery, and entering a plea of denial in most circumstances, unless there is a sound tactical reason for not doing so or the child client expresses an informed decision after having been thoroughly advised of both the consequences of entering an admission and alternative options.

C. Where appropriate, the attorney should arrange for the court to address any immediate needs of the child client, such as educational/vocational needs, emotional/mental/physical health needs, and safety needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:411 (March 2019).

§1353. Child's Right to Speedy Trial

A. The attorney should be aware of and protect the child client's right to a speedy trial under the Children's Code and constitutional law, unless strategic considerations warrant otherwise. Requests or agreements to continue a contested hearing date should not be made without consultation with the child client. The attorney shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event an attorney finds it necessary to seek additional time to adequately prepare for a proceeding, the attorney should consult with the child client and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

B. If the child client's adjudication hearing is set outside the applicable time limitation, once the time delay lapses the attorney shall file a motion to dismiss the petition. If this motion is denied by the juvenile court, the attorney shall make an adequate record and seek supervisory review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:412 (March 2019).

§1355. Discovery

A. The attorney should pursue discovery, including filing a motion for discovery and conducting appropriate interviews. The attorney has a duty to pursue, as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

B. In considering discovery requests, the attorney should take into account that such requests may trigger reciprocal discovery obligations. The attorney shall be familiar with the rules regarding reciprocal discovery. The attorney shall be aware of any potential obligations and time limits regarding reciprocal discovery. Where the attorney intends to offer an alibi defense, he or she shall provide notice to the district attorney as required by law.

C. The attorney should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;

2. potential mitigating information;

3. the names and addresses of all prosecution witnesses, their prior statements, and criminal/delinquency records, if any;

4. all oral and/or written statements by the child client, and the details of the circumstances under which the statements were made;

5. the prior delinquency record of the child client and any evidence of other misconduct that the government may intend to use against the accused;

6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;

8. statements of co-defendants;

9. all investigative reports by all law enforcement and other agencies involved in the case; and

10. all records of evidence collected and retained by law enforcement.

D. The attorney shall monitor the dates to ensure the state complies with its discovery obligations. If discovery violations occur, the attorney should seek prompt compliance and/or sanctions for failure to comply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:412 (March 2019).

§1357. Theory of the Case

A. During the investigation and adjudication hearing preparation, the attorney should develop and continually reassess a theory of the case, and this theory should inform all motions practice and trial strategy in order to yield the best result.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:412 (March 2019).

§1359. Motions

A. The attorney should file motions, responses or objections as necessary to zealously represent the client. The attorney should consider filing an appropriate motion whenever there exists a good faith reason to believe that the child client is entitled to relief that the court has discretion to grant. The attorney should file motions as soon as possible due to the time constraints of juvenile court.

B. The decision to file motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a motion include, but are not limited to:

1. the pre-adjudication custody of the child client;

2. the constitutionality of the implicated statute or statutes (in which case counsel should be mindful that the Attorney General must be served with a copy of such a motion);

3. the constitutionality of the implicated statute or statutes;

4. the potential defects in the charging process;

5. the sufficiency of the charging document;

6. the propriety and prejudice of any joinder of charges or defendants in the charging document;

7. the discovery obligations of the state and the reciprocal discovery obligations of the defense;

8. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:

a. the fruits of illegal searches or seizures;

b. involuntary statements or confessions;

c. statements or confessions obtained in violation of the child client's right to an attorney, or privilege against self-incrimination; or

d. unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.

9. the suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;

10. in consultation with the child client, a mental or physical examination of the child client;

11. relief due to mental incapacity, incompetency, mental retardation or mental illness;

12. access to resources or experts who may be denied to the child client because of his or her indigence;

13. the child client's right to a speedy trial;

14. the child client's right to a continuance in order to adequately prepare his or her case;

15. matters of evidence which may be appropriately litigated by means of a pre-adjudication motion in limine;

16. motion for judgment of dismissal; or

17. matters of adjudication or courtroom procedures, including inappropriate clothing or restraints of the client.

18. matters related to the conditions under which the child client is confined, including the implementation of a program of education or other services while in confinement.

D. The attorney should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the child client's rights, including later claims of waiver or procedural default. The attorney has a continuing duty to file motions as new issues arise or new evidence is discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011), amended LR 45:412 (March 2019).

§1360. Interlocutory Writs of Review

A. Any interlocutory decision by the juvenile court is subject to the supervisory review of the Louisiana Courts of Appeal pursuant to an application for a writ of review. Writ applications from juvenile proceedings receive priority treatment and should be filed no later than 15 days from the date of the ruling at issue. Counsel should be familiar with the procedures for seeking supervisory writs, including the procedure for seeking an emergency writ of review.

B. If counsel files and argues an unsuccessful motion, counsel should strongly consider seeking supervisory review to the Louisiana Courts of Appeal. In situations where the

court makes a spontaneous improper ruling, counsel should make an immediate oral motion in opposition, state any reasons for the opposition on the record, and notice an intention to seek supervisory writs on the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 45:413 (March 2019).

§1361. Plea Negotiations

A. The attorney should explore with the child client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to an adjudication, and in doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to adjudication. After the attorney is fully informed on the facts and the law, he or she should, with complete candor, advise the child client concerning all aspects of the case, including counsel's frank estimate of the probable outcome. Counsel should not understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the child client's determination of his or her posture in the matter.

B. The attorney shall not accept any plea agreement without the child client’s express authorization.

C. The existence of ongoing tentative plea negotiations with the prosecution should not prevent the attorney from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay the attorney’s investigation into the facts of the case and preparation of the case for further proceedings, including adjudication.

D. The attorney should participate in plea negotiations to seek the best result possible for the child client consistent with the child client’s interests and directions to the attorney. The attorney should consider narrowing contested issues or reaching global resolution of multiple pending cases. Prior to entering into any negotiations, the attorney shall have sufficient knowledge of the strengths and weaknesses of the child client’s case, or of the issue under negotiation, enabling the attorney to advise the child client of the risks and benefits of settlement.

E. In conducting plea negotiations, the attorney should be familiar with:

1. the various types of pleas that may be agreed to, including an admission, a plea of nolo contendere, and a plea in which the child client is not required to personally acknowledge his or her guilt (Alford plea);

2. the advantages and disadvantages of each available plea according to the circumstances of the case including collateral consequences of a plea;

3. whether the plea agreement is binding on the court and the Office of Juvenile Justice.

4. whether the plea is expungable; and

5. whether the plea will subject the child client to requirements to register as a sex offender.

F. In conducting plea negotiations, the attorney should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department that may affect the content and likely results of negotiated pleas.

G. In preparing to enter a plea before the court, the attorney should explain to the child client the nature of the plea hearing and prepare the child client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense and the appropriate disposition. Specifically, the attorney should:

1. be satisfied there is a factual or strategic basis for the plea or admission or Alford plea;

2. make certain that the child client understands the rights he or she will waive by entering the plea and that the child client’s decision to waive those rights is knowing, voluntary and intelligent; and

3. be satisfied that the plea is voluntary and that the child client understands the nature of the charges;

H. When the plea is against the advice of the attorney or without adequate time to investigate, the attorney should indicate this on the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2608 (September 2011), amended LR 45:413 (March 2019).

§1363. Court Appearances

A. The attorney shall attend all hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1365. Preparing the Child for Hearings

A. The attorney should explain to the child client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

B. The attorney should advise the client as to suitable courtroom dress and demeanor. If the client is detained, the attorney should consider requesting the client’s appearance unshackled and unchained. The attorney should also be alert to the possible prejudicial effects of the client appearing before the court in jail or other inappropriate clothing.

C. The attorney should plan with the client the most convenient system for conferring throughout the delinquency proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011), amended LR 45:413 (March 2019).

§1367. Adjudication Preparation

A. Where appropriate, the attorney should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;

2. relevant documents prepared by investigators;

3. outline or draft of opening statement;

4. cross-examination plans for all possible prosecution witnesses;

5. direct examination plans for all prospective defense witnesses;

6. copies of defense subpoenas;

7. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and prepared transcripts of any audio or video taped witness statements;

8. prior statements of all defense witnesses;

9. reports from all experts;

10. a list of all defense exhibits, and the witnesses through whom they will be introduced;

11. originals and copies of all documentary exhibits;

12. copies of all relevant statutes and cases; and

13. outline or draft of closing argument.

B. The attorney should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the delinquency proceedings, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudication.

C. The attorney should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior adjudications to impeach the child client) and, where appropriate, the attorney should prepare motions and memoranda for such advance rulings.

D. The attorney should take steps to see that the adjudication hearing is conducted in a timely fashion consistent with the prescribed time limits in the Children's Code for conducting the hearing unless there are strategic reasons for not doing so, and should request appropriate relief for failure to follow the prescribed time limits.

E. Throughout the adjudication process, the attorney should endeavor to establish a proper record for appellate review. The attorney shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where necessary, the attorney should seek a court order to have the child client available for conferences.

G. Throughout preparation and adjudication, the attorney should consider the potential effects that particular actions may have upon sentencing if there is a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011), amended LR 45:413 (March 2019).

§1369. Objections

A. The attorney should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the child client's position at adjudication or during other hearings. The attorney should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. If necessary, the attorney should file briefs in support of evidentiary issues. Further, during all hearings, the attorney should preserve legal issues for appeal, as appropriate.

B. Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct that the attorney considers prejudicial to the child client's legitimate interests.

C. The attorney should be prepared to object to the introduction of any evidence damaging to the child client's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011), amended LR 45:414 (March 2019).

§1371. Sequestration of Witnesses

A. Prior to delivering an opening statement, the attorney should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1373. Opening Statements

A. Counsel should prepare and request to make an opening statement to provide an overview of the case unless a strategic reason exists for not doing so. The attorney should be familiar with the law and the individual trial judge's rules regarding the permissible content of an opening statement. The attorney should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011), amended LR 45:414 (March 2019).

§1375. Confronting the Prosecutor's Case

A. The attorney should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of dismissal. The attorney should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1377. Stipulations

A. The attorney should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. The attorney should not enter into any stipulations detrimental to the client's expressed goals of the representation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011), amended LR 45:414 (March 2019).

§1379. Cross-Examination

A. Counsel should use cross-examination strategically to further the theory of the case. In preparing for cross-examination, the attorney should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, the attorney should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted.

B. In preparing for cross-examination, the attorney should:

1. obtain the prior records of all state and defense witnesses;

2. be prepared to examine any witness;

3. consider the need to integrate cross-examination, the theory of the defense, and closing argument;

4. consider whether cross-examination of each individual witness is likely to generate helpful information;

5. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

6. consider a cross-examination plan for each of the anticipated witnesses;

7. be alert to inconsistencies in witnesses' testimony;

8. be alert to possible variations in witnesses' testimony;

9. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

10. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

11. have prepared, for introduction into evidence, all documents that counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses; and

12. be alert to issues relating to witness credibility, including bias and motive for testifying.

C. The lawyer should be prepared to examine fully any witness whose testimony is damaging to the child client's interests.

D. The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination.

E. The attorney should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. The attorney should be aware of the law of competency of witnesses, in general, and admission of expert testimony, in particular, in order to be able to raise appropriate objections.

F. Before beginning cross-examination, the attorney should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by law. If the attorney does not receive prior statements of prosecution witnesses until they have completed direct examination, the attorney should request adequate time to review these documents before commencing cross-examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011), amended LR 45:414 (March 2019)..

§1381. Conclusion of Prosecution's Evidence

A. Where appropriate, at the close of the prosecution's case, the attorney should move for a dismissal of petition on each count charged. The attorney should request, when necessary, that the court immediately rule on the motion, in order that the attorney may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1383. Defense Strategy

A. The attorney should develop, in consultation with the child client, an overall defense strategy. In deciding on a defense strategy, the attorney should consider whether the

child client's legal interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. In developing and presenting the defense case, the attorney should consider the implications it may have for a rebuttal by the prosecutor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011), amended LR 45:414 (March 2019).

§1385. Affirmative Defenses

A. The attorney should be aware of the elements and burdens of proof of any affirmative defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1387. Direct Examination

A. In preparing for presentation of a defense case, the attorney should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;

2. determine the implications that the order of witnesses may have on the defense case;

3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses, to the extent that use of character witnesses does not allow the prosecution to introduce potentially harmful evidence against the child client;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented;

7. review all tangible evidence that must be presented; and

8. after the state's presentation of evidence and a discussion with the child client, make the decision whether to call any witnesses.

B. The attorney should conduct redirect examination as appropriate.

C. The attorney should prepare all witnesses for direct and possible cross-examination. Where appropriate, the attorney should also advise witnesses of suitable courtroom dress and demeanor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011), amended LR 45:414 (March 2019).

§1389. Child's Right to Testify

A. The attorney shall respect the child client's right to decide whether to testify.

B. The attorney shall discuss with the child client all of the considerations relevant to the child client's decision to testify. This advice should include consideration of the child client's need or desire to testify, any repercussions of testifying, the necessity of the child client's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child client, and the child client's developmental ability to provide direct testimony and withstand possible cross-examination.

C. The attorney should be familiar with his or her ethical responsibilities that may be applicable if the child client insists on testifying untruthfully. If the child client indicates an intent to commit perjury, the attorney shall advise the child client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury. If the child client persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent, the attorney should seek the leave of the court to withdraw from the case. If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, the attorney shall not lend aid to perjury or use the perjured testimony. The attorney should maintain a record of the advice provided to the child client and the child client's decision concerning whether to testify.

D. The attorney should protect the child client's privilege against self-incrimination in juvenile court proceedings. When the child client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:414 (March 2019).

§1391. Preparing the Child Client to Testify

A. If the child client decides to testify, the attorney should prepare the child client to testify. This should include familiarizing the child client with the courtroom, court procedures, and what to expect during direct and cross-examination. If possible, prior to the adjudication hearing the attorney should conduct a mock direct and cross-examination on the child client with a separate attorney acting as prosecutor. Often the decision whether to testify may change at trial. Thus, the attorney should prepare the case for either contingency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:415 (March 2019).

§1393. Questioning the Child Client

A. The attorney should seek to ensure that questions to the child client are phrased in a developmentally appropriate manner. The attorney should object to any inappropriate questions by the court or an opposing attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:415 (March 2019).

§1395. Closing Arguments

A. Counsel shall prepare a closing argument and shall deliver it at the conclusion of the hearing unless there is a strategic reason not to do so. The attorney should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), LR 45:415 (March 2019).

§1397. Motion for a New Trial

A. The attorney should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of delinquency has been entered against the client after trial, the attorney should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors the attorney should consider include:

1. the likelihood of success of the motion, given the nature of the error(s) that can be raised; and

2. the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the child client's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:415 (March 2019).

§1399. Expungement

A. The attorney should inform the child client of any procedures available for requesting that the record of conviction be expunged or sealed. The attorney should explain that some contents of juvenile court records may be made public (e.g., when a violent crime has been committed) and that there are limitations on the expungement of records.

B. The attorney should provide assistance with the expungement procedure if requested, when the client appears eligible for expungement, including active representation of the child client in any hearing related to the expungement request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:415 (March 2019).

Chapter 15. Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings—Post-Adjudication

§1501. Post-Adjudication Placement Pending Disposition

A. Following the entry of an adjudication, the attorney should be prepared to argue for the least restrictive environment for the child client pending disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011), amended LR 45:415 (March 2019).

§1503. Defense's Active Participation in Designing the Disposition

A. The active participation of the child client's attorney at disposition is essential. In many cases, the attorney's most valuable service to the child client will be rendered at this stage of the proceeding. Counsel should have the disposition hearing held on a subsequent date after the adjudication, unless there is a strategic reason for waiving the delay between adjudication and disposition.

B. Prior to disposition there may be non-court meetings and staffings that can affect the juvenile's placement or liberty interest. The attorney should attend or participate in these, where possible.

C. The attorney should not make or agree to a specific dispositional recommendation without the child client's consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011), amended LR 45:415 (March 2019).

§1505. Obligations of Counsel Regarding Disposition

A. The child client's attorney should prepare for a disposition hearing as the attorney would for any other evidentiary hearing, including the consideration of calling appropriate witnesses and the preparation of evidence in mitigation of or support of the recommended disposition. Among the attorney's obligations regarding the disposition hearing are:

1. to ensure all information presented to the court which may harm the child client and which is not accurate and truthful or is otherwise improper is stricken from the text of the predisposition investigation report;

2. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the child client, and which can reasonably be obtained based on the facts and circumstances of the offense, the child client's background, the applicable sentencing provisions, and other information pertinent to the disposition;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the child client, is presented to the court;

4. to consider preparing a letter or memorandum to the judge or juvenile probation officer that highlights the child client's strengths and the appropriateness of the disposition plan proposed by the defense; and

5. where a defendant chooses not to proceed to disposition, to ensure that a plea agreement is negotiated with consideration of the disposition hearing, correctional, financial and collateral implications.

B. The attorney should be familiar with disposition provisions and options applicable to the case, including but not limited to:

1. any disposition assessment tools;

2. detention including any mandatory minimum requirements;

3. deferred disposition and diversionary programs;

4. probation or suspension of disposition and permissible conditions of probation;

5. credit for pre-adjudication detention;

6. restitution;

7. commitment to the Office of Juvenile Justice at a residential or non-residential program;

8. place of confinement and level of security and classification criteria used by Office of Juvenile Justice;

9. eligibility for correctional and educational programs; and

10. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs.

C. The attorney should be familiar with the direct and collateral consequences of adjudication and the disposition, including:

1. the impact of a fine or restitution and any resulting civil liability;

2. possible revocation of probation or parole if client is serving a prior sentence on a parole status;

3. future enhancement on dispositions;

4. loss of participation in extra-curricular activities;

5. loss of college scholarships;

6. suspension or expulsion from school;

7. the inability to be employed in certain occupations including the military;

8. suspension of a motor vehicle operator's permit or license;

9. ineligibility for various government programs (e.g., student loans) or the loss of public housing or other benefits;

10. the requirement to register as a sex offender;

11. the requirement to submit a DNA sample;

12. deportation/removal and other immigration consequences;

13. the loss of other rights (e.g., loss of the right to vote, to carry a firearm or to hold public office);

14. the availability of juvenile arrest or court records to the public, in certain cases; or

15. the transmission of juvenile arrest records, court records, or identifying information to federal law enforcement agencies.

D. The attorney should be familiar with disposition hearing procedures, including:

1. the effect that plea negotiations may have upon the disposition discretion of the court and/or the Office of Juvenile Justice;

2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;

3. the use of "victim impact" evidence at any disposition hearing;

4. the right of the child client to speak prior to receiving the disposition;

5. any discovery rules and reciprocal discovery rules that apply to disposition hearings; and

6. the use of any sentencing guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011), amended LR 45:415 (March 2019).

§1507. Preparing the Child Client for the Disposition Hearing

A. In preparing for the disposition hearing, counsel should consider the need to:

1. explain to the child client the nature of the disposition hearing, the issues involved, the applicable sentencing requirements, disposition options and alternatives available to the court, and the likely and possible consequences of the disposition alternatives;

2. explain fully and candidly to the child client the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any

institution to which commitment is possible, and the probable duration of the child client's responsibilities under the proposed dispositional plan;

3. obtain from the child client relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the child client sources through which the information provided can be corroborated;

4. prepare the child client to be interviewed by the official preparing the predisposition report, including informing the child client of the effects that admissions and other statements may have upon an appeal, retrial or other judicial proceedings, such as forfeiture or restitution proceedings;

5. inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission to committing delinquent acts may have upon an appeal, subsequent retrial or trial on other offenses;

6. when psychological or psychiatric evaluations are ordered by the court or arranged by the attorney prior to disposition, the attorney should explain the nature of the procedure to the child client and the potential lack of confidentiality of disclosures to the evaluator;

7. ensure the child client has adequate time to examine the predisposition report, if one is utilized by the court; and

8. maintain regular contact with the child client prior to the disposition hearing and inform the client of the steps being taken in preparation for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011), amended LR 45:416 (March 2019).

§1509. Predisposition Report

A. Where the court uses a predisposition report, counsel should be familiar with the procedures concerning the preparation, submission, and verification of the predisposition report. Counsel should be prepared to use the predisposition report in defense of the child client.

B. Counsel should be familiar with the practices of the officials who prepare the predisposition report and the defendant's rights in that process, including access to the predisposition report by the attorney and the child client, and ability to waive such a report, if it is in the child client's interest to do so.

C. Counsel should provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the child client's version of the alleged act. Counsel should also take appropriate steps to ensure that erroneous or misleading information which may harm the child client is deleted from the report and to preserve and protect the child client's interests, including requesting that a new report be prepared with the challenged or unproven information deleted before the report or memorandum is distributed to the Office of Juvenile Justice or treatment officials.

D. In preparation for a disposition hearing, the attorney should ensure receipt of the disposition report no later than 72 hours prior to the disposition hearing. Upon receipt of this report, the attorney should review the report with the client, ensure its accuracy and prepare a response to the report. Counsel should prepare a written dispositional plan that counsel and the client agree will best achieve the client's dispositional goals. Counsel should consider consulting with social service experts or other appropriate experts to develop the dispositional plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011), amended LR 45:416 (March 2019).

§1511. Prosecution's Disposition Position

A. The attorney should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of disposition be imposed and attempt to persuade the district attorney to support the child client's requested disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011), amended LR 45:416 (March 2019).

§1513. Disposition Hearing

A. The attorney should take steps to see that the disposition hearing is conducted in a timely fashion consistent with the prescribed time limits in the Children's Code for conducting the disposition hearing unless there are strategic reasons for not doing so, and should request appropriate relief for failure to follow the prescribed time limits.

B. The attorney should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the child client's interest.

C. Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the child client's interests.

D. The lawyer at disposition should examine fully and, where possible, impeach any witness whose evidence is damaging to the child client's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or

contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child client's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

E. Where information favorable to the child client will be disputed or challenged, the attorney should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child client.

F. Where the court has the authority to do so, counsel should request specific recommendations from the court concerning the place of detention, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

G. During the hearing if the court is indicating a commitment is likely, the attorney should attempt to ensure that the child client is placed in the most appropriate, least restrictive placement available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011), amended LR 45:417 (March 2019).

§1515. Post-Disposition Counseling

A. When a disposition order has been entered, it is the attorney's duty to explain the nature, obligations and consequences of the disposition to the child client and to urge upon the child client the need for accepting and cooperating with the dispositional order. The child client should also understand the consequences of a violation of the order.

B. Where the court places the child client in the custody of the Office of Juvenile Justice, with the child client's permission and a parent's written release, the attorney should do the following:

1. assert the child client's rights to subsequent review hearings as provided by law;

2. provide the Office of Juvenile Justice with a copy of the child client's education records; and

3. advise the child client on his rights to continued representation post-disposition.

C. If appeal from either the adjudicative or dispositional decree is contemplated, the child client should be advised of that possibility, and the attorney shall do the following:

1. counsel compliance with the court's decision during the interim; and

2. request that any order of commitment be stayed pending appeal, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011), amended LR 45:417 (March 2019).

§1517. Reviewing or Drafting Court Orders

A. Counsel's attorney should review all written orders or when necessary draft orders to ensure that the child client's interests are protected, to ensure the orders are clear and specific, and to ensure the order accurately reflects the court's oral pronouncement and complies with the applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011), amended LR 45:417 (March 2019).

§1519. Monitoring the Child Client's Post-disposition Detention

A. The attorney should monitor the child client's post-disposition detention status and ensure that the child client is placed in a commitment program in a timely manner as provided by law, that the child client is receiving appropriate or required rehabilitative services, that the child client is receiving appropriate educational services, and that the child client is physically, mentally, and emotionally safe in the child client's facility.

B. When a child client is committed to a program, the attorney shall provide the child client information on how to contact the attorney to discuss concerns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011), amended LR 45:417 (March 2019).

§1521. Post-Disposition Representation

A. The lawyer's responsibility to the child client does not end with the entry of a final dispositional order. Louisiana law entitles juveniles to representation at every stage of the proceeding, including post-disposition matters. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the child client in matters arising from the original proceeding.

B. The lawyer should conduct post-dispositional proceedings according to the principles generally governing representation in juvenile court matters. The attorney should be prepared to actively participate in hearings regarding probation status or conditions, conditions of confinement, and post-dispositional services. When a child client is committed to a program and the attorney receives notice of an Office of Juvenile Justice transfer staffing or decision, the attorney should review and challenge the decision and, if appropriate, bring the matter to the trial court.

C. The lawyer should monitor the child client's progress in secure care and when appropriate file necessary motions for modification of disposition on behalf of the child client.

D. In providing representation with respect to post-dispositional proceedings, the attorney should do the following:

1. Contact both the child client and the agency or institution involved in the disposition plan at regular intervals in order to ensure that the child client's rights are respected and, where necessary, to counsel the child client and the child client's family concerning the dispositional plan. The attorney should actively seek court intervention when the child client is subjected to inappropriate treatment or conditions or when the child client's rights are violated.

2. Prepare for hearings, whether the review is sought by the child client or is a review hearing provided by law, by conducting an appropriate investigation including the following:

a. request and review documents from the child client's probation file or Office of Juvenile Justice file;

b. interview the child client and the child client's collateral contacts, including the adult or adults who are expected to assume custody of the child client when the child client is released from custody or supervision, or to provide re-entry support if the child client has reached the age of majority while in custody;

c. In consultation with the child client and available social services or other appropriate professionals, decide an appropriate plan for post-dispositional proceedings, including:

i. Whether to request a modification of disposition, including termination of probation, release from state custody or step-down to non-secure custody;

ii. Whether to request a modification of conditions of confinement or a modification of conditions of probation; and

d. Attempt to determine, unless there is a sound tactical reason for not doing so, the prosecution's position with respect to the hearing and attempt to persuade the district attorney to support the child client's position with respect to the hearing.

3. Conduct any post-dispositional hearings according to the principles generally governing representation in juvenile court matters including the following:

a. Develop, in consultation with the child client, a theory of the hearing and a plan for presenting and advancing the theory, including the presentment of friendly witnesses and documentation;

b. Request a contradictory hearing when necessary to establish disputed facts, develop evidence, or assert the child client's rights;

c. In a contradictory hearing, examine fully and, where possible, impeach any witness whose evidence is damaging to the child client's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child client's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

d. Present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child client.

e. Advocate for the child client's interests in argument, whether in summary hearing or contradictory hearing.

E. Where the lawyer is aware that the child client or the child client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she may render assistance in arranging for such services.

F. Even after an attorney's representation in a case is complete, the attorney should comply with a child client's reasonable requests for information and materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011), amended LR 45:417 (March 2019).

§1523. Child Client's Right to Appeal

A. Following a delinquency adjudication, the attorney should inform the child client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. This discussion should include the details of the appellate process including the time frames of decisions, the child client's obligations pending appeal, and the possibility of success on appeal.

B. Counsel representing the child client following a delinquency adjudication should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the child client of the nature, consequences, probable outcome, and advantages or disadvantages associated with such proceedings.

C. After disposition, the attorney should consider filing a motion to reconsider the disposition. The attorney should consider an appeal of the disposition where appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011), amended LR 45:418 (March 2019).

§1525. Counsel's Participation in Appeal

A. A lawyer who has represented a client through adjudication shall be prepared to continue representation in appellate actions, whether affirmative or defensive, unless new counsel is appointed at the request of the client or, in

the case of a felony-grade delinquency matter, the trial attorney appropriately utilizes the services of the Louisiana Appellate Project, to the extent those appellate services are available.

B. Whether or not trial counsel expects to conduct the appeal, he or she shall promptly inform the child client of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the child client decides not to exercise this privilege.

C. If after such consultation and if the child client wishes to appeal the order, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the client during the pendency of the appeal.

D. In circumstances where the child client wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

E. Where the child client indicates a desire to appeal the judgment and/or disposition of the court, counsel should consider requesting a stay of execution of any disposition, particularly one involving out-of-home placement or secure care. If the stay is denied, the attorney should consider appealing the stay. The attorney should also inform the child client of any right that may exist to be released on bail pending the disposition of the appeal. Where an appeal is taken and the child client requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

F. Where the child client takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

G. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the child client's interests, new counsel may be appointed in place of trial counsel.

H. When the appellate decision is received, the attorney or substitute appellate counsel should explain the outcome of the case to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011), amended LR 45:418 (March 2019).

§1527. Probation Revocation Representation

A. Trial counsel should be prepared to continue representation if revocation of the child client's probation or parole is sought, unless new counsel is appointed.

B. The attorney appointed to represent the child client charged with a violation of probation should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child client;

2. review the probation department file;

3. identify, locate and interview exculpatory or mitigating witnesses;

4. consider reviewing the child client's participation in mandated programs; and

5. consider obtaining expert assistance to test the validity of relevant scientific evidence (e.g., urinalysis results).

C. In preparing for a probation revocation, the attorney should be familiar with all the procedural protections available to the child client including but not limited to discovery, cross-examination, compelling witnesses and timely filing of violations.

D. When representing a child client in a revocation of probation hearing who was not a client of the attorney at the initial adjudication, the attorney should find out if the child client was represented by an attorney in the underlying offense for which the child client was placed on probation. The attorney may have an argument if the child client entered an admission without counsel and did not give a valid waiver of counsel.

E. The attorney should prepare the child client for the probation revocation hearing including the possibility of the child client or parent being called as witnesses by the State. The attorney should also prepare the child client for all possible consequences of a decision to enter a plea or the consequences of a probation revocation.

F. In preparing for the probation revocation, the attorney should prepare alternative dispositions including the possibility of negotiated alternatives such as a pre-hearing contempt proceeding or an additional disposition short of revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011), amended LR 45:419 (March 2019).

§1529. Challenges to the Effectiveness of Counsel

A. Where a lawyer appointed or retained to represent a child client previously represented by other counsel has a good faith belief that prior counsel did not provide effective assistance, the child client should be so advised and any appropriate relief for the child client on that ground should be pursued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011), amended LR 45:419 (March 2019).

Chapter 17. Service Restriction Protocol

§1701. Purpose, Findings and Intentions

A. On May 25, 2011, the legislative auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that 28 of Louisiana's 42 district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

The report explains, at p. 6, that:

[D]uring 2008 and 2009, the Louisiana Public Defender Board ("Board") received less money than it had requested during the budgeting/appropriations process. To preserve the state's public defender system, the Board reduced, and in some cases, eliminated state funding to local public defender districts that had positive fund balances. This allowed state funding to be directed to those districts with the greatest financial need. Twelve districts were required to use their fund balances to finance operations in 2008 and 28 districts were required to do so in 2009. It was a limited solution that allowed the continuation of the public defense system during lean economic times. At the same time, this seriously depleted most of the local districts' fund balances.

1. As a result of this spending pattern, the legislative auditor recommended that the board monitor the fiscal operations and financial position of all district defenders and, further, provide guidance to district defenders to ensure that districts do not spend more money than they collect. In order to comply with the legislative auditor's recommendation to provide guidance to public defenders to ensure that districts do not spend more funds than they receive, the board adopts this service restriction protocol.

B. The board recognizes that excessive caseloads affect the quality of representation being rendered by public defense service providers and thereby compromise the reliability of verdicts and threaten the conviction of innocent persons.

C. The board further recognizes that excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct. The board finds that by breaching the ethical obligations imposed by the Rules of Professional Conduct, a public defense service provider fails to satisfy the state's obligation to provide effective assistance of counsel to indigent defendants at each critical stage of the proceeding.

1. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to rules:

a. 1.1 (requiring competent representation);

b. 1.3 (requiring "reasonable diligence and promptness" in representation);

c. 1.4 (requiring prompt and reasonable communications with the client);

d. 1.7(a)(2) (a "lawyer shall not represent a client if … there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person…");

e. 1.16(a)(1) (requiring a lawyer to "withdraw from the representation of a client if…the representation will result in violation of the Rules of Professional Conduct or law.");

f. 5.1(a) and (b) (imposing on a "firm" the obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and that a "lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct"); and

g. 6.2(a) (a "lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as … representing the client is likely to result in violation of the Rules of Professional Conduct or other law.").

2. The board further recognizes that a district or a district defender's office may be a "firm" for the purposes of Rule of Professional Conduct 5.1(a).

D. When this protocol uses "shall" or "shall not," it is intended to impose binding obligations. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct, but not as a binding rule. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not prohibited specifically.

E. This protocol is intended to be read consistently with constitutional requirements, statutes, the Rules of Professional Conduct, other court rules and decisional law and in the context of all relevant circumstances.

F. This protocol is neither designed nor intended as a basis for civil liability, criminal prosecution or the judicial evaluation of any public defense service provider's alleged misconduct.

G. If any phrase, clause, sentence or provision of this protocol is declared invalid for any reason, such invalidity does not affect the other provisions of this protocol that can be given effect without the invalid provision, and to this end, the provisions of this protocol are severable. The provisions of this protocol shall be liberally construed to effectuate the protocol's purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1703. Definitions

A. As used in this protocol, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

Board—the Louisiana Public Defender Board.

Board Staff—one or more members of the executive staff of the Board as set forth in R.S. 15:150 assigned by the board or the state public defender to perform the duties set forth herein.

Case—*case* as defined in R.S. 15:174.C.

Caseload—the number of cases handled by a public defender service provider. The *caseload* of a district is the sum of all public defender service providers' caseloads in that district.

District—the judicial district in which a district defender supervises service providers and enforces standards and guidelines.

District Defender—an attorney under contract with the board to supervise public defense service providers and enforce standards and guidelines within a judicial district or multiple judicial districts. Also known as a district public defender or chief indigent defender.

District Indigent Defender Fund—the fund provided for in R.S. 15:168.

Fiscal Crisis—that a district indigent defender fund is unable to support its expenditures with revenues received from all sources and any accrued fund balance. Because a district indigent defender fund may not expend amounts in excess of revenues and accrued fund balance, a district facing a fiscal crisis must restrict public defense services to cut back on or slow the growth of expenditures. Services should be restricted in the manner that the board and the affected district defender determine to be the least harmful to the continuation of public defense services within the district.

Notice—written notice given as provided for herein.:

a. between the district defender and the board or board staff. Notice between a district defender and the board or board staff, as required in this protocol, may be given by mail, facsimile transmission or electronic mail. If notice is given by certified or registered mail, notice shall be effective upon receipt by the addressee. If notice is given by mail that is not sent certified or registered, by facsimile transmission, or by electronic mail, notice shall be effective only after the sending party confirms telephonically with the receiving party that all pages, including attachments, were received by the receiving party;

b. from the district defender to the court. Notice from a district defender to the court, as required in this protocol, shall be given by filing notice with the affected district's clerks(s) of court and hand-delivering copies to the offices of the chief judge and the district attorney of the affected district.;

c. from the district defender to others. Notice from a district defender to persons not otherwise specified may be given by hand-delivery or by certified or registered mail; notice of shall be effective upon hand-delivery or deposit into the U.S. mail.

Public Defender Service Provider—an attorney who provides legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions as a district employee or as an independent contractor. Unless the context or surrounding circumstances clearly indicate otherwise, a public defender service provider includes a district defender.

Rules of Professional Conduct—the Louisiana Rules of Professional Conduct.

State Public Defender—the person employed by the board pursuant to R.S. 15:152.

Workload—a public defender service provider's caseload, including appointed and other work, adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties. Non-caseload factors also include the experience level of the public defense service provider, waits in courtrooms for judicial priority afforded private-lawyer cases, training functions required of senior lawyers to junior lawyers, travel time to and from jails and prisons where clients are incarcerated, timeliness and ease of access to incarcerated clients, and the number of non-English speaking clients. A workload is excessive when it impairs the ability of a public defense service provider to meet the ethical obligations imposed by the Rules of Professional Conduct. The workload of a district is the sum of all public defender service providers' workloads in that district. The workload of a district is excessive when all non-supervisory public defense service providers within that district have excessive workloads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:814 (March 2012).

§1705. Applicability of Sections

A. Sections 1707 through 1717 shall apply when a district is facing a fiscal crisis or excessive workload, or both. Section 1719 applies when one or more individual public defender service providers are facing excessive workloads, but the district itself is not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1707. Notice of Impending Fiscal Crisis, Excessive Caseload, or Both

A. When a district defender or board staff projects that a district will experience a fiscal crisis or an excessive workload, or both, during the next 12 months, the district defender or board staff, as the case may be, shall give notice to the other within 7 days of making such projection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1709. Discussion of Alternatives; Proposed Service Restriction Plan

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 45 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 60 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 15 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 30 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1711. Comprehensive and Expedited Site Visits

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps shall be taken.

1. Within 90 days of receiving the district defender's proposed service restriction plan, board staff shall conduct a comprehensive site visit. the purpose of the comprehensive site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting comprehensive site visits, board staff should perform any and all such actions that board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the comprehensive site visit, the district defender and board staff should consult with the chief judge and district attorney before finalizing the service restriction plan.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps should be taken.

1. Within 45 days of receipt of the district defender's proposed service restriction plan, board staff should conduct an expedited site visit. The purpose of the expedited site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting expedited site visits, board staff may perform any and all such actions the board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the expedited site visit, the district defender and board staff should consult with the chief judge and district attorney prior to finalizing the service restriction plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1713. Factors to be Considered in Development of a Service Restriction Plan

A. Recognition of Diversity of Districts

1. Individual districts have different public defender service delivery methods, funding levels, caseloads, workloads and staff. As a result, service restriction plans should be tailored to each district. In some districts, restricting misdemeanor representation may be the appropriate step, while in others; districts may no longer be able to handle capital cases. However, to the extent possible, all service restriction plans should reflect that the district will continue representation of existing clients.

B. Non-Attorney Support Staff

1. In preparing the final service restriction plan for a district, the district defender and board staff should attempt to preserve the district's support staff to the extent possible.

C. Public Defender Service Provider Considerations

1. Public defender service providers' workloads must be controlled so that all matters can be handled competently. If workloads prevent public defender service providers' from providing competent representation to existing clients, public defender service providers must neither be allowed nor required to accept new clients.

2. Reasonable communications between public defender service providers and their clients are necessary for clients to participate effectively in their representation.

3. Loyalty and independent judgment are essential elements in public defender service providers' client relationships. Conflicts of interest can arise from the public defender service providers' responsibilities to other clients, former clients, third persons or from the public defender service providers' own interest. Loyalty to clients is impaired when a public defender service provider cannot consider, recommend, or carry out appropriate courses of action for clients because of the public defender service providers' other responsibilities or interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1715. Declination of New Appointments; Other Relief

A. If the district defender and board staff agree that the fiscal crisis or excessive workload, or both, is imminent, the district defender and public defense service providers shall begin declining new appointments at an agreed upon time prior to breaching the Rules of Professional Conduct.

B. If the court appoints the district defender or one of the district's public defense service providers following declination of appointments as set forth in §1715.A, the district defender and the district's public defense service providers shall seek continuances in those cases where the defendant is not incarcerated. The district defender and the district's public defense service providers shall continue to provide legal services for incarcerated clients provided they may do so without breaching the Rules of Professional Conduct and after considering the severity of the offense and the length of time the defendant has been in custody. If the district defender determines that litigation pursuant to State v. Peart, 621 So.2d 780 (La. 1993); State v. Citizen, 04-KA-1841 (La. 4/1/05), 898 So.2d 325 or other related litigation is necessary at this time, the district defender is authorized to take such action after giving notice to the board and board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1717. Finalization of Plan; Dissemination

A. If the fiscal crisis or excessive workload, or both, remains imminent at conclusion of the board staff's site visit, the district defender shall, within 30 days of conclusion of the site visit, submit his or her proposed written final service restriction plan to board staff.

B. Board staff shall have seven days after receipt of the proposed final service restriction plan to review and approve the plan as submitted or approve the plan as modified by board staff. The plan becomes final upon the district defender's receipt of the board staff's approval. If board staff takes no action on the proposed final services restriction plan, the plan is deemed to be approved as submitted on the first business day following the expiration of the seventh day.

C. After the plan has been approved by board staff, the district defender shall give notice of the plan, together with a copy of the plan, to the court in accordance with §1703.A.9.b. and to the state public defender in accordance with §1703.A.9.a.

D. Copies of the notice and the final service restriction plan also shall be sent by the district defender to the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chief and/or administrative judge of each court in the district in which public defender service providers deliver legal services to indigent persons in criminal proceedings, and the sheriff and parish president or equivalent head of parish government for each parish in the district in accordance with §1703.A.9.c.

E. The district defender may seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation.

F. Notices under this §1717 shall include the effective date of the service restriction and should be provided as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1719. Excessive Workloads of Individual Public Defender Service Providers

A. A public defender service provider's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or result in the breach of ethical obligations, and public defense service providers are obligated to decline appointments above such levels.

B. If the district defender becomes aware that one or more of the district's public defender service providers' workloads are, or will become, excessive, the district defender shall take appropriate action. Appropriate action includes, but is not limited to, transferring non-representational responsibilities within the district, including managerial or supervisory responsibilities to others; transferring cases from one public defender service providers to another; or authorizing the public defender service providers to refuse new cases.

C. If a public defense service provider believes that he or she has an excessive workload, the public defense service provider shall consult with his or her supervisor and seek a solution by transferring cases to a public defense service provider whose workload is not excessive or by transferring non-representational responsibilities. Should the supervisor disagree with the public defense service provider's position or refuse to acknowledge the problem, the public defense service provider should continue to advance up the chain of command within the district until either relief is obtained or the public defense service provider has reached and requested assistance or relief from the district defender. If after appealing to his or her supervisor and district defender without relief, the public defense service provider should appeal to the regional director, if applicable, and the state public defender for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:817 (March 2012).

Chapter 19. Performance Standards for Criminal Defense Representation in Indigent Capital Cases

§1901. Purpose, Findings and Intentions

A. The standards for attorneys representing indigent defendants in capital cases are intended to serve several purposes. First and foremost, the standards are intended to encourage public defenders, assistant public defenders, and assigned counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants. These standards apply to trial level, appellate, and post-conviction representation. It is the intention of these rules to adopt and apply the standards for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary, and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*.

B. The standards are also intended to alert defense counsel to courses of action that are necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that should be taken in each case to ensure that the capital client receives high quality legal representation. The standards are further intended to provide a measure by which the performance of individual attorneys and defender offices may be evaluated by case supervisors, responsible agencies and the state public defender and to assist in training and supervising attorneys. While the great majority of the requirements detailed in these standards reflect accepted minimum levels of practice in capital defense, some standards have been added to assist in the supervision, development and accountability of indigent capital defense service provision.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate". In those instances where a particular action is required in providing quality representation, the standards use the words "should" or "shall". Even where the standards use the words "should" or "shall", in certain situations the lawyers best informed professional judgment and discretion may indicate otherwise.

D. There is a limitless variety of circumstances presented by indigent capital defense and this variation in combination with changes in law and procedure requires that attorneys approach each new case with a fresh outlook. Therefore, though the standards are intended to be comprehensive, they are not exhaustive. Depending upon the type of case and the particular jurisdiction, there may well be additional actions that an attorney should take or should consider taking in order to provide zealous and effective representation. Attorneys are expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from these standards, the attorney should be aware of and be able to articulate the reasons that a departure from the standards is in the client's best interests and consistent with high quality legal representation.

E. Minimum standards that have been promulgated concerning representation of defendants in non-capital cases, and the level of adherence to such standards required for non-capital cases are not sufficient for death penalty cases. Counsel in death penalty cases are required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has adequate time and resources for preparation. These performance standards have been adapted from the *State of Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court*, adding capital specific issues and procedures where necessary. In light of the recognition that "death is different" and capital prosecutions necessitate heightened procedural safeguards, these standards should be interpreted in order to compel high quality legal representation.

F. In accordance with R.S. 15:173 the exercise of the authority to promulgate standards is not intended to create any new right, right of action, or cause of action or eliminate any right, right of action, or cause of action existing under current law. Accordingly, these standards shall not be construed to provide any criminal defendant the basis of any claim that the attorney or attorneys appointed to represent him pursuant to the Louisiana Public Defender Act of 2007 performed in an ineffective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:49 (January 2015).

§1903. General Standards for Capital Defense Counsel

A. Obligations of Defense Counsel

1. Since the death penalty differs from all other criminal penalties, defense counsel in a capital case should

respond to this difference by making extraordinary efforts on behalf of the accused.

2. The minimum standard in a capital case is high quality representation. To provide high quality representation counsel should zealously preserve, protect, and promote the client's rights and interests, and be loyal to the client. Counsel should serve as the client's counselor and advocate with courage and devotion, free from conflicts of interest and political or judicial interference. Zealous, high quality representation is to be provided in accordance with the *Louisiana Rules of Professional Conduct*.

3. To ensure the preservation, protection and promotion of the client's right and interests, counsel should:

a. be proficient in the applicable substantive and procedural law;

b. acquire and maintain appropriate experience, skills and training;

c. devote adequate time and resources to the case;

d. engage in the preparation necessary for high quality representation;

e. endeavor to establish and maintain a relationship of trust and open communication with the client;

f. make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

4. The primary and most fundamental obligation of a capital defense attorney to the administration of justice and as an officer of the court is to provide zealous, effective, high quality, ethical representation for his or her clients at all stages of the criminal process.

5. If personal matters make it impossible for defense counsel to fulfill the duty of zealous, high quality representation, he or she has a duty to refrain from representing the client.

6. Where counsel is unable to provide high quality representation in a particular case, counsel must promptly bring this deficiency to the attention of the capital case supervisor and the capital case coordinator or Responsible Agency. If the deficiency cannot be remedied, then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

7. Counsel assigned in any case in which the death penalty is a possible punishment should, even if the prosecutor has not indicated that the death penalty will be sought, begin preparation for the case as one in which the death penalty will be sought while employing strategies to have the case designated as a non-capital one. Even if the case has not been filed as a capital case, if there exists a reasonable possibility to believe that the case could be amended to a capital charge, counsel should be guided by capital defense techniques and these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment, and any political factors that may impact the charging decision.

B. Training and Experience of Capital Defense Counsel

1. In order to provide high quality legal representation, counsel should have a mastery of any substantive criminal law and laws of criminal procedure that may be relevant to counsel's representation. Counsel should also be familiar with the prevailing customs or practices of the relevant court, and the policies and practices of the prosecuting agency.

2. In providing representation at any stage in a capital case, counsel should be familiar with all applicable areas of law relevant to capital trials, appeals, and state and federal post-conviction relief.

3. Prior to agreeing to undertake representation in a capital case, counsel should have sufficient experience or training to provide high quality representation. Counsel should not accept a capital case assignment unless he or she has been certified for the specific level of representation assigned, and has the necessary knowledge and skills to handle the particular case.

4. If after being assigned a case counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

5. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community and certified capital defenders, in particular. Further, where considerations of timing, resources or the interests of the client make it appropriate, counsel should request assignment of an additional attorney(s). Similarly, where appropriate, counsel should request assignment of an additional attorney(s) with specialized experience or knowledge to assist directly in particular aspects of the representation.

6. Capital defense counsel should complete a comprehensive training program in the defense of capital cases as required by the capital guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of capital cases. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of capital cases.

7. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information

about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

C. Resources and Caseload

1. Counsel should not accept a capital case assignment unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, and research tools.

2. If after being assigned a case counsel discovers that he or she does not have available sufficient resources, then counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief.

3. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with the capital guidelines and these performance standards, counsel shall inform the case supervisor. If counsel believes the case supervisor has inadequately resolved the issue, counsel should raise the question progressively with the district and the state public defender, as appropriate. Where counsel has exhausted all avenues for reasonable resolution and the excessive workload issue has not been resolved counsel should, after providing the state public defender with reasonable notice, move to withdraw from the case or cases in which capital defense services in compliance with the guidelines and these performance standards cannot be provided.

4. Counsel should never give preference to retained clients over indigent clients, or suggest that retained clients should or would receive preference.

5. Counsel representing capital clients should, due to the nature of capital cases and the necessity for time-consuming research and preparation, give priority to death penalty cases over their other caseload.

D. Professionalism

1. Counsel has an obligation to keep and maintain a thorough, organized, and current file relating to the representation of each client. Counsel's file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel's file should be maintained in a fashion that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained, and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

2. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client's rights from being forfeited due to error. Counsel should be present, alert, and focused on the client's best interests during all critical stages of the proceedings.

3. Counsel's obligation to provide high quality representation to the client continues until counsel formally withdraws, or an order relieving counsel becomes final. Unless required to do so by law or the rules of professional conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case, and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

4. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client, and should cooperate fully with successor counsel. This duty includes, but is not limited to:

a. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;

b. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

c. sharing potential further areas of investigation and litigation with successor counsel; and

d. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

5. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

a. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

b. discovering potential further areas of investigation and litigation; and

c. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

6. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

7. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

8. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any improper influence arising from a desire to assist the client or to protect him or herself.

9. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent, unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this Standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel, nor limit the ability of counsel to communicate confidential or privileged information to the client or his legal representativeness within the protection of the lawyer-client relationship.

10. While ensuring compliance with the *Louisiana Rules of Professional Conduct* in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

11. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity, and compassion. Counsel should avoid disparaging the victim directly or indirectly, unless necessary and appropriate in the circumstances of the particular case. Counsel should undertake victim outreach through an appropriately qualified team member, or the use of an expert in defense initiated victim outreach.

E. Conflicts of Interest

1. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team. Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s), and the names of any important witnesses.

2. Where a capital case involves multiple defendants, a conflict will be presumed between the defendants and separate representation will be required. However, there are many other situations in which conflicts can arise. In addition to the current or prior representation of co-defendants or witnesses, conflicts can arise, for example, when a capital defense lawyer: is subject to investigation or criminal prosecution by state or federal authorities; is representing or has represented a witness or victim; is seeking employment with prosecuting agencies; has a financial, political or personal interest in the proceedings; has an excessive workload; or, is related to a victim or the judge. Disclosure of potential conflicts should be made under any of these circumstances and counsel should err in favor of disclosure of any other potential conflicts.

3. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the *Louisiana Rules of Professional Conduct*.

4. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the *Louisiana Rules of Professional Conduct*. Defense counsel should fully disclose to the client, at the earliest feasible opportunity, any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

5. Where the client files a motion, complaint, or grievance against counsel in regard to the quality of his or her representation, counsel should notify the Case Supervisor and the agency responsible for the assignment of counsel to the case.

6. Any waiver of conflict that is obtained should comply with the requirements of the *Louisiana Rules of Professional Conduct*, and should be obtained only after the client has been told: that a conflict of interest exists; the consequences to his defense from continuing with conflict-laden counsel; and that he has a right to obtain other counsel. In a capital case, any waiver of conflict should be obtained through and after consultation by the client with independent counsel. In order to allow the monitoring of the procedure of obtaining of a waiver, the capital case coordinator should be advised prior to obtaining a conflict waiver from an indigent capital defendant and should approve or provide for the assignment of independent counsel.

F. Allocation of Authority between Counsel and Client

1. The allocation of authority between counsel and the client shall be managed in accordance with *Louisiana's Rules of Professional Conduct*, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

2. Counsel serves as the representative of the client and shall abide by the client's decisions regarding the objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

3. The attorney shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify, and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

4. Strategic and tactical decisions should be made by counsel after consultation with the client where feasible and appropriate. When feasible and appropriate, counsel and other team members should seek the client's input regarding decisions to be made in the case. Counsel should candidly advise the client regarding the probable success and consequences of adopting any particular posture in the proceedings, and provide the client with all information necessary to make informed decisions. Counsel should provide the client with his or her professional opinion on what course to adopt whenever possible. In order to ensure that consultation with the client is meaningful, counsel should make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

5. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these Standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

6. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

7. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should consult with the case supervisor and utilize other defense team members in his or her efforts to resolve a dispute.

8. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the case supervisor and responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

9. Where the client insists upon taking action with which the counsel has a fundamental disagreement or the representation has been rendered unreasonably difficult by the client, counsel shall advise the case supervisor and may request a substitution of counsel by the responsible agency. Where a substitution of counsel is not permitted, counsel may move to withdraw from the representation only with the prior consent of the responsible agency.

10. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

11. Where counsel or a client make a reasonable request for substitution of counsel, the district defender or state public defender, as appropriate, shall take all

reasonable steps to substitute counsel. Where substitution of counsel is not possible, every effort should be made to avoid the withdrawal or discharge of counsel, including the assignment of additional counsel, consultation with persons experienced in resolving such disputes and providing counsel access to expert advice and training designed to assist in resolving the dispute.

12. A client's capacity to make adequately considered decisions in connection with the representation may be diminished, whether because of mental impairment or for some other reason. Where counsel reasonably believes that the client has diminished capacity, he or she should:

a. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

b. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

c. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

13. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should notify the case supervisor and appropriate action should be taken to respond to this situation. Given the gravity and complexity of this situation, counsel and the case supervisor should consider consultation with additional counsel experienced and skilled in this area.

14. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring file to successor counsel. Upon the termination of the representation, the client will ordinarily be entitled to counsel's entire file upon request.

G. Assembling the Defense Team

1. Counsel are to be assigned in accordance with the capital defense guidelines. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

2. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these performance standards and the associated guidelines. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these standards, unless the standard specifically imposes the duty on "lead counsel."

3. As soon as practical after assignment and at all stages of a capital case, the director of the law office assigned the case, the contracting agency or lead counsel should assemble a defense team by:

a. providing advice regarding the number and identity of the additional counsel to be assigned;

b. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

i. at least one mitigation specialist and one fact investigator;

ii. at least one member with specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

iii. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

iv. sufficient support staff, such as secretarial, law clerk and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

v. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

4. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

5. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with the Capital Guidelines and Performance Standards and are sufficient to permit high quality representation.

6. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this Section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and, if such a witness is necessary, a separate expert mitigation specialist should be retained.

7. Team members should be fully instructed on the practices and procedures to be adopted by the team, including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

8. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make an adequate record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

9. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these Performance Standards and associated Guidelines.

10. In general, counsel should avoid assigning one lawyer to handle the guilt-innocence phase and another lawyer to handle the penalty phase.

H. Scope of Representation

1. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

2. Ordinarily, counsel representing a capital defendant should assume responsibility for the representation of the defendant in all pending criminal and collateral proceedings involving the client for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the capital representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions of the client where the favorable resolution of such an action is likely to be of significance in the capital proceeding. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

3. Where it is not appropriate for counsel to assume the representation of the defendant in other proceedings due to a lack of appropriate experience or qualifications, lack of sufficient resources, or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client and is, where possible, capitally certified.

4. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his capital proceedings and is conducted in a manner that best serves the client's interests in light of the capital proceedings.

5. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain the exact limits of the scope of the representation, including both those purposes for which the client will and will not be represented. Where possible, the agreement to provide representation that is limited in its scope should be communicated in writing.

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§1905. Performance Standard 2: Relations with Client

A. Counsel's Obligation to Build and Maintain Relationship with Client

1. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a capital client should proceed in a client-centered fashion with a strong emphasis on the relationship between the defense team and the client.

2. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, and cultural differences, circumstances of incarceration, prior experiences in the criminal justice system, and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, the capital case supervisor should be informed, and such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

3. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member, or seeking removal or replacement from the director of the law office or contracting agency.

4. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation of a capital client, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

5. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a capital client, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client, but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

6. In a trial level case, a capital client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a capital client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following trial.

7. In an appellate or post-conviction case, a capital client may be visited less frequently, but regular communication and actual visits remain critical to effective representation. In an appellate or post-conviction case, a capital client should be visited by a member of the defense team no less than once every two weeks, by an attorney member of the defense team no less than once a month and by lead counsel no less than once every two months, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following any major hearing and in the lead up to any execution date.

8. In all capital cases, where barriers to communication or trust exist or the circumstances call for more frequent contact, visits by defense team members, including counsel, should be as frequent as necessary to ensure high quality representation and to protect the interests of the client.

9. Counsel at all stages of the case need to monitor the client's physical, mental, and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional, and mental condition throughout the representation both personally, through the observations of other team members and experts, and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change, and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

10. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

a. the progress of and prospects for the investigation and what assistance the client might provide;

b. current or potential legal issues;

c. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;

d. the development of a defense theory;

e. presentation of the defense case;

f. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;

g. litigation deadlines and the projected schedule of case-related events; and

h. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

11. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

12. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

13. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

14. Counsel should treat the client with respect. Counsel should never demean, disparage, or be hostile towards the client. It is the responsibility of lead counsel to ensure that all members of the defense team satisfy this standard.

15. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

16. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential, or potentially damaging conversations are not conducted during any monitored or recorded calls.

17. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel.

a. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and counsel. Counsel should specifically advise the client to assert his rights to silence and counsel if approached by any state actor seeking to question him about the charged offense, any other offense, or any other matter relevant to guilt, penalty, or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights.

b. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters, or any matter that may prove relevant in a penalty phase hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

c. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

18. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client to prevent any potentially harmful statements from being made or alleged.

B. Counsel's Initial Interviews with Client

1. Recognizing that first contact with a capital client is an extremely important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights, and begin the development of a relationship of trust and confidence.

2. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

3. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence, and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

4. An initial interview of pre-trial clients should be conducted within twenty-four hours of counsel's entry into the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

5. If non-certified counsel is meeting with the client before the assignment of appropriately certified counsel, the information obtained should ordinarily be limited to that necessary to advise the client concerning the current procedural posture of the case and to provide for the assertion of the client's rights to silence and to counsel.

6. Preparing for the Initial Interview:

a. prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

ii. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available; and,

iii. consult with any predecessor counsel to become more familiar with the case and the client.

b. In addition, where the pre-trial client is incarcerated, counsel should:

i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

iii. be familiar with any procedures available for reviewing the trial judge's setting of bail.

c. prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the procedural posture of the case;

ii. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;

iii. consider consulting with any predecessor counsel to become more familiar with the case and the client.

7. Conducting the Interviews

a. Counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in a capital case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

b. Counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

c. Counsel should take all reasonable steps to ensure, at the initial interview and in all successive interviews and proceedings, that barriers to communication and trust are overcome.

d. The scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client, and the circumstances under which the interviews occur.

e. Information to be provided to the client during initial interviews includes, but is not limited to:

i. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;

ii. describing the other persons who are members of the defense team, how and when counsel or other appropriate members of the defense team can be contacted and when counsel or other members of the defense team will see the client next;

iii. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, potential penalties, and available defenses;

iv. what arrangements will be made or attempted for the satisfaction of the client’s most pressing needs; e.g., medical or mental health attention, contact with family or employers;

v. realistic answers, where possible, to the client’s most urgent questions;

vi. an explanation of the availability, likelihood, and procedures that will be followed in setting the conditions of pretrial release; and

vii. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody, and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations.

f. Information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

i. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;

ii. whether the client has any pending proceedings, charges, or outstanding warrants in or from

other jurisdictions or agencies (and the identity of any other appointed or retained counsel);

iii. the ability of the client to meet any financial conditions of release or afford an attorney;

iv. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve.

g. Appreciating the unique pressure placed upon capital defendants and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a relationship of trust and confidence has been established that will permit full and frank disclosure.

h. Where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison, and other records as may be pertinent.

i. Counsel should observe, and consider arranging for, documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

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§1907. Performance Standard 3: Investigation

A. Counsel's Responsibility to Investigate

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, penalty phase, any possible agreed upon disposition, any potential claim for relief, and any possible reduction of the case to a non-capital prosecution. A high quality, exhaustive investigation will be prompt, thorough, and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the penalty phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or penalty phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and penalty phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

B. Conduct of the Investigation

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include: information obtained from the client; information and statements obtained from witnesses; discovery obtained from the state; records collected; physical evidence; and direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to guilt and penalty phase, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and the particular offense charged and include an investigation of: other charged or uncharged bad acts that may be alleged directly or as impeachment; any co-defendant or alleged co-conspirator; any alternate suspects; any victim or victims; relevant law enforcement personnel and agencies; and, forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following.

a. Interviews with the client should be conducted in accordance with performance standard 2.B. In particular, counsel should be conscious of the need for multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews.

b. When interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

ii. potential alibi witnesses;

iii. witnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects:

(a). members of the client's immediate and extended family;

(b). neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;

(c). persons familiar with the communities where the client and the client's family live and have lived;

(d). former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;

(e). correctional, probation or parole officers;

iv. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and

v. government experts who have performed the examinations, tests, or experiments.

c. Discovery should be conducted in accordance with performance standard 5.F.

d. Counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Public Records Law, the Freedom of Information Act, statutory entitlements to records such as medical treatment, military service, social security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media.

i. Counsel should strive to obtain records by means least likely to alert prosecution to the investigative steps being taken by the defense or the content of the records being obtained.

ii. Where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of

third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought.

iii. Unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date.

iv. Counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available.

v. Counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for government witnesses, for possible use at trial for impeachment purposes.

e. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing, but also the legitimacy of the methods used to conduct the testing and the qualifications of those responsible for the testing.

f. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

i. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely, and accurately document the condition of any relevant scene using the most appropriate and effective means, including audio-visual recordings, diagrams, charts, measurements, and descriptive memoranda. The condition of the scenes should always be documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

ii. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

iii. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant, and the similarities and differences between a co-defendant's defense and the client's.

iv. Counsel should also attend potentially relevant hearing involving state or defense witnesses.

C. Duty of Counsel to Conduct Penalty Phase Investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the case for life with the guilt phase strategy.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the penalty phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for life to be stressed at the penalty phase. All information obtained in the guilt phase investigation should be assessed for its significance to the penalty phase and, where possible, the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment, and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication, and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings, parents, and other family members extending back at least three generations, including but not limited to: medical history consisting of complete prenatal, pediatric, and adult health information (including hospitalizations, mental and physical illness or injury, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage); exposure to harmful substances in utero and in the environment; substance abuse and treatment history; mental health history; history of maltreatment and neglect; trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences); educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof); social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability); military experience (including length and type of service, conduct, special training, combat exposure, health and mental health services); immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile criminal and correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective voir dire, motions in limine, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family. Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state in penalty phase to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the penalty phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) which may be alleged against the client should include an investigation of any legal basis for overturning the conviction, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with standard 1.H.

c. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at penalty phase and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate the possibility that there exists any absolute bar to the imposition of the death penalty.

a. Counsel should conduct a high quality, independent, exhaustive investigation to determine whether the client may suffer from intellectual disability. Counsel should not rely on his or her own assessment or impression of the client in determining whether the client has a viable claim of mental retardation as intellectual disability may be difficult to accurately assess and many clients will mask such disability even at the risk of their lives. Where a potential intellectual disability claim exists, the defense team should include members with expertise in the recognition, investigation and development of evidence of intellectual disability as well as the litigation of issues of intellectual disability. Where the defense team does not contain sufficient expertise in this regard, lead counsel should use all available avenues to secure additional counsel or other team members with expertise in investigating and litigating issues of intellectual disability.

b. In view of the decision of *Roper v. Simmons*, 543 U.S. 551 (2005), especially in cases involving foreign born clients, where the client's date of birth may be difficult to document, a special investigation may be required to ascertain the true "age" of the client to ensure that he is "death eligible" and, if not, ensure that the client is not exposed to the possibility of a death sentence.

c. Counsel should attempt to identify and develop other grounds which, though currently not providing an absolute bar to imposition of a death sentence, may in the future provide such exemption, such as serious mental illness, post-18 cognitive impairment, or guilt as a principal not directly responsible for the death.

d. Counsel should ensure that the presentation of evidence of an absolute bar to the death penalty, such as intellectual disability, is not limited to bare proof of the dispositive fact but fully presents the mitigating effect of the

evidence, including the continuing mitigating effect of the evidence even where the evidence does not wholly satisfy the legal bar to the death penalty.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information, and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, military, criminal and incarceration, and social service records, in order to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than death. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the jury, reflect the client's inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:

i. the client's family and those familiar with the client;

ii. the client's friends, teachers, classmates, co-workers, employers, and those who served in the military with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family;

iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

vi. witnesses who can testify about the applicable alternative to a death sentence and/or the condition under which the alternative sentence would be served;

vii. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, social workers and persons with specialized knowledge of medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

iv. persons with specialized knowledge about gangs and gang culture; and

v. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

15. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as

photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

a. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

b. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

c. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, diminished capacity and competence to be executed; and

d. obtaining an agreed disposition or assisting the client make a decision to accept or reject a possible agreed disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the areas to be canvassed. Counsel should determine whether an expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, penalty phase, agreed upon disposition,

litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at both the guilt and penalty phase and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible. Counsel should strongly consider, with the consent of the client, forgoing a guilt-innocence phase plan that denies the defendant had any involvement in the offense and instead attempt to raise doubts about whether the offense was a first-degree murder (e.g., because of the defendant's role, mental state or intent).

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the strategic planning document and any prior drafts to assist in the supervision and support of the defense team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:58 (January 2015).

§1909. Performance Standard 4: Agreed Dispositions

A. Duty of Counsel to Seek an Agreed Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed disposition and promptly convey to the client any offers made by the prosecution for an agreed disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed disposition that is in the client's best interest. Consideration of an agreed disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

B. Formal Advice Regarding Agreed Dispositions

1. Counsel should be aware of, and fully explain to the client:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than death including but not limited to forfeiture of assets, deportation or the denial of naturalization or of

reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in penalty phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

f. available drug rehabilitation programs, psychiatric treatment, and health care;

g. the possible and likely place of confinement;

h. credit for pretrial detention;

i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;

j. eligibility for correctional programs, work release and conditional leaves;

k. deferred sentences, conditional discharges and diversion agreements;

l. probation or suspension of sentence and permissible conditions of probation;

m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and

n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client:

a. concessions the client may make as part of an agreed disposition, including:

i. to waive trial and plead guilty to particular charges;

ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel.

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. that the death penalty will not be sought;

ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a

specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (i)-(ix) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. Art I, §25, R.S. 46:1841 et seq., or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or her guilt (*North Carolina v. Alford*, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (*State v. Crosby*, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and penalty phase and on appellate post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial and appellate process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of mental health, family dysfunction or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and

collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

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§1911. Performance Standard 5: Pre-Trial Litigation

A. Obligations regarding Court Hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court. Counsel should advise the client on appropriate demeanor and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation.

3. Prior to any court hearing, counsel should meet with and explain to the client the purpose and procedure to be followed at the hearing. Where the client may be directly addressed by the court or asked to speak on the record, counsel should warn the client in advance and advise the client on how to proceed. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample.

b. where possible, ensuring that capitally certified counsel shall represent the client at the first appearance hearing conducted under La. C.Cr.P. art. 230.1 in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify

and ensure that the client's medical, mental health and security needs are being met.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a capital defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the capital case and the ramifications for the capital case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana. Counsel should not wait for the client to be extradited before commencing active representation of the client.

C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all pre-indictment cases. Counsel should move for and attempt to secure a preliminary hearing in a timely fashion having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment.

2. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by: creating a transcript of cross-examination of state's witnesses for use as an impeachment tool; preserving testimony favorable to the client of a witness who may not appear at trial; providing discovery of the state's case; allowing for more effective and earlier preparation of a defense; and, persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

3. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

4. In preparing for the preliminary hearing, the attorney should be familiar with:

a. the elements of each of the offenses alleged;

b. the requirements for establishing probable cause;

c. factual information which is available concerning the existence of or lack of probable cause;

d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;

e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and

f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

5. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

D. Counsel's Duties at Arraignment

1. Where possible, capitally certified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's fifth and sixth amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health and security needs are being met.

E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. art. 331, and, where appropriate, to make a proposal concerning conditions of release. Client's charged with capital crimes remain eligible to be admitted to bail even after indictment and counsel should consider and, where appropriate, pursue an application to have the client admitted to bail.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

F. Formal and Informal Discovery

1. Counsel

2. Unless:

a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that may be relied upon by the prosecution to establish first degree murder under R.S. 14:30;

b. any aggravating circumstances that may be relied upon by the prosecution in the penalty phase pursuant to La. C.Cr.P. art. 905.4;

c. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

d. any record of the client's arrests and convictions and those of potential witnesses;

e. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

f. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

g. any documents or tangible evidence obtained from or belonging to the client, including a list of all items seized from the client or from any place under the client's dominion;

h. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

i. one half of any DNA sample taken from the client;

j. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

k. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

l. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

m. any other adjudicated or nonadjudicated conduct that may be relied upon by the prosecution in the penalty phase;

n. any victim impact information that may be relied upon by the prosecution in the penalty phase, including any information favorable to the client regarding the victim or victim impact;

o. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

p. any statements of co-conspirators;

q. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

r. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

3. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

4. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in rule 3.8(d) of the *Louisiana Rules of Professional Conduct*.

5. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

6. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

7. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

8. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special

measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

9. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

10. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional information available from inspection of the original that may not be available from the reproduction.

11. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

12. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

13. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

14. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information.

15. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars, lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these Standards should consider all legal and factual claims potentially available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a capital case when determining the motions to be filed in the particular case, including motions to proceed ex parte. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than pro forma or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

a. the unique characteristics of death penalty law and practice;

b. the potential impact of any pretrial motion or ruling on the strategy for the penalty phase;

c. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;

d. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;

e. the significant limitations placed upon factual development of claims in subsequent stages of the case; and

f. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

a. matters potentially developed in early stages of investigation, including:

i. the pretrial custody of the accused;

ii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;

iii. the need for a preliminary hearing, including a post-indictment preliminary hearing;

iv. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;

v. the need for and adequacy of a bill of particulars;

vi. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or penalty phase of trial;

vii. the need for and adequacy of notice of any victim impact evidence;

viii. the preservation of and provision of unimpeded access to evidence and witnesses;

ix. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

x. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal state or local law or is contrary to the interests of the client;

xi. access to experts or resources which may be denied to an accused because of his indigence;

xii. the defendant's right to a speedy trial;

xiii. the defendant's right to a continuance in order to adequately prepare his or her case;

xiv. the need for a change of venue;

xv. the need to obtain a gag order;

xvi. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xvii. the dismissal of a charge on double jeopardy grounds;

xviii. the recusal of the trail judge, the prosecutor and/or prosecutor's office;

xix. competency of the client;

xx. intellectual disability;

xxi. the nature, scope and circumstances of any testing or assessment of the client;

xxii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiii. requiring the state to respond to motions in writing;

b. matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes, including the constitutionality of the death penalty or the proposed method of execution;

ii. the potential defects in the grand jury composition, the charging process or the allotment;

iii. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

iv. any basis upon which the indictment may be quashed;

v. the adequacy and constitutionality of any aggravating factors or circumstances;

vi. the propriety and prejudice of any joinder of charges or defendants in the charging document;

vii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of penalty or by the defense in mitigation of penalty;

viii. the constitutionality of the death penalty both generally and as applied in Louisiana;

ix. abuse of prosecutorial discretion in seeking the death penalty;

x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions;

xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law;

xii. the admissibility of evidence other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the penalty phase;

xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;

xv. notices of affirmative defenses with all required information included; and

xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence;

c. matters likely arising later in pretrial litigation and in anticipation of trial, including:

i. *in-limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;

ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;

iii. the competency of a particular witness or class of witnesses;

iv. the nature and scope of victim impact evidence;

v. *in limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;

vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;

vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of ex parte communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;

viii. challenges to the process of establishing the jury venire;

ix. the use of a jury questionnaire;

x. the manner and scope of voir dire, the use of cause and peremptory challenges and the management of sequestration;

xi. the desirability and circumstances of the jury viewing any scene; and

xii. the instructions to be delivered at guilt and penalty phase.

5. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

a. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

b. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and

c. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

6. Counsel should timely file motions according to the applicable rules and case law, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

7. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

8. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the litigation theory document and any prior drafts to assist in the supervision and support of the defense team.

H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

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§1913. Performance Standard 6: Special Circumstances

A. Duties of Counsel at Re-trial

1. The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt or penalty phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

B. Continuing Responsibility to Raise Issue of Client's Incompetence

1. Competence is far more likely to be present as an issue in a capital case than a non-capital case due to the high prevalence of mental illness and impaired reasoning in the population of capital clients and the increased likelihood of incompetence due to the nature of the charge, the complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk in a capital case that given the nature of the charge, the complexity of capital cases and the life and death stakes of the case a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and penalty phase and how each affects the other; the consequences of each available plea on both guilt and penalty phase; and, the range of possible verdicts and the consequences of those verdicts at guilt and penalty phase.

3. In considering the client's ability to assist counsel in a capital case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the penalty phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than death. The possibility of a death sentence and the necessity to prepare for and present a penalty phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a capital case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by the reality that a death sentence has been imposed, that an execution date is approaching, as well as by the effects of confinement, particularly prolonged confinement, on death row, such as the development or progression of depression or other mental illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every capital case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from

a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or penalty phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are independent and appropriately qualified. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose the confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found unrestorably incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. Where a capital client is found incompetent or unrestorably incompetent, capitally certified counsel should remain responsible for all competency reviews.

21. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never untimely to raise a question concerning a client's competence.

22. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake; and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately inform the capital case coordinator of the client's desire and should request that the capital case coordinator assign independent counsel to advise the client. The capital case coordinator shall immediately assign at least one attorney certified as lead counsel to consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel. Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with the Capital Guidelines and Performance Standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a capital defendant has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, the capital coordinator may assign additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with the Guidelines and Performance Standards for capital defense to the extent possible within the limitations of their role as standby counsel. Counsel shall not accept appointment as standby counsel unless certified as lead trial counsel or certified as associate trial counsel where certified lead trial counsel is also appointed. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5. With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony, that the defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and penalty phases of the trial, as appropriate. Where there is reason to believe that the client may re-invoke his right to counsel, the capital coordinator should ensure that a full defense team remains assigned and available to assume the representation.

D. Counsel's Additional Responsibilities when Representing a Foreign National

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest consulate;

c. with the permission of the client, contact the nearest consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the consulate;

d. where contact is made with the relevant consulate, counsel should discuss what specific assistance the consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should advise the capital case supervisor. Counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals in capital cases and where this is not the case should advise the capital case supervisor and seek additional support, including the assigning of additional counsel.

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§1915. Performance Standard 7: Trial

A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence:

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing ex parte procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail;

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.):

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made;

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant matters, including relevant prior testimony, before deciding whether or not to present them at trial;

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses;

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense;

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and penalty phases that may be necessary or of assistance at trial, including:

a. copies of all relevant documents filed in the case;

b. relevant documents prepared or obtained by investigators;

c. *voir dire* questions, topics or plans;

d. outline or draft of opening statements for both guilt and penalty phases;

e. cross-examination plans for all possible prosecution witnesses;

f. direct examination plans for all prospective defense witnesses;

g. copies of defense subpoenas and proof of service;

h. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

i. prior statements of all defense witnesses;

j. reports from defense experts;

k. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

l. exhibits, including originals and copies of all documentary exhibits;

m. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

n. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and

o. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the penalty phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the continuance, explaining the incomplete preparation, unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

B. Jury Selection

1. Preparing for *Voir Dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire, including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should determine whether any special procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate, should submit a request for a jury questionnaire by a pretrial motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *voir dire* questions in advance of trial. Counsel should tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case for both guilt and penalty phase. Creative use of *voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards the death penalty and, in particular, each juror's willingness and capacity to return a verdict of death or life if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary *voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process. Recognizing the scope of the task of adequately recording all relevant information during the *voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

2. Examination of the Prospective Jurors

a. Counsel should personally *voir dire* the panel.

b. If the court denies counsel's request to ask questions during *voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *voir dire*, particularly in cases where the *voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *voir dire* as to sensitive questions.

d. In a group *voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *voir dire* to elicit responses in a way that will minimize any negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *voir dire.*

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually phrase questions in an open-ended fashion that elicits

substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Death Qualification

a. Counsel should be intimately familiar with the constitutional, statutory and case law relating to questioning and challenging of potential jurors as they relate to "death qualification."

b. Counsel should apply techniques of *voir dire* designed to overcome the tendency of the process of death qualification to undermine the presumption of innocence and increase the perception of death as the appropriate penalty.

c. Counsel should ensure that an individual inquiry is made of each juror as to his or her views on the death penalty.

d. Counsel should apply techniques of *voir dire* designed to ensure that the view each juror expresses regarding the death penalty:

i. is pertinent to the situation the juror will face in penalty phase (e.g. after hearing all the evidence, full deliberation and a unanimous determination of guilt beyond reasonable doubt);

ii. is in the context of a finding of guilt of first degree murder having regard to the aggravator(s) in the case (e.g. specific intent to kill or cause great bodily harm to a child under 12); and

iii. is not obscured by consideration of any lawful defense or justification that will necessarily have been rejected by penalty phase (e.g. the killing was not in self-defense, he knew the difference between right and wrong, he was not in a sudden passion or heat of blood);

e. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the case law.

f. Counsel should determine the extent to which a juror's views on the death penalty or mitigation may substantially impair his or her ability to make an impartial decision at guilt or return a life verdict. Counsel may consider exploring factors such as the strength of the juror's views on the death penalty, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

g. Counsel should apply techniques of *voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law;

h. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on the death penalty or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

i. Counsel should apply techniques of *voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of capital punishment.

j. Counsel should apply techniques of *voir dire* designed to ensure that each prospective juror understands and accepts:

i. that each juror is entitled to their own opinion and vote and so each juror must individually decide whether the client is sentenced to life or death following a penalty phase;

ii. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others;

iii. that each juror can give life for whatever reason he or she wishes;

iv. that each juror is entitled to the assistance of the court in having his or her opinion respected; and

v. the procedures for bringing penalty phase deliberations to an end and the effect of a hung jury at penalty phase.

k. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to the death penalty and mitigation.

l. Counsel should document and, where appropriate litigate the effect of death qualification on the representativeness of the qualified jury venire.

4. Other challenges for Cause and Peremptory Challenges

a. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

b. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

c. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her

remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

d. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

e. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

5. Unconstitutional Exclusion of Jurors

a. In preparation for trial, during *voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have to have regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

b. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

c. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

6. *Voir Dire* After the Jury has been Impanelled

a. Counsel should consider requesting additional *voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *voir dire*, or jurors otherwise violated the court's instructions.

b. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

c. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

C. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

a. the admissibility or exclusion of evidence and the use to which evidence may be put;

b. the form or content of prosecution questioning, including during voir dire;

c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;

d. the form or content of prosecution argument, including the scope of rebuttal argument;

e. jury instructions and verdict forms; and

f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the attorney-general; and, the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to

potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible.

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense;

b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important;

c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction;

d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

D. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial

dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each other, counsel should consider discussing their relationship and previous activities to create a context for the alleged offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and *Giglio* evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify on present evidence.

E. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination;

c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

d. prepare a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies, variations and contradictions in a witness' testimony;

f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;

g. be alert to significant omission or deficiencies in the testimony of any witnesses;

h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

i. have prepared a transcript of all audio or video tape recorded statements made by the witness;

j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;

k. be alert to and raise where appropriate issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;

l. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age (chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;

b. exclusion of the witness' testimony and all evidence affected by that testimony;

c. a mistrial;

d. dismissal of the case; and/or

e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

F. Presenting the Defendant's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead

relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to proceed to penalty phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the penalty phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to penalty phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. The client should be called to testify in a capital case only in rare circumstances, however, counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense;

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that capital jurors frequently determine the applicable punishment prior to penalty phase and that the jury in penalty phase will be permitted to rely upon all evidence introduced in the guilt phase, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

G. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

H. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel normally should request a poll as to each count on which the jury has convicted.

I. The Defense Case Concerning Penalty

1. Preparation for the sentencing phase should begin immediately upon counsel's entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation, explains the offense, or rebuts the prosecution's case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant's guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the penalty phase.

6. Counsel should present to the jury all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client's life story that serves to humanize the client and offers a cohesive theory for life rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client's life and the mitigation case is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case in the penalty phase, counsel should seek to integrate the defense theories at guilt and penalty phase into a complimentary whole or, where this is not possible, seek to minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the penalty phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client's moral culpability for the offense; demonstrate the client's capacity for rehabilitation or adaptation to prison; demonstrate the client's remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client's life; humanize the client; engender sympathy or empathy in the jury,; or would otherwise support a sentence less than death. Counsel should always consider and seek to address the likely concern the jury has regarding the possibility that the client will represent a future danger if sentenced to life imprisonment, rather than death.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would

rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining to the jury how and why this mitigation is relevant.;

c. Witnesses who can testify about the effect of a sentence of life imprisonment and/or the conditions under which a sentence of life imprisonment would be served;

d. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

e. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses.

f. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than death.

11. Among topics counsel should consider presenting through evidence and argument are:

a. positive character evidence and evidence of specific positive acts, including evidence of positive relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, adaptation to incarceration, prospects for rehabilitation during a life sentence and reputation evidence;

b. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

c. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

d. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

e. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

f. employment and training history (including skills and performance, and barriers to employability);

g. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

h. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

i. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the penalty phase, any adjudicated or nonadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to call in the penalty phase may appropriately be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

a. carefully consider:

i. what legal challenges may appropriately be made to the interview or the conditions surrounding it, and

ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;

b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing); and

c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain to the jury the significance of the mitigation presented. Counsel's closing argument should be more than a general attack on capital punishment and should not minimize the jury's verdict. Counsel should never ask, instruct, or give permission to the jury to return a death sentence, but rather should appeal to the jury for, and provide reasons for, a life sentence. Counsel's closing argument should not be contradictory. Counsel should not demean, disparage, be hostile towards, or make inappropriate comparisons regarding the client.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:75 (January 2015).

§1917. Performance Standard 8: Post-Verdict Motions and Formal Sentencing

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a death verdict is returned by the jury. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and

b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that the death penalty is not a legally permissible penalty in the circumstances of the case, including that the death penalty would be constitutionally excessive, where such an arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

B. Preparation for Formal Sentencing, the Sentence Investigation Report and the Uniform Capital Sentencing Report

1. In preparing for sentencing, counsel should:

a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report and uniform capital sentencing report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview;

iii. obtain a copy of the sentence investigation report and uniform capital sentencing report, once completed. Review the completed reports and discuss their contents with the client;

iv. file a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Understanding that the formal imposition of a death sentence following a jury's death verdict is neither automatic, nor inevitable, counsel should actively advocate for a disposition other than the imposition of a death sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of the death penalty and in support of an argument that the death penalty, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a death sentence, counsel should prepare and file a motion for reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. the minutes of all of the proceedings connected with the case;

b. the indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. the transcript of arraignment;

d. the transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. the transcript of any proceeding in which allotment of the case occurred;

f. the transcript of any joint proceedings held with another defendant(s);

g. the transcript of the entirety of voir dire, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. the transcript of all bench conferences, in chambers hearings or charge conferences;

i. the transcript of all argument and instruction;

j. the transcript of all testimony, including testimony at the penalty phase of the trial;

k. any and all exhibits introduced in connection with the case;

l. the jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of death and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence review memorandum. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:86 (January 2015).

§1919. Performance Standard 9: Direct Appeal

A. Duties of Appellate Counsel

1. Appellate counsel should comply with the capital guidelines, and these performance standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or

reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all rules of court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. the issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case, counsel must bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of appellee's brief and before filing a reply brief, a second case review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the original brief, appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should prepare and timely file a sentence review memorandum in each case. The sentence review

memorandum shall address itself to the state's sentence review memorandum and to the question of whether the sentence is excessive, having regard to: the influence of passion, prejudice, or other arbitrary factors; whether the evidence supports the jury's finding of a statutory aggravating circumstance; and whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The sentence review memorandum need not be limited to the matters contained in the record and shall furnish additional information relevant to the court's considerations under La. C.Cr.P. art. 905.9 and Supreme Court Rule XXVIII based upon the results of investigation undertaken pursuant to performance standard 9(25).

25. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

26. Counsel should promptly review the uniform capital sentence report for accuracy and completeness. Where a response to the uniform capital sentence report has not previously been filed in the case, or where the response was incomplete or inaccurate, counsel should prepare and file an opposition to the report in accordance with these standards.

27. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

28. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

29. Lead counsel shall adopt procedures, including at least two moot court arguments, to assist counsel in preparing to present argument. The moot court shall include at least one attorney qualified as lead appellate counsel who was not involved in drafting the brief. The moot will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the moot should be conducted independently of the case review.

30. Counsel presenting oral argument should be the person best qualified to present oral argument taking into account experience, the complexity of the case and time to prepare. That person will ordinarily be lead counsel. However, after consultation with the case supervisor and defense team, lead counsel may designate other counsel to present argument, including outside counsel.

31. Where pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention to the court by letter or, where appropriate, should seek leave to file a supplemental brief.

32. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

33. Counsel shall promptly inform the capital case coordinator of the disposition in any capital appeal case.

34. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

35. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. Appellate counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

38. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure

and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review; and, the procedure for assignment of counsel to represent the client in post-conviction proceedings.

39. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of post-conviction counsel. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

40. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

41. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, capital case direct appeal review form, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

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§1921. Performance Standard 10: State Post-Conviction and Clemency

A. Duties of Post-Conviction Counsel

1. Post-conviction counsel should comply with the capital guidelines, and these performance standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a *pro se* brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or Supreme Court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction

counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high quality, independent, exhaustive investigation and should not assume that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the Constitution or laws or treaties of the United States;

b. the execution of the defendant would violate the Constitution, laws or treaties of the United States or the Constitution or laws of the state of Louisiana;

c. the conviction was obtained in violation of the constitution of the state of Louisiana;

d. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

e. the court exceeded its jurisdiction;

f. the conviction or sentence subjected the defendant to double jeopardy;

g. the limitations on the institution of prosecution had expired;

h. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

i. the conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana;

j. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted; or

k. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for the death penalty.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or penalty in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on voir dire examination; and,

e. the possibility that the client is innocent of the offense charged or not eligible for the death penalty.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these Standards are intended to reflect accepted minimum standards for performance in capital cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these Standards as they describe the responsibilities of trial and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C.Cr.P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that

would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all rules of court, including Supreme Court Rule XXVII and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead post-conviction counsel, at which the issues raised in the case and the defense theory in post-conviction can be discussed. The issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

23. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition. Lead counsel shall adopt a procedure for screening the petition, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead post-conviction counsel.

24. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

25. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

26. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, counsel must promptly bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

27. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

28. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

29. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

30. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

31. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

32. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

33. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant rules of court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

34. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

35. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

36. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States. If post-conviction counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender.

37. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

38. Post-conviction counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

39. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; and, the procedure for assignment of counsel to represent the client in federal habeas corpus proceedings. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

40. Counsel shall promptly inform the capital case coordinator of the disposition in any capital post-conviction case.

41. Counsel shall take all necessary steps to preserve the client's right to federal review, including ensuring that the client is not time barred from seeking relief. Post-conviction counsel shall be responsible for protecting the client's interests in this regard, including ensuring that a federal petition is filed while state post-conviction proceedings remain pending where the time remaining for filing a federal petition following finalization of the state post-conviction proceedings will be inadequate to allow a timely filing at that time.

42. State post-conviction counsel may continue to represent the client in his federal habeas corpus proceedings only with the consent of the capital case coordinator and the informed consent of the client. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited. In these circumstances, the capital case coordinator should not ordinarily consent to continuing representation by state post-conviction counsel in the absence of: informed consent from the client obtained through independent counsel; and, the assignment to the defense team of at least one attorney qualified and experienced in federal habeas corpus proceedings in capital cases who was not involved in the preparation and presentation of the state post-conviction petition.

43. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

44. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

B. Duties of Clemency Counsel

1. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

2. Clemency counsel should conduct an investigation of matters relevant to clemency consistent with these standards and should not assume that the investigation conducted by prior counsel was complete or adequate.

3. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

4. Clemency counsel should ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

5. Clemency counsel should fully discharge the ongoing obligations imposed by the guidelines, and standards including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and

d. continue an aggressive investigation of all aspects of the case.

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§1923. Performance Standard 11: Supervision, Review and Consultation

A. Supervision of the Defense Team

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards and the guidelines rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid. By submitting an expert's invoice to the office of the state defender for payment, counsel certifies that the work performed was reasonably necessary and that it was completed to an appropriate standard.

3. The case supervisor is responsible for monitoring the correct, effective and appropriate implementation of the capital guidelines and performance standards in each case. In contrast to the responsibilities of lead counsel to make strategic decisions in the case, this is an administrative level of supervision designed to ensure that the team is assembled and is functioning in accordance with the guidelines and standards. The case supervisor shall be certified as lead counsel and shall have a comprehensive knowledge of the requirements of the capital guidelines and performance standards. The case supervisor shall not be a staff member in the same office as members of the defense team or district defender of the district responsible for the case.

4. The case supervisor for each case shall meet with the defense team no less than once every three months and provide a quarterly report to the capital case coordinator in the form provided, advising of the extent to which the team and its representation are in compliance with the guidelines and standards.

5. The case supervisor is a lawyer engaged to consult with counsel on the defense team within lawyer-client privilege to assist in ensuring that each client is receiving high quality representation in compliance with the capital guidelines and performance standards. The case supervisor does not, by virtue of being case supervisor, have the authority to act on behalf of the defendant or to direct members of the defense team to take any action or refrain from taking any action. The case supervisor may make recommendations to the defense team, resolve workload questions pursuant to guideline §919 and report non-compliance with the guidelines to the district public defender and state public defender. All members of the defense team shall cooperate with the case supervisor and provide access to the case file and case theory documents as requested.

6. The state defender, district defender or director of a defender organization having an employment or contractual relationship with counsel on a defense team may exercise

such supervisory and regulatory authority as is consistent with the *Louisiana Rules of Professional Conduct* and provided for within that employment or contractual relationship. However, it shall remain at all times the responsibility of individual counsel to ensure that representation is provided in accordance with the capital guidelines and performance standards.

7. The capital case coordinator shall have responsibility for monitoring the performance of counsel and defender organizations providing capital representation in the state and reporting to the state defender. In performing this supervisory role, the capital case coordinator shall have particular regard to: the capital guidelines and performance standards; applications for certification and re-certification of counsel; quarterly reports submitted by case supervisors; requests for expert assistance by counsel; briefings from counsel following the closure of cases; findings and recommendations of case review committees formed under guideline §921(C); case observation; and other reliable sources of information.

8. Where the capital case coordinator becomes aware that a defense team is not providing representation consistent with these guidelines and associated performance standards, the capital case coordinator, shall take necessary action to protect the interests of the attorney's current and potential clients.

B. Case Review Meetings, Consulting Counsel and Practice Advisories

1. In order to ensure high quality legal representation in each case, identify any problems in the case in a timely fashion, develop the knowledge and skill of capital defenders and build the capacity of the indigent capital defense community in this state, representation in each case should include the use of case review meetings.

2. Case review meetings are meetings facilitated by a professional external to the team. Case review meetings will include the whole defense team, the facilitator and a diverse group of appropriately qualified professionals external to the team (both lawyers and non-lawyers). The case review meeting will involve a systematic and comprehensive review of the case and the representation appropriate to the stage of proceedings and preparation of the case. The case review meeting will involve a structured dialogue and critical thinking designed to empower the defense team and is not designed as a mechanism for assessing the performance of the defense team or its members. The case review meeting will produce a list of concrete commitments from the defense team arising from the discussions in the case review meeting.

3. The documents prepared for each case review meeting, the minutes of the case review meeting and the commitments arising from each case review meeting shall be maintained by counsel in the relevant case file and shall be available for review by the case supervisor.

4. At each stage of representation in a case (trial, appellate and post-conviction) there should ordinarily be a minimum of three case review meetings conducted. Case review meetings will ordinarily be conducted: early in the assignment of the case (to ensure the team has been properly assembled, is adequately resourced and has an appropriate plan for advancing representation in the case); once substantial work on the case has been commenced (to ensure that the work is proceeding appropriately, to provide feedback on the defense theory, to provide input on investigative and litigation planning and to respond to particular issues that have developed in the case); and, as the case is approaching the culmination of the work at the particular stage of representation (to ensure that the case is ready to proceed, to provide feedback on the planned execution of the case theory that has been developed and to troubleshoot any final issues that have arisen).

5. Facilitators for case reviews conducted pursuant to these standards shall be approved by the capital case coordinator.

6. In addition to counsel assigned as a part of the defense team and the case supervisor, counsel should consult with and take advantage of the skills and experience of other certified capital defenders. The state defender may require as a condition of provisional certification that counsel consult with other counsel designated by the state defender. Counsel may consult on a specific issue or issues, or may consult in an ongoing fashion with the defense team.

7. Counsel consulting on a case is acting within lawyer-client privilege and should maintain confidentiality accordingly.

8. Counsel consulting with a defense team should ensure that their work as a consulting counsel and any advice provided is fully documented. In order to ensure the accuracy of any advice provided, consulting counsel should seek to reduce that advice to writing, including a notation of the issue presented and the factual or legal assumptions that underpin the advice. This requirement is not intended to require consulting counsel to provide briefing on the basis of any advice or otherwise increase the scope of the responsibility of counsel consulting on the case but instead to ensure that such advice as is given is reduced to writing to avoid the miscommunications inherent in oral communication.

9. In order to assist capital defenders in the performance of their duties, the capital case coordinator may from time to time issue practice advisories. These practice advisories shall not have the status or effect of rules promulgated by the Louisiana Public Defender Board. The practice advisories represent the opinion of the office of the state public defender as to best practices and are intended to provide a timely and flexible way to provide expert advice to the field on specific or emerging areas in capital defense.

10. Before a practice advisory may be issued, it must be approved by an advisory committee of no less than four members including counsel actively engaged in capital defense at trial, appellate and post-conviction level. No practice advisory shall be issued without the approval of the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:94 (January 2015).

Chapter 21. Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases

§2101. Purpose

A. The standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of juveniles facing a possible sentence of life without parole or serving a sentence of life without parole. For the purpose of these standards, pursuant to *Roper v. Simmons, Graham v. Florida* and *Miller v. Alabama*, the term *juvenile* includes any individual who was under the age of 18 at the time of the alleged offense.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations, the lawyer's best informed professional judgment and discretion may indicate otherwise.

D. These standards are intended to adopt and apply the Louisiana Rules of Professional Conduct, Louisiana Public Defender Board (LPDB) Performance Standards for Criminal Defense Representation in Indigent Capital Cases, LPDB Capital Defense Guidelines, LPDB Trial Court Performance Standards for Delinquency Representation, the Campaign for the Fair Sentencing of Youth (CFSY) Trial Defense Guidelines for Representing a Child Client Facing a Possible Life Sentence, the guidelines for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*. In these standards, the ABA guidelines have been adapted and applied to meet the specific needs and legal requirements applicable to lawyers representing juveniles facing a possible sentence of life without parole in Louisiana while seeking to give effect to the intention and spirit of the ABA guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1915 (October 2017).

§2103. Obligations of Defense Counsel

A. Since the representation of children facing a possible sentence of life without parole in adult court is a highly specialized area of legal practice, defense counsel should make extraordinary efforts on behalf of his or her client to ensure that trial proceedings "take into account how children are different, and how those differences counsel against irrevocably sentencing [children] to a lifetime in prison" [*Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012)] and that "[s]entences imposed without parole eligibility [are] reserved for the worst offenders and worst cases" [La. C.Cr.P. art. 878.1].

B. The primary and most fundamental obligation of the attorney representing a child facing a possible sentence of life without parole in adult court is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana rules of professional conduct, to act in accordance with the Louisiana rules of court, and to properly document case files to reflect adherence to these standards.

C. To ensure the preservation, protection and promotion of the client's rights and interests, counsel should:

1. be proficient in the applicable state, federal, and international law substantive and procedural governing juvenile transfer, prosecution of juveniles in adult court, mitigation, sentencing, appeals, and state and federal post-conviction relief;

2. acquire and maintain appropriate experience, skills and training;

3. devote adequate time and resources to the case;

4. ensure that the defense team is appropriately staffed in accordance with these standards (see performance standard 2105, training and experience of defense counsel; performance standard 2107, resources and caseloads; and performance standard 2115, assembling the defense team);

5. engage in the preparation necessary for high quality representation;

6. endeavor to establish and maintain a relationship of trust and open communication with the client;

7. make accommodations where necessary due to a client's special circumstances, including but not limited to age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and/or circumstances of incarceration.

D. Counsel assigned in any case in which the client is a juvenile and life without parole (LWOP) is a possible punishment should, even if the prosecutor has not transferred the case to adult court and/or has not indicated that LWOP will be sought, begin preparation for the case as one in which LWOP will be sought while employing strategies to avoid transfer and/or have the case designated as non-LWOP. Even if the case has not been filed as an LWOP case, if there exists a reasonable possibility to believe that the case could be amended to an LWOP charge, counsel should be guided by these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment and any political factors that may impact the charging decision.

E. The attorney who provides legal services for a juvenile owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

F. A child facing LWOP retains all decision-making authority granted to an adult client. The client's rights to make important decisions is not diminished by the client's status as a child (see perf. standard 2113, allocation of authority between counsel and client).

G. The attorney should communicate with the child in a trauma-informed and developmentally and age-appropriate manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion for funding to hire a foreign language or sign language interpreter to be present at the initial interview, all subsequent interviews and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1915 (October 2017).

§2105. Training and Experience of Defense Counsel

A. Before agreeing to defend a juvenile facing a possible life without parole sentence in adult court, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer zealous and high quality legal representation.

B. Counsel should have a mastery of any substantive criminal law and laws of juvenile and criminal procedure that may be relevant to counsel's representation, including ethical obligations for juvenile representation, adolescent development, juvenile transfer, obligations for juvenile representation in adult court (including these standards), mitigation, the process for sentencing juveniles facing life without parole, appeals and state and federal post-conviction. Counsel should also be familiar with the prevailing customs or practices of the relevant court and the policies and practices of the prosecuting agency.

C. Prior to representing a juvenile facing a possible life without parole sentence, at a minimum, counsel should have sufficient experience or training to provide high quality representation.

1. At least one attorney must have specialized training and relevant substantive experience representing child clients and shall annually complete at least six hours of training relevant to the representation of juveniles. In particular, at least one attorney must have experience interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Additional training may include, but is not limited to:

a. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

b. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to, those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

c. normal childhood development (including brain development), developmental delays and intellectual disability;

d. educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to, those related to consent and competency issues;

e. immigration issues regarding children;

f. gang involvement and activity;

g. factors leading children to delinquent behavior.

2. At least one attorney must have specialized training and relevant substantive experience representing individuals charged with homicide offenses in adult court, including, but not limited to, the investigation and presentation of sentencing mitigation. When possible, one attorney should have experience investigating and presenting death penalty mitigation at a capital sentencing hearing. Additional training may include, but is not limited to:

a. identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits;

b. long-term consequences of deprivation, neglect and maltreatment during developmental years;

c. social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior;

d. effects of substance abuse;

e. the presence, severity and consequences of exposure to trauma;

f. sensitivity to issues of sexual orientation and gender identity;

g. identifying, developing and documenting institutional mitigation.

D. If, after being assigned a case, counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

E. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community, juvenile defenders and certified capital defenders.

F. Defense counsel should complete a comprehensive training program in the defense of juvenile life without parole cases as required by these guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of juveniles facing life without parole sentences. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of juveniles facing life without parole sentences.

G. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

H. If personal matters make it impossible for defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1916 (October 2017).

§2107. Resources and Caseloads

A. Counsel should not accept assignment to represent a juvenile facing life without parole unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, research tools and access to expert assistance.

B. In assessing whether counsel has sufficient resources to accept an appointment, counsel should adhere to these standards as well as the case load standards set out by the Public Defender Board.

C. If, after being assigned a case, counsel discovers that he or she does not have available sufficient resources, then counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief. Counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

D. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with these performance standards, counsel should exhaust all avenues for reasonable resolution. If the excessive workload issue is not resolved, counsel should move to withdraw from the case or cases in which representation of a juvenile facing life without parole in compliance with these performance standards cannot be provided.

E. Counsel should never give preference to retained clients over indigent clients and should give priority to Miller cases over other cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1917 (October 2017).

§2109. Professionalism

A. Counsel has an obligation to ensure that the case file is properly documented to demonstrate adherence to these standards. Counsel’s file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel’s file should be maintained in a fashion that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

B. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client’s rights from being forfeited due to error. Counsel should be present, alert and focused on the client’s best interests during all critical stages of the proceedings.

C. Counsel’s obligation to provide high quality representation to the client continues until counsel formally

withdraws or an order relieving counsel becomes final. Unless required to do so by law or the Louisiana Rules of Professional Conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

D. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

1. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;

2. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

3. sharing potential further areas of investigation and litigation with successor counsel; and

4. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

E. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

1. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

2. discovering potential further areas of investigation and litigation; and

3. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

F. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

G. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

H. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any improper influence arising from a desire to assist the client or to protect him or herself.

I. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel nor limit the ability of counsel to communicate confidential or privileged information to the client or his legal representatives within the protection of the lawyer-client relationship.

J. While ensuring compliance with the Louisiana Rules of Professional Conduct in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

K. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity and compassion. Counsel should avoid disparaging the victim directly or indirectly unless necessary and appropriate in the circumstances of the particular case. Counsel should undertake victim outreach through an appropriately qualified team member or the use of an expert in defense initiated victim outreach.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1917 (October 2017).

§2111. Conflicts of Interest

A. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, counsel may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team. Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s) and the names of any important witnesses.

C. Where a juvenile life without parole case involves multiple defendants, because of the unique nature of the sentencing hearing, a conflict will be presumed between the defendants and separate representation will be required.

D. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child.

E. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the Louisiana Rules of Professional Conduct.

F. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the Louisiana Rules of Professional Conduct. Defense counsel should fully disclose to the client at the earliest feasible opportunity any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

G. Where the client files a motion, complaint or grievance against counsel in regard to the quality of his or her representation, counsel should notify the district defender or the agency responsible for the assignment of counsel to the case.

H. Any waiver of conflict that is obtained should comply with the requirements of the Louisiana Rules of Professional Conduct and should be obtained through and after consultation by the client with independent counsel who has explained:

1. that a conflict of interest exists;

2. the consequences to his defense from continuing with conflict-laden counsel; and

3. that he has a right to obtain other counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1918 (October 2017).

§2113. Allocation of Authority between Counsel and Client

A. The allocation of authority between counsel and the client shall be managed in accordance with the Louisiana Rules of Professional Conduct, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

B. Counsel serves as the representative of the client and shall abide by the express wishes of the client regarding the objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

C. Counsel shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

D. Counsel should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what

other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decision.

E. In order to ensure that consultation with the client is meaningful, counsel should communicate in a trauma-informed and developmentally and age-appropriate manner and make accommodations where necessary due to a client's special circumstances, such as age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and circumstances of incarceration.

F. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

G. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

H. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should utilize other defense team members in his or her efforts to resolve a dispute.

I. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the district defender or responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

J. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

K. A juvenile client's capacity to make adequately considered decisions in adult court when facing a possible sentence of life without parole may be diminished, whether because of age and its attendant circumstances, mental impairment or for some other reason. Where counsel reasonably believes that the child client has diminished capacity, he or she should:

1. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

2. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

3. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

L. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should consider consultation with additional counsel experienced and skilled in this area.

M. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring files to successor counsel. Upon the termination of the representation, the client will ordinarily be entitled to counsel's entire file upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1919 (October 2017).

§2115. Assembling the Defense Team

A. Counsel are to be assigned in accordance with these standards. A minimum of two counsel shall be assigned to each case. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these performance

standards. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these standards, unless the standard specifically imposes the duty on "lead counsel."

C. As soon as practical after assignment and at all stages of a juvenile life without parole case, lead counsel should assemble a defense team by:

1. requesting at least one additional counsel in accordance with these standards;

2. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

a. at least one mitigation specialist and one fact investigator;

b. at least one member with specialized training and knowledge in adolescent development, including but not limited to, developmental science and other research that informs specific legal questions regarding capacities, responsiveness to treatment and culpability;

c. at least one member with specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment in adolescents, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

d. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

e. sufficient support staff, such as secretarial, clerical and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

f. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

D. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

E. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with these standards and are sufficient to permit high quality representation.

F. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and if such a witness is necessary, a separate expert mitigation specialist should be retained.

G. Team members should be fully instructed on the practices and procedures to be adopted by the team, including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

H. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation and to ensure that all components of the defense team are in place. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make a complete record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

I. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these performance standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1920 (October 2017).

§2117. Scope of Representation

A. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

B. Ordinarily, counsel representing a juvenile facing a life without parole sentence should assume responsibility for the representation of the client in all pending criminal and collateral proceedings involving the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case and for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions or delinquency adjudications of the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

C. Where it is not appropriate for counsel to assume the representation of the client in other proceedings due to a lack of appropriate experience or qualifications, a lack of sufficient resources or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client.

D. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his JLWOP proceedings and is conducted in a manner that best serves the client's interests in light of the JLWOP proceedings.

E. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain, in a trauma informed and age and developmentally appropriate manner, the exact limits of the scope of the representation, including both those purposes for which the client will and will not be represented. Where possible the agreement to provide representation that is limited in its scope should be communicated in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1921 (October 2017).

§2119. Relations with Client

A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a child facing a sentence of life without parole in adult court should proceed in a trauma-informed and developmentally and age-appropriate manner with a strong emphasis on the relationship between the defense team and the client.

B. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the child's special circumstances, such as age and its attendant circumstances, trauma, incompetence, mental or physical disability/illness, language barriers, cultural differences, circumstances of incarceration, prior experiences in the criminal justice system and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

C. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. All members of the team should be trained on interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member.

D. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

E. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a child facing a possible sentence of life without parole, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

F. In a trial level case, a JLWOP client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a JLWOP client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once every month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during and following trial.

G. In an appellate or post-conviction case, a JLWOP client may be visited less frequently but regular communication and actual visits remain critical to effective representation.

H. Counsel at all stages of the case need to monitor the client's physical, mental and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional and mental condition throughout the representation both personally, through the observations of other team members and experts and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

I. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

1. the progress of and prospects for the investigation and what assistance the client might provide;

2. current or potential legal issues;

3. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;

4. the development of a defense theory;

5. presentation of the defense case;

6. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;

7. litigation deadlines and the projected schedule of case-related events; and

8. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

J. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

K. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

L. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

M. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

N. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential or potentially damaging conversations are not conducted during any monitored or recorded calls.

O. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel. Counsel should take special care to ensure such crucial information is communicated in a trauma-informed and age appropriate manner.

1. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and to counsel. Counsel should specifically advise the client to assert his rights to silence and to counsel if approached by any state actor seeking to question him about the charged offense, any other offense or any other matter relevant to guilt, penalty or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights. Counsel should especially consider the client's age, development and familiarity with the criminal justice system in considering how to support the client in effectively asserting his rights.

2. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters or any matter that may prove relevant in a sentencing hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

3. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

P. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client

to prevent any potentially harmful statements from being made or alleged.

Q. Beginning at the outset and continuing throughout representation, counsel should endeavor to connect the client with all possible educational and programming opportunities whether the client is in or out of custody. Counsel should advise the client about the importance of good behavior during the pendency of his criminal matter and seek to find solutions to any impediment to the client's good behavior. Counsel should keep in mind that demonstrating a client's ability and potential to change, grow and be rehabilitated is central to a Miller sentencing hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1921 (October 2017).

§2121. Counsel's Initial Interviews with Client

A. Recognizing that first contact with a juvenile client facing a possible life without parole sentence is an extremely important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights and begin the development of a relationship of trust and confidence.

B. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

C. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

D. An initial interview of pre-trial clients should be conducted within 24 hours of counsel's assignment to the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

E. Preparing for the Initial Interview

1. Prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

a. be familiar with the elements of the offense(s)and the potential punishment(s), where the charges against the client are already known;

b. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available;

c. request mental health, juvenile assessment center, detention center or education records, including any screenings or assessments, that may help in the initial interview with the client; and

d. consult with any predecessor counsel to become more familiar with the case and the client.

2. In addition, where the pre-trial client is incarcerated, counsel should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail;

d. be familiar with the requirements of PREA and IDEA and utilize any failure to follow these laws to advocate for release or, in the alternative, placement in a more appropriate facility;

e. advocate for placement in a juvenile detention facility.

3. Prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

a. be familiar with the procedural posture of the case;

b. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;

c. consider consulting with any predecessor counsel to become more familiar with the case and the client.

F. Conducting the Interviews

1. Counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in representing a juvenile client in a life without parole case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

2. Counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

3. Counsel should take all reasonable steps to ensure at the initial interview and in all successive interviews and proceedings that barriers to communication and trust are overcome.

4. The scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client and the circumstances under which the interviews occur.

5. Information to be provided to the client during initial interviews includes, but is not limited to:

a. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;

b. describing the other persons who are members of the defense team, how and when counsel, or other appropriate members of the defense team, can be contacted; and when counsel, or other members of the defense team, will see the client next;

c. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, the potential penalties, and available defenses;

d. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs; e.g., medical or mental health attention, education, other conditions of confinement issues, contact with family or employers;

e. realistic answers, where possible, to the client's most urgent questions;

f. an explanation of the availability, likelihood and procedures that will be followed in setting the conditions of pretrial release;

g. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations;

h. assess whether there may be some question about the child's competence to proceed or the existence of a disability that would impact a possible defense or mitigation;

i. an understanding of the conditions of incarceration:

i. whether the child is being held in an adult jail or juvenile detention center;

NOTE: if the child is being held in an adult jail, counsel should advocate that the child be placed in a juvenile detention center.

ii. if the child is being held in an adult jail, whether the child has any contact with adult inmates;

iii. whether the child is being provided education in compliance with state and federal law;

iv. whether the child is receiving adequate medical, dental and mental health care;

v. whether the child has adequate clothing, bedding and personal hygiene products;

vi. whether the child has been exposed to or is at risk of physical violence, sexual assault or self-harm;

vii. whether the child has adequate access to physical exercise and natural light.

6. Information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

a. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;

b. whether the client has any pending proceedings, charges or outstanding warrants in or from other jurisdictions or agencies (and the identity of any other appointed or retained counsel);

c. the ability of the client to meet any financial conditions of release or afford an attorney;

d. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve.

7. Appreciating the unique pressure placed upon juvenile defendants facing the possibility of a life without parole sentence and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a relationship of trust and confidence has been established that will permit full and frank disclosure.

8. Where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

9. Counsel should observe and consider arranging for documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1923 (October 2017).

§2123. Procedures that Subject Client to the Jurisdiction of Criminal Court

A. Where a child's prosecution begins in juvenile court, counsel should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to

such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought.

B. Counsel should fully explain the procedures by which a child can be transferred to adult court and the consequences of transfer to the child and the child's parents.

C. Counsel should advocate for the child to remain in the jurisdiction of juvenile court but should only do so after assessing the strategic advantages and disadvantages and the need to present facts and mitigating evidence to the district attorney in an effort to persuade the district attorney to keep the child in juvenile court.

D. Where a continued custody hearing will be held, counsel shall not, except in extraordinary circumstances, waive the continued custody hearing. Counsel shall fully prepare for the continued custody hearing in accordance with performance standard 2125, continued custody hearings.

E. If the child has already been transferred to adult proceedings and counsel did not represent the child in juvenile court, counsel should obtain the juvenile court records and files and the juvenile court attorney's entire file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1925 (October 2017).

§2125. Continued Custody Hearings

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;

2. the law for establishing probable cause;

3. factual information that is available concerning probable cause;

4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;

5. the child's custodial situation, including all persons living in the home;

6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and

7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

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§2127. Investigation

A. Counsel's Responsibility to Investigate

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, sentencing phase, any possible agreed upon disposition, any potential claim for relief and any possible reduction of the case to a non-JLWOP prosecution. A high quality, exhaustive investigation will be prompt, thorough and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the sentencing phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or sentencing phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and sentencing phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or

theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

B. Conduct of the Investigation

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include:

a. information obtained from the client;

b. information and statements obtained from witnesses;

c. discovery obtained from the state;

d. records collected;

e. physical evidence; and

f. direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to the guilt and sentencing phases, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and the particular offense charged and include an investigation of:

a. other charged or uncharged bad acts that may be alleged directly or as impeachment;

b. any co-defendant or alleged co-conspirator;

c. any alternate suspects;

d. any victim or victims;

e. relevant law enforcement personnel and agencies; and

f. forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following:

a. interviews with the client should be conducted in accordance with performance standard 2121. In particular, counsel should be conscious of the need for trauma-informed and age and developmentally appropriate interviews, multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews;

b. when interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

ii. potential alibi witnesses;

iii. members of the client's immediate and extended family;

iv. neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;

v. persons familiar with the communities where the client and the client's family live and have lived;

vi. former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;

vii. correctional, probation or parole officers;

viii. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and

ix. government experts who have performed the examinations, tests, or experiments;

c. discovery should be conducted in accordance with performance standard 2131.F;

d. counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Louisiana Public Records Act, the Freedom of Information Act, statutory entitlements to records such as medical treatment, military service, Social Security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media;

e. counsel should strive to obtain records by means least likely to alert the prosecution to investigative steps being taken by the defense or the content of the records being obtained;

f. where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought;

g. unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date;

h. counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available;

i. counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for government witnesses, for possible use at trial for impeachment purposes.

9. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing but also the legitimacy of the methods used to conduct the testing and the qualifications of those responsible for the testing.

10. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

11. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely and accurately document the condition of any relevant scene using the most appropriate and effective means, including, audio-visual recordings, diagrams, charts, measurements and descriptive memoranda. The condition of the scenes should always be documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as, maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

12. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

13. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant and the

similarities and differences between a co-defendant's defense and the client's.

14. Counsel should also attend potentially relevant hearings involving state or defense witnesses.

C. Duty of Counsel to Conduct Sentencing Phase Investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the strategy for sentencing with the guilt phase strategy. In doing so, counsel must ensure the defense team is adequately supported by a mitigation expert in accordance with performance standard 2115, Assembling the Defense Team.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the sentencing phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for the sentencing phase. All information obtained in the guilt phase investigation should be assessed for its significance to sentencing and where possible the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than life without parole.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings and parents, and other family members extending back at least three generations, including but not limited to:

a. medical history consisting of complete prenatal, pediatric and adult health information (including hospitalizations, mental and physical illness or injury, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage);

b. exposure to harmful substances in utero and in the environment;

c. substance abuse and treatment history;

d. mental health history;

e. history of maltreatment and neglect;

f. trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster;

g. experiences of racism or other social or ethnic bias;

h. cultural or religious influences);

i. educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof);

j. social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability);

k. immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior;

l. prior adult and juvenile criminal and correctional experience;

m. religious, gender, sexual orientation, ethnic, racial, cultural and community influences;

n. socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective *Voir dire*, motions *in limine*, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family. Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state at sentencing to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the sentencing phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) or delinquency adjudications which may be alleged against the client should include an investigation of any legal basis for overturning the conviction or adjudication, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with performance standard 2117, scope of representation.

c. Counsel should investigate the facts of any alleged prior bad acts, including any alleged prior convictions or uncharged misconduct or bad acts, the state may seek to introduce in either the guilt or sentencing phases to determine how the evidence may be excluded, rebutted or mitigated.

d. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at sentencing and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate grounds for arguing that the state should be precluded from seeking a life without parole sentence in the case because the client is not the worst offender or the crime is not the worst offense. Grounds might include, for example, age, intellectual disability, mental illness, cognitive impairment, felony murder, guilt as a principal not directly responsible for the death or any other basis for asserting that the client is not the worst offender. When the client is charged with second degree murder, counsel should argue that the state is precluded from seeking a life without parole sentence in the case because the crime is, by definition, not the worst offense.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than life without parole. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a Miller sentencing proceeding.

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, criminal and juvenile incarceration, and social service records, in order to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, exemplify the client's immaturity due to age, explain his inability to appreciate risks and consequences, demonstrate his susceptibility to peer or familial pressure, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than life without parole. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the judge or jury, educate the jury and the court on adolescent development and the biological limitations of the adolescent mind, particularly a child's inability to appreciate risks and consequences, demonstrate the child's diminished culpability, reflect a child's unique capacity for rehabilitation, inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. Counsel should endeavor, with the help of a mitigation expert, to create opportunities for the client to learn, grow and change during the pendency of his criminal case. A client's custodial status should not preclude counsel from seeking out such opportunities. Counsel should ensure that the client is receiving a free and appropriate education and any and all other supports and services that he is entitled to under state and federal law (including those provided in prior IEP's) and advocate to remedy any violation these laws.

15. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:

i. the client's family and those familiar with the client;

ii. the client's friends, teachers, classmates, co-workers, and employers, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history and religious, racial, and cultural experiences and influences upon the client or the client's family;

iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

vi. former or current correctional officers or employees or others who may be able to testify as to the good conduct, education and growth of the client while in custody;

b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, speech language pathologists, social workers and persons with specialized knowledge of adolescent development, medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

iv. persons with specialized knowledge about gangs and gang culture;

v. persons with specialized knowledge and expertise in adolescent development; and

vi. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

16. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

a. an adequate understanding of adolescent development;

b. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

c. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

d. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, and diminished capacity; and

e. obtaining an agreed upon disposition or assisting the client in making a decision to accept or reject a possible agreed upon disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the areas to be canvassed. Counsel should determine whether an

expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should also consider whether a teaching expert is more appropriate for the case to educate the fact-finder or sentencing body. An example of the use of a teaching expert might be to educate the jury or the court on adolescent development. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, sentencing phase, agreed upon disposition, litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at both the guilt and sentencing phases and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible.

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings should be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should lay out a comprehensive strategy for both guilt and sentencing phases – detailing the needed fact investigation as well as the plan for collecting and creating mitigating evidence. The plan for both guilt and mitigation investigation should include a timeline for the completion of investigatory tasks. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1925 (October 2017).

§2129. Agreed-Upon Dispositions

A. Duty of Counsel to Seek an Agreed-Upon Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal, factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client, with special attention to the age and abilities of the client, that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed upon disposition and promptly convey to the client, in an age and developmentally appropriate manner, any offers made by the prosecution for an agreed upon disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed upon disposition that is in the client's best interest. Consideration of an agreed upon disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

B. Formal Advice Regarding Agreed-Upon Disposition

1. Counsel should be aware of, and fully explain to the client in an age and developmentally appropriate manner:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than life without parole including but not limited to forfeiture of assets, deportation or the denial of naturalization or of reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in sentencing phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than life without parole, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

f. available drug rehabilitation programs, psychiatric treatment, and health care;

g. the possible and likely place of confinement;

h. credit for pretrial detention;

i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;

j. eligibility for correctional programs, work release and conditional leaves;

k. deferred sentences, conditional discharges and diversion agreements;

l. probation or suspension of sentence and permissible conditions of probation;

m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and

n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client in an age and developmentally appropriate manner.

a. Concessions the client may make as part of an agreed upon disposition, including:

i. to waive trial and plead guilty to particular charges;

ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel;

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. that life without parole will not be sought;

ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (1)-(9) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. art I, §25, R.S. 46:1841 et seq., or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or her guilt (*North Carolina v. Alford*, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (*State v. Crosby*, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation

department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain, in an age and developmentally appropriate manner, all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and sentencing and on appellate, post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial, appellate and post-conviction process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed upon disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of age and its attendant circumstances, intellectual disability, mental illness, cognitive impairment, language impairment, trauma, family dysfunction, third party interference or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1931 (October 2017).

§2131. Pre-Trial Litigation

A. Obligations Regarding court Hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on the client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court. Counsel should advise the client on appropriate demeanor

and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation. Counsel should plan, with the client, the most convenient system for conferring throughout any court proceeding.

3. Prior to any court hearing, counsel should explain to the client, in an age and developmentally appropriate manner, what is expected to happen before, during and after each hearing. Where the client may be directly addressed by the court or asked to speak on the record, counsel should warn the client in advance and both advise the client on how to proceed and prepare the client for any potential colloquy or testimony. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using age and developmentally appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high-quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample;

b. counsel shall represent the client at the continued custody hearing in order to contest transfer to adult court in accordance with performance standard 2125;

c. where possible, ensuring that counsel shall represent the client at a first appearance hearing conducted under La. C. Cr. P. art. 230.1 in order to contest transfer to adult court, contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), and will invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health, education and security needs are being met and that the jail is in full compliance with PREA.

a. Counsel should consider requesting the client be held in a facility intended for juveniles rather than an adult jail.

b. Counsel shall advocate for the client to be provided a free and appropriate educational plan as required by the PREA, including special education as appropriate. Maintenance of the client's education may result in the development of positive mitigation evidence, and may be beneficial to the client's mental health.

c. Counsel shall consult with the client about requesting sight and sound isolation from adults, taking reasonable steps to explain the potential positive and negative consequences of such isolation.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the Louisiana case and the ramifications for the case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana.

Counsel should not wait for the client to be extradited before commencing active representation of the client.

C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all cases in a timely fashion, having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment. Counsel shall move for a preliminary hearing even when a continued custody hearing has been held and even where counsel represented the client at a continued custody hearing. If counsel is denied a preliminary hearing, counsel shall move for an adversarial bond hearing where counsel shall ensure his ability to examine witnesses.

2. In the event the client is subject to the jurisdiction of the juvenile court, in the absence of exceptional circumstances, counsel shall enforce the client's right to a continued custody hearing. Counsel should consider the strategic benefit of negotiating or requesting a continuance of the continued custody hearing, having regard for prosecution practices in the particular jurisdiction, the opportunity to conduct pre-hearing investigation, the opportunity to negotiate retaining juvenile jurisdiction over the case and the likely timing of any indictment. A continued custody hearing shall not substitute for a preliminary hearing.

3. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by:

a. creating a transcript of cross-examination of state's witnesses for use as an impeachment tool;

b. preserving testimony favorable to the client of a witness who may not appear at trial;

c. providing discovery of the state's case;

d. allowing for more effective and earlier preparation of a defense; and

e. persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

4. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

5. In preparing for the preliminary hearing, the attorney should be familiar with:

a. the elements of each of the offenses alleged;

b. the requirements for establishing probable cause;

c. factual information which is available concerning the existence of or lack of probable cause;

d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;

e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and

f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

6. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

D. Counsel's Duties at Arraignment

1. Where possible, qualified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's Fifth and Sixth Amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health educational and security needs are being met.

5. Counsel should move for discovery at or immediately following arraignment and shall reserve the right to file all other pretrial motions in accordance with the rules of criminal procedure. See performance standard 2131.F, formal and informal discovery.

E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. art. 331, and, where appropriate, to make a proposal concerning conditions of release.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

5. Absent extraordinary circumstances, counsel shall advocate for the client to be held in the juvenile detention center. Whether the client is in juvenile or adult custody, counsel shall advocate for PREA and, where appropriate, IDEA compliant conditions of confinement. See performance standard 2131.B, obligation of counsel following arrest.

F. Formal and Informal Discovery

1. Counsel should pursue discovery, including filing a motion for discovery, a bill of particulars and conducting appropriate interviews. Counsel has a duty to pursue, as soon as practicable, discovery procedures provided by statute, by the rules of the jurisdiction, and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

2. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations. Counsel shall be familiar with the rules regarding reciprocal discovery and be aware of any potential obligations and time limits regarding reciprocal discovery.

3. Counsel should consider seeking discovery, at a minimum, of the following:

a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that may be relied upon by the prosecution to establish first degree murder under R.S. 14:30;

b. any aggravating circumstances that may be relied upon by the prosecution in support of a sentence of life without parole;

c. any evidence that may be relied upon by the prosecution in support of the argument that the client is the "worst offender";

d. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

e. any record of the client's arrests and convictions and those of potential witnesses;

f. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

g. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

h. any documents or tangible evidence obtained from or belonging to the client, including a list of all items seized from the client or from any place under the client's dominion;

i. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

j. one half of any DNA sample taken from the client;

k. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

l. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

m. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

n. any other adjudicated or unadjudicated conduct that may be relied upon by the prosecution in the sentencing phase;

o. any victim impact information that may be relied upon by the prosecution in the sentencing phase, including any information favorable to the client regarding the victim or victim impact;

p. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

q. any statements of co-conspirators;

r. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

s. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

4. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

5. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in Rule 3.8(d) of the Louisiana Rules of Professional Conduct.

6. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

7. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

8. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

9. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

10. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

11. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional information available from inspection of the original that may not be available from the reproduction.

12. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

13. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

14. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

15. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information. Counsel should be wary of discussing any confidential matters over the recorded jail phones.

16. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars, lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these standards should consider all legal and factual claims potentially available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a JLWOP case when determining the motions to be filed in the particular case, including motions to proceed ex parte. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than pro forma or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

a. the unique characteristics of juvenile law and practice;

b. the unique characteristics of a sentencing hearing for a juvenile facing a possible sentence of life without parole;

c. the potential impact of any pretrial motion or ruling on the strategy for the sentencing phase;

d. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a life without parole sentence;

e. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;

f. the significant limitations placed upon factual development of claims in subsequent stages of the case; and

g. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

a. matters potentially developed in early stages of investigation and discovery, including:

i. the pretrial custody of the accused, including the appropriate bond amount and the need for an adversarial hearing to explore the same;

ii. the need to divest the criminal court of jurisdiction or the improper or unwarranted transfer of the client to criminal court;

iii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;

iv. the need for a preliminary hearing, including a post-indictment preliminary hearing;

v. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;

vi. the need for and adequacy of a bill of particulars;

vii. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or sentencing phase of trial;

viii. the need for and adequacy of notice of any victim impact evidence;

ix. the preservation of and provision of unimpeded access to evidence and witnesses;

x. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

xi. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal, state or local law or is contrary to the interests of the client;

xii. access to experts or resources required by, among other things, these standards which may be denied to an accused because of his indigence;

xiii. the client's right to a speedy trial;

xiv. the client's right to a continuance in order to adequately prepare his or her case;

xv. the need for a change of venue;

xvi. the need to obtain a gag order;

xvii. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xviii. the dismissal of a charge on double jeopardy grounds;

xix. the recusal of the trail judge, the prosecutor and/or prosecutor's office;

xx. competency of the client;

xxi. intellectual disability;

xxii. the nature, scope and circumstances of any testing or assessment of the client;

xxiii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiv. requiring the state to respond to motions in writing;

b. matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes;

ii. the constitutionality of a juvenile life without parole sentence generally, as applied in Louisiana, and as applied to the client's case;

iii. the potential defects in the grand jury composition, the charging process or the allotment;

iv. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

v. any basis upon which the indictment may be quashed;

vi. the adequacy and constitutionality of any aggravating factors or circumstances;

vii. the propriety and prejudice of any joinder of charges or defendants in the charging document;

viii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of sentence or by the defense in mitigation of sentence;

ix. abuse of prosecutorial discretion in seeking a sentence of life without parole;

x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions with special attention to the particular issues raised by the client's age and attendant circumstances;

xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law with special attention to the particular issues raised by the client's age and attendant circumstances;

xii. the admissibility of evidence of other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase with special attention to the particular issues raised by the client's age and attendant circumstances;

xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the sentencing phase with special attention to the particular issues raised by the client's age and attendant circumstances;

xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;

xv. notices of affirmative defenses with all required information included; and

xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence;

c. matters likely arising later in pretrial litigation and in anticipation of trial, including:

i. *in limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;

ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;

iii. the competency of a particular witness or class of witnesses;

iv. the nature and scope of victim impact evidence;

v. *in limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;

vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;

vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of ex parte communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;

viii. challenges to the process of establishing the jury venire;

ix. the desirability of jury determination of sentence;

x. the use of a jury questionnaire;

xi. the manner and scope of *Voir dire*, the use of cause and peremptory challenges and the management of sequestration;

xii. the desirability and circumstances of the jury viewing any scene; and

xiii. the instructions to be delivered at guilt and sentencing;

d. counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

i. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

ii. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and

iii. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

5. Counsel should timely file motions according to the applicable rules and caselaw, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

6. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

7. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. See performance standard 2127(E), development of a strategic plan for the case.

H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all witnesses with information pertinent to the instant or future proceedings;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional

grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant Rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1933 (October 2017).

§2133. Special Circumstances

A. Duties of Counsel at Re-Trial

The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt or sentencing phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

B. Continuing Responsibility to Raise Issue of Client's Incompetence

1. Competence is a common issue for a juvenile facing a possible sentence of life without parole due to age and its attendant circumstances, including adolescent brain development, the nature of the charge, complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk that, given the nature of the charge, the complexity of the case, the unique nature of the sentencing hearing, and the possibility of a life without parole sentence, a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and sentencing phase and how each affects the other; the consequences of each available plea on both guilt and sentencing; and, the range of possible verdicts and the consequences of those verdicts at guilt and sentencing.

3. In considering a juvenile client's ability to assist counsel in a JLWOP case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the sentencing phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than life without parole. The possibility of a sentence of life without parole and the necessity to prepare for and present a sentencing phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of

testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a juvenile life without parole case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by the reality that a life without parole sentence has been imposed, as well as by the effects of confinement on a juvenile, particularly prolonged confinement, such as the development or progression of depression or other mental illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every JLWOP case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or sentencing phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are independent and appropriately qualified to evaluate an adolescent. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found irrestorably incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never untimely to raise a question concerning a client's competence.

21. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake; and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately request that an attorney with experience representing juveniles consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel. Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with these performance standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a juvenile facing a possible sentence of life without parole has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, counsel should request additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with these performance standards to the extent possible within the limitations of their role as standby counsel. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5. With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *Voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony that the defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and sentencing phases of the trial, as appropriate.

D. Counsel's Additional Responsibilities when Representing a Foreign National

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest Consulate;

c. with the permission of the client, contact the nearest Consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the Consulate;

d. where contact is made with the relevant Consulate, counsel should discuss what specific assistance the Consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals.

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§2135. Trial

A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been

fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence:

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing ex parte procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail.

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.):

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made.

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant matters, including relevant prior testimony, before deciding whether or not to present them at trial.

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses;

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense;

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and sentencing phases that may be necessary or of assistance at trial, including:

i. copies of all relevant documents filed in the case;

ii. relevant documents prepared or obtained by investigators;

iii. *Voir dire* questions, topics or plans;

iv. outline or draft of opening statements for both guilt and sentencing phases;

v. cross-examination plans for all possible prosecution witnesses;

vi. direct examination plans for all prospective defense witnesses;

vii. copies of defense subpoenas and proof of service;

viii. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

ix. prior statements of all defense witnesses;

x. reports from defense experts;

xi. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

xii. exhibits, including originals and copies of all documentary exhibits;

xiii. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

xiv. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and

xv. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the sentencing phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the continuance, explaining the incomplete preparation, unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

B. Jury Selection

1. Preparing for *Voir dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire, including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate,

should submit a request for a jury questionnaire by a pretrial motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *Voir dire* questions in advance of trial. Counsel should tailor *Voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case for both guilt and sentencing. Creative use of *Voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *Voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards sentencing a juvenile to a sentence of life without parole; in particular, each juror's willingness and capacity to return a verdict that could result in a sentence of life without parole if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *Voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary *Voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process. Recognizing the scope of the task of adequately recording all relevant information during the *Voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

2. Examination of the Prospective Jurors

a. Counsel should personally *Voir dire* the panel.

b. If the court denies counsel's request to ask questions during *Voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *Voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *Voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *Voir dire*, particularly in cases where the *Voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *Voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *Voir dire* as to sensitive questions.

d. In a group *Voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *Voir dire* to elicit responses in a way that will minimize any negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *Voir dire*.

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually phrase questions in an open-ended fashion that elicits substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the case law.

4. Counsel should determine the extent to which a juror's views on juvenile life without parole or mitigation may substantially impair his or her ability to make an impartial decision at guilt or sentencing. Counsel may consider exploring factors such as the strength of the juror's views on life without parole for a juvenile, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

5. Counsel should apply techniques of *Voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law.

6. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on sentencing a juvenile to life without parole or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

7. Counsel should apply techniques of *Voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of a life without parole sentence on a juvenile.

8. Counsel should apply techniques of *Voir dire* designed to ensure that each prospective juror understands and accepts:

a. that each juror is entitled to their own opinion and vote;

b. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others; and

c. that each juror is entitled to the assistance of the court in having his or her opinion respected.

9. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to life without parole and mitigation.

C. Other challenges for Cause and Peremptory Challenges

1. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

2. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

3. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

4. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

5. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

D. Unconstitutional Exclusion of Jurors

1. In preparation for trial, during *Voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have with regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

2. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

3. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

E. *Voir dire* After the Jury has been Impaneled

1. Counsel should consider requesting additional *Voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *Voir dire*, or jurors otherwise violated the court's instructions.

2. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

3. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

F. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

a. the admissibility or exclusion of evidence and the use to which evidence may be put;

b. the form or content of prosecution questioning, including during *Voir dire*;

c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;

d. the form or content of prosecution argument, including the scope of rebuttal argument;

e. jury instructions and verdict forms; and

f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the attorney general; and the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense.

b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important.

c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction.

d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

G. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each other, counsel should consider discussing their relationship and previous activities to create a context for the alleged

offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and Giglio evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify or present evidence.

H. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination;

c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

d. prepare a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies, variations and contradictions in a witness' testimony;

f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;

g. be alert to significant omission or deficiencies in the testimony of any witnesses;

h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

i. have prepared a transcript of all audio or video tape recorded statements made by the witness;

j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;

k. be alert to and raise, where appropriate, issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;

l. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *Voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age (chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;

b. exclusion of the witness' testimony and all evidence affected by that testimony;

c. a mistrial;

d. dismissal of the case; and/or

e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

I. Presenting the Client's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to

proceed to sentencing phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the sentencing phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to sentencing phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client, in an age and developmentally appropriate manner, all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense;

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that all evidence introduced at guilt may be relied on at sentencing, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

J. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

K. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel normally should request a poll as to each count on which the jury has convicted.

L. The Defense Case Concerning Sentencing

1. Preparation for the sentencing phase should begin immediately upon counsel's entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon sentencing and to seek information that supports mitigation, explains the offense, or rebuts the prosecution's case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant's guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning sentencing that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the sentencing phase.

6. Counsel should present all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client's life story that serves to humanize the client and offers a cohesive theory for a sentence other than life without parole rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client's life and the mitigation case that is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case at sentencing, counsel should seek to integrate the defense theories at guilt and sentencing into a complimentary whole or, where this is not possible, seek to minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the sentencing phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client's moral culpability for the offense; demonstrate the client's capacity for rehabilitation; demonstrate the client's remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client's life; humanize the client; engender sympathy or empathy in the jury; or would otherwise support a sentence less than life without parole. Counsel should always consider and seek to address the likely concern the sentencer has regarding the possibility that the client will represent a future danger if released from prison.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, would demonstrate the client's capacity for growth and

rehabilitation or would otherwise support a sentence less than life without parole;

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide developmental, medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation; to explain possible treatment programs; or otherwise support a sentence less than life without parole; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining how and why this mitigation is relevant;

c. witnesses who can testify about the adverse impact of a sentence of life without parole on the client's family and loved ones;

d. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses;

e. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than life without parole.

11. Among topics counsel should consider presenting through evidence and argument are:

a. youth and its attendant circumstances;

b. adolescent development;

c. positive character evidence and evidence of specific positive acts, including evidence of positive relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, prospects for rehabilitation and reputation evidence;

d. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

e. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

f. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

g. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

h. employment and training history (including skills and performance, and barriers to employability);

i. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

j. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

k. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning sentencing, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning sentencing is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the sentencing phase, any adjudicated or unadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to introduce in the sentencing phase may appropriately be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

a. carefully consider:

i. what legal challenges may appropriately be made to the interview or the conditions surrounding it; and

ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;

b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing); and

c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why life without parole is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain the significance of the mitigation presented and why it supports a sentence other than life without parole. Counsel's closing argument should be more than a general attack on juvenile life without parole and should not minimize the jury's verdict at guilt.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1943 (October 2017).

§2137. Post-Verdict Motions and Formal Sentencing

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a life without parole sentence is imposed. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence not discovered during the trial that would likely have changed the verdict at either guilt or sentencing phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and

b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that life without parole is not a legally permissible penalty in the circumstances of the case, including that the sentence would be constitutionally excessive, where such arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either the guilt or sentencing phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

B. Preparation for Formal Sentencing and the Sentence Investigation Report

1. In preparing for sentencing, counsel should:

a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview;

iii. obtain a copy of the sentence investigation report, once completed, and review the completed report with the client;

iv. file a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Counsel should continue to actively advocate for a disposition other than the imposition of a life without parole sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of a life without parole sentence and in support of an argument that life without parole, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a sentence of life without parole, counsel should prepare and file a motion for reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. the minutes of all of the proceedings connected with the case;

b. the indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. the transcript of arraignment;

d. the transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. the transcript of any proceeding in which allotment of the case occurred;

f. the transcript of any joint proceedings held with another defendant(s);

g. the transcript of the entirety of *Voir dire*, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. the transcript of all bench conferences, in chambers hearings or charge conferences;

i. the transcript of all argument and instruction;

j. the transcript of all testimony, including testimony at the sentencing phase of the trial;

k. any and all exhibits introduced in connection with the case;

l. the jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of life without parole and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence investigation report. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1954 (October 2017).

§2139. Direct Appeal

A. Duties of Appellate Counsel

1. Appellate counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality juvenile life without parole representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner

that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all rules of court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. The issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case and the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of appellee's brief and before filing a reply brief, a second case review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the original brief, Appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

25. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

26. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

27. If pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention to the court by letter or, where appropriate, should seek leave to file a supplemental brief.

28. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

29. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

30. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

31. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

32. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review.

33. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

34. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

35. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1955 (October 2017).

§2141. State Post-Conviction and Clemency

A. Duties of Post-Conviction Counsel

1. Post-conviction counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme

Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality JLWOP representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high-quality, independent, exhaustive investigation and should not assume that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the constitution or laws or treaties of the United States;

b. the conviction was obtained in violation of the constitution of the state of Louisiana;

c. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

d. the court exceeded its jurisdiction;

e. the conviction or sentence subjected the defendant to double jeopardy;

f. the limitations on the institution of prosecution had expired;

g. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

h. the conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana;

i. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted;

j. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for a sentence of life without parole; or

k. a sentence of life without parole is unconstitutional for a juvenile.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or sentencing in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on *Voir dire* examination; and

e. the possibility that the client is innocent of the offense charged or not eligible for a sentence of life without parole.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these standards are intended to reflect accepted minimum standards for performance in juvenile life without parole cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these standards as they describe the responsibilities of trial and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C. Cr. P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all rules of court and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition.

23. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

24. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

25. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, and the deficiency cannot be remedied then counsel

must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

26. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

27. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

28. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

29. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

30. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

31. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

32. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant rules of court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

33. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

34. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

35. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; and the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

38. Counsel shall take all necessary steps to preserve the client's right to federal review.

39. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited.

40. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

41. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to

be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1958 (October 2017).

§2143. Supervision, Review and Consultation

A. Supervision of the Defense Team

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

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