

ACT No. 217

2015 Regular Session

HOUSE BILL NO. 385

BY REPRESENTATIVE NANCY LANDRY

1 AN ACT

2 To amend and reenact Children's Code Article 603(17)(b), relative to mandatory reporters;
3 to establish an exception for certain mental health/social service practitioners; and
4 to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Children's Code Article 603(17)(b) is hereby amended and reenacted to
7 read as follows:

8 Art. 603. Definitions

9 As used in this Title:

10 * * *

11 (17) "Mandatory reporter" is any of the following individuals:

12 * * *

13 (b) "Mental health/social service practitioner" is any individual who provides
14 mental health care or social service diagnosis, assessment, counseling, or treatment,
15 including a psychiatrist, psychologist, marriage or family counselor, social worker,
16 member of the clergy, aide, or other individual who provides counseling services to
17 a child or his family. Notwithstanding any other provision of law to the contrary,
18 when representing a child, as defined in this Code, in a case arising out of this Code,
19 a mental health/social service practitioner shall not be considered a mandatory
20 reporter under the following limited circumstances: (i) when the practitioner is
21 engaged by an attorney to assist in the rendition of professional legal services to that
22 child, (ii) when the information that would serve as the basis for reporting arises in
23 furtherance of facilitating the rendition of those professional legal services to that
24 child, and (iii) when the information that would serve as the basis for reporting is
25 documented by the mental health/social service practitioner. The documentation

1 shall be retained by the mental health/social service practitioner until one year after
2 the child has reached the age of majority.

3 * * *

4 Comments - 2015

5 (a) As in other areas of legal practice, representation involving children and
6 families is increasingly reliant upon the use of interdisciplinary assistance from
7 mental health and social service practitioners as an essential element of providing
8 effective assistance of counsel. The United States Supreme Court has long
9 recognized that a defendant's constitutional right to prepare a defense may
10 necessitate various types of assistance from mental health experts. See *Ake v.*
11 *Oklahoma*, 470 U.S. 68 (1985). Additionally, state standards for the representation
12 of parents in child in need of care and termination of parental rights proceedings
13 provide that attorneys should use a "multidisciplinary approach to representation
14 when available" and "engage or involve a social worker as part of the parent's 'team'
15 to help determine an appropriate case plan, evaluate social services suggested for the
16 client, and act as a liaison and advocate for the client with the service providers".
17 Louisiana Administrative Code, Title 22, Part XV, Chapter 11, Section 1123(B).

18 (b) Absent the additional protections provided by this revision, attorneys
19 may be forced to choose between forgoing practitioner services necessary for
20 effective representation or risking the mandatory reporting of confidential and
21 privileged information by their representatives in a manner that is antithetical to the
22 client's goals of representation. This revision carves out a narrow exception to the
23 definition of a mandatory reporter by excluding mental health and social service
24 practitioners only under the limited circumstances when the practitioner is acting as
25 the representative of an attorney by providing services in furtherance of individual
26 legal representation and, in the course of providing that assistance, becomes aware
27 of information that would otherwise require mandatory reporting.

28 (c) The revised language draws from Code of Evidence Article 506 to
29 reconcile any potential conflict between mandatory reporting requirements and rules
30 of lawyer-client privilege and confidentiality applicable to attorney representatives.

31 (d) Nothing in this article shall be construed as to limit or abrogate any
32 individual's obligation to report pursuant to any other law or profession's ethical
33 standards.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored
are additions.