

2022 Regular Session

SENATE BILL NO. 409

BY SENATOR CONNICK

JUVENILE JUSTICE. Provides relative to dual jurisdiction for both criminal sentencing and juvenile adjudication for certain offenses. (8/1/22)

AN ACT

To amend and reenact Children's Code Art. 305 and to enact Children's Code Art. 897.2, relative to criminal court jurisdiction over children; to provide relative to juvenile delinquency jurisdiction; to provide relative to dual jurisdiction for certain offenses; to provide relative to revocation of suspension of sentence; to provide relative to custody of the juvenile; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Art. 305 is hereby amended and Children's Code Art. 897.2 is hereby enacted to read as follows:

Art. 305. Divestiture of juvenile court jurisdiction; original criminal court jurisdiction over children

~~A.(1) When a child is fifteen years of age or older at the time of the commission of first degree murder, second degree murder, aggravated or first degree rape, or aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile court until either:~~

~~(a) An indictment charging one of these offenses is returned;~~

~~(b) The juvenile court holds a continued custody hearing pursuant to Articles~~

1 ~~819 and 820 and finds probable cause that he committed one of these offenses,~~
2 ~~whichever occurs first. During this hearing, when the child is charged with~~
3 ~~aggravated or first degree rape, the court shall inform him that if convicted he shall~~
4 ~~register as a sex offender for life, pursuant to Chapter 3-B of Title 15 of the~~
5 ~~Louisiana Revised Statutes of 1950.~~

6 ~~(2) Thereafter, the child is subject to the exclusive jurisdiction of the~~
7 ~~appropriate court exercising criminal jurisdiction for all subsequent procedures,~~
8 ~~including the review of bail applications, and the court exercising criminal~~
9 ~~jurisdiction may order that the child be transferred to the appropriate adult facility~~
10 ~~for detention prior to his trial as an adult.~~

11 ~~B.(1) When a child is fifteen years of age or older at the time of the~~
12 ~~commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he~~
13 ~~is subject to the exclusive jurisdiction of the juvenile court until whichever of the~~
14 ~~following occurs first:~~

15 ~~(a) An indictment charging one of the offenses listed in Subparagraph (2) of~~
16 ~~this Paragraph is returned.~~

17 ~~(b) The juvenile court holds a continued custody hearing and finds probable~~
18 ~~cause that the child has committed any of the offenses listed in Subparagraph (2) of~~
19 ~~this Paragraph and a bill of information charging any of the offenses listed in~~
20 ~~Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is~~
21 ~~charged with forcible or second degree rape or second degree kidnapping, the court~~
22 ~~shall inform him that if convicted he shall register as a sex offender for life, pursuant~~
23 ~~to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.~~

24 ~~(2)(a) Attempted first degree murder.~~

25 ~~(b) Attempted second degree murder.~~

26 ~~(c) Manslaughter.~~

27 ~~(d) Armed robbery.~~

28 ~~(e) Aggravated burglary.~~

29 ~~(f) Forcible or second degree rape.~~

1 (g) Simple or third degree rape.

2 (h) Second degree kidnapping.

3 (i) Repealed by Acts 2001, No. 301, §2.

4 (j) Aggravated battery committed with a firearm.

5 (k) A second or subsequent aggravated battery.

6 (l) A second or subsequent aggravated burglary.

7 (m) A second or subsequent offense of burglary of an inhabited dwelling.

8 (n) A second or subsequent felony-grade violation of Part X or X-B of
9 Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950 involving the
10 manufacture, distribution, or possession with intent to distribute controlled
11 dangerous substances.

12 (3) The district attorney shall have the discretion to file a petition alleging
13 any of the offenses listed in Subparagraph (2) of this Paragraph in the juvenile court
14 or, alternatively, to obtain an indictment or file a bill of information. If the child is
15 being held in detention, the district attorney shall make his election and file the
16 indictment, bill of information, or petition in the appropriate court within thirty
17 calendar days after the child's arrest, unless the child waives this right.

18 (4) If an indictment is returned or a bill of information is filed, the child is
19 subject to the exclusive jurisdiction of the appropriate court exercising criminal
20 jurisdiction for all subsequent procedures, including the review of bail applications,
21 and the district court may order that the child be transferred to the appropriate adult
22 facility for detention prior to his trial as an adult.

23 C. Except when a juvenile is held in an adult jail or lockup, the time
24 limitations for the conduct of a continued custody hearing are those provided by
25 Article 819.

26 D. The court exercising criminal jurisdiction shall retain jurisdiction over the
27 child's case, even though he pleads guilty to or is convicted of a lesser included
28 offense. A plea to or conviction of a lesser included offense shall not re-vest
29 jurisdiction in the court exercising juvenile jurisdiction over such a child.

1 A. If a petition alleges that a child between the ages of fifteen and
2 eighteen and has committed first degree murder, attempted first degree
3 murder, second degree murder, attempted second degree murder,
4 manslaughter, armed robbery, aggravated burglary, aggravated kidnapping,
5 aggravated rape, forcible rape, simple rape, second degree kidnapping, a second
6 or subsequent aggravated battery, a second or subsequent aggravated burglary,
7 a second or subsequent burglary of an inhabited dwelling, or a second or
8 subsequent felony-grade violation of Part X or X-B of Chapter 4 of Title 40 of
9 the Louisiana Revised Statutes of 1950, involving the manufacture, distribution,
10 or possession with intent to distribute controlled dangerous substances, the
11 court shall order a hearing and may, in its discretion, dismiss the petition and
12 transfer the child to a court of appropriate criminal jurisdiction for
13 prosecution. If the child is being held in detention, the district attorney shall file
14 the indictment, bill of information, or petition in the appropriate court within
15 thirty calendar days after the child's arrest, unless the child waives this right.

16 B. Knowing and willful age misrepresentation by a juvenile subject shall
17 not affect any action or proceeding that occurs based upon the
18 misrepresentation. Any evidence obtained during the period of time in which
19 a child misrepresents his or her age may be used against the child and shall be
20 subject only to rules of evidence applicable in adult proceedings.

21 C. The juvenile officer may consult with the office of the prosecuting
22 attorney concerning any offense for which the child could be transferred for
23 prosecution to the appropriate court of criminal jurisdiction under this Article.
24 The prosecuting attorney shall have access to police reports, reports of the
25 juvenile or deputy juvenile officer, statements of witnesses, and all other records
26 or reports relating to the offense alleged to have been committed by the child.
27 The prosecuting attorney shall have access to the disposition records of the child
28 when the child has been adjudicated for an offense that would be a felony-grade
29 offense if committed by an adult. The prosecuting attorney shall not divulge any

1 information regarding the child and the offense until the juvenile court, at a
2 judicial hearing, has determined that the child is not a proper subject to be
3 dealt with under the provisions of this Chapter.

4 D. A written report shall be prepared by the juvenile officer in
5 accordance with this Article, developing fully all available information relevant
6 to the criteria that shall be considered by the court in determining whether the
7 child is a proper subject to be dealt with under the provisions of this Title and
8 whether there are reasonable prospects of rehabilitation within the juvenile
9 justice system. These criteria shall include but not be limited to:

10 (1) The seriousness of the offense alleged and whether the protection of
11 the community requires transfer to the court of appropriate criminal
12 jurisdiction.

13 (2) Whether the offense alleged involved viciousness, force, and violence.

14 (3) Whether the offense alleged was against persons or property, with
15 greater weight being given to an offense against persons, especially if personal
16 injury resulted.

17 (4) Whether the offense alleged is a part of a repetitive pattern of
18 offenses that indicate that the child may be beyond rehabilitation under the
19 Children's Code.

20 (5) The record and history of the child, including experience with the
21 juvenile justice system, other courts, supervision, commitments to juvenile
22 institutions, and other placements.

23 (6) The sophistication and maturity of the child as determined by
24 consideration of his home and environmental situation, emotional condition,
25 and pattern of living.

26 (7) The age of the child.

27 (8) The program and facilities available to the juvenile court in
28 considering disposition.

29 (9) Whether or not the child can benefit from the treatment or

1 rehabilitative programs available to the juvenile court, and

2 (10) Racial disparity in certification.

3 * * *

4 Art. 897.2. Disposition after conviction of certain felony offenses; dual
5 jurisdiction

6 A. When the offender is under eighteen years of age and has been
7 transferred for prosecution to the appropriate court exercising criminal
8 jurisdiction, and whose prosecution results in a conviction or a plea of guilty for
9 the offenses listed in Children's Code Art. 305, the court shall consider dual
10 jurisdiction of both criminal and juvenile codes, as set forth in this Article. The
11 court is authorized to impose a juvenile disposition under this Title and
12 simultaneously impose an adult criminal sentence, the execution of which shall
13 be suspended pursuant to the provision of this Article. Successful completion of
14 the juvenile disposition ordered shall be a condition of the suspended adult
15 criminal sentence. The court may order an offender into the custody of the
16 office of juvenile justice pursuant to this Article under all of the following
17 criteria:

18 (1) Upon agreement of the office of juvenile justice.

19 (2) If the office of juvenile justice determines that there is space available
20 in a facility designed to serve offenders sentenced under this Article.

21 B. If the office of juvenile justice agrees to accept a child and the court
22 does not impose a juvenile disposition, the court shall make findings on the
23 record as to the reason the office of juvenile justice was not appropriate for the
24 child prior to imposing the adult criminal sentence.

25 C. If there is probable cause to believe that the offender has violated a
26 condition of the suspended sentence or committed a new offense, the court shall
27 conduct a hearing on the violation charged, unless the child waives a hearing.
28 If the violation is established and found, the court may continue or revoke the
29 juvenile disposition, impose the adult criminal sentence, or enter any other

1 order it deems appropriate.

2 D. When a child has received a suspended sentence pursuant to this
3 Article and the office of juvenile justice determines the child is beyond the scope
4 of its treatment programs, the office of juvenile justice may petition the court
5 for a transfer of custody of the offender. The court shall hold a hearing and
6 shall either:

7 (1) Revoke the suspended sentence and direct that the child be taken into
8 immediate custody of the Department of Corrections.

9 (2) Direct that the child be placed on probation.

10 E. When a child who has received a suspended sentence reaches the age
11 of eighteen, the court shall hold a hearing, at which it shall either:

12 (1) Revoke the suspended sentence and direct that the child be taken into
13 immediate custody of the Department of Corrections.

14 (2) Direct that the child be placed on probation.

15 (3) Direct that the child remain in the custody of the office of juvenile
16 justice, if the office agrees to such placement.

17 F. The office of juvenile justice shall petition the court for a hearing
18 before it releases a child who meets the criteria of Paragraph A of this Article
19 at any time before the child reaches the age of twenty-one years. The court shall
20 either:

21 (1) Revoke the suspended sentence and direct that the child be taken into
22 immediate custody of the Department of Corrections.

23 (2) Direct that the child be placed on probation.

24 G. If the suspension of the adult criminal sentence is revoked, all time
25 served by the child under the juvenile disposition shall be credited toward the
26 adult criminal sentence imposed.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Whitney Kauffeld.

DIGEST

SB 409 Original

2022 Regular Session

Connick

Present law provides that when a child is 15 years of age or older and commits first degree murder, second degree murder, aggravated or first degree rape, or aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile court until either an indictment is returned or the juvenile court holds a continued custody hearing and finds probable cause that the child committed one of these offenses. Present law provides that thereafter, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction.

Proposed law deletes present law.

Present law provides that when a child is 15 years of age or older and commits attempted first degree murder, attempted second degree murder, manslaughter, armed robbery, aggravated burglary, forcible or second degree rape, simple or third degree rape, second degree kidnapping, aggravated battery committed with a firearm, a second or subsequent aggravated battery, a second or subsequent aggravated burglary, a second or subsequent burglary of an inhabited dwelling, or a second or subsequent felony-grade violation of the Uniform Controlled Dangerous Substances Law involving the manufacture, distribution, or possession with intent to distribute controlled dangerous substances, he is subject to the exclusive jurisdiction of the juvenile court until the first of either the return of an indictment or the juvenile court finds probable cause that the child committed one of these offenses and a bill of information is filed. Present law further provides that the district attorney has the discretion to file a petition alleging any of these offenses in the juvenile court or obtain an indictment or file a bill of information. Present law further provides that if an indictment is returned or bill of information filed, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all subsequent procedures.

Proposed law deletes present law.

Present law provides that if an indictment is returned, the juvenile court is fully divested from jurisdiction to adjudicate the matter before the court.

Proposed law deletes present law and provides that if a child between 15 and 18 has committed any of the enumerated present law offenses, and the district attorney has filed a petition, the court has discretion to retain or dismiss the petition and transfer the child to a court of appropriate criminal jurisdiction for prosecution. Proposed law further provides that the district attorney must file the petition, indictment, or bill of information within 30 days of the child's arrest, if the child remains in detention. Proposed law further provides that if a child misrepresents his age, it would have no effect on the prosecution of the child.

Proposed law provides that the juvenile court officer may consult with the district attorney, and the district attorney must have access to all documentation relative to the offense and prior offenses committed by the juvenile.

Proposed law requires that a written report be prepared providing all information relative to the court in determining whether there are reasonable prospects of rehabilitation within the juvenile justice system. Those factors include the seriousness of the offense and community safety, whether the offense involved viciousness, force, or violence on the part of the juvenile, whether the offense was against a person or property, and if personal injury resulted, whether the offense was part of a repetitive pattern, the record and history of the child, the sophistication and maturity of the child, the age of the child, the programs and facilities available in the juvenile justice system, whether the child would benefit from

treatment, and racial disparity in certification.

Proposed law provides that the court is authorized to impose both a juvenile and adult sentence for disposition. The execution of the adult sentence is suspended, and as a condition of the suspension, the juvenile must successfully complete the juvenile sentence. The court may order the juvenile into the custody of the office of juvenile justice, with agreement of the office of juvenile justice and provided there is space available for the juvenile. If the office of juvenile justice agrees to accept the child but the court does not impose a juvenile disposition, the court must make a finding on the record why such a disposition is inappropriate.

Proposed law provides that if there is probable cause for a court to believe that the juvenile violated the terms of his suspended sentence or committed a new offense, the court must hold a hearing, unless the child waives. If the court finds that a violation occurred, the court may revoke the juvenile disposition and impose the adult sentence or enter an order it deems appropriate.

Proposed law provides that if the office of juvenile justice finds that the child is beyond the scope of the treatment programs, it may petition the court for a transfer of custody of the offender. The court must hold a hearing and determine if a transfer of custody is appropriate.

Proposed law provides that when the child reaches the age of 18, the court must hold a hearing to determine continued custody of the juvenile.

Proposed law provides that the office of juvenile justice must petition the court for a hearing before it releases a child under the age of 21. The court must determine whether to revoke the suspended sentence and impose the adult sentence, or place the child on probation.

Proposed law provides that if the suspension of the adult criminal sentence is revoked, the child will be provided jail credit in the adult sentence for all time served under the juvenile disposition.

Effective August 1, 2022.

(Amends Ch.C. Art. 305; adds Ch.C. Art. 897.2)