

SENATE FLOOR AMENDMENTS

2022 Regular Session

Amendments proposed by Senator Luneau to Engrossed Senate Bill No. 418 by Senator Cathey

1 AMENDMENT NO. 1

2 On page 1, line 2, after "Children's Code" delete the remainder of the line and insert the
3 following:

4 "Arts. 305(A)(2), and (B)(4), 306(B), (C), and (D), 821(E), and 857(A),
5 862(A), and 864(B), relative to juvenile court jurisdiction;"

6 AMENDMENT NO. 2

7 On page 1, delete line 3, and insert "to provide relative to juvenile detention for certain
8 offenses; to provide factors for continued custody hearings; to provide relative to transfers
9 for criminal prosecution; and to"

10 AMENDMENT NO. 3

11 On page 1, line 6, after "Children's Code" delete the remainder of the line and insert the
12 following:

13 "Arts. 305(A)(2), and (B)(4), 306(B), (C), and (D), 821(E), and 857(A),
14 862(A), and 864(B) are hereby amended and reenacted to read as"

15 AMENDMENT NO. 4

16 On page 1, delete lines 8 through 17, and on page 2, delete lines 1 through 7, insert the
17 following:

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

20 A.(1) * * *

21 (2) Thereafter, the child is subject to the exclusive jurisdiction of the
22 appropriate court exercising criminal jurisdiction for all subsequent
23 procedures, including the review of bail applications, and the court exercising
24 criminal jurisdiction may order that the child be transferred to the appropriate
25 adult facility for detention prior to his trial as an adult **if the child has not been**
26 **transferred pursuant to Article 306.**

27
28 B.(1) * * *

29 (4) If an indictment is returned or a bill of information is filed, the child is
30 subject to the exclusive jurisdiction of the appropriate court exercising criminal
31 jurisdiction for all subsequent procedures, including the review of bail applications,
32 and the district court may order that the child be transferred to the appropriate adult
33 facility for detention prior to his trial as an adult **if the child is not already being**
34 **detained pursuant to Article 306.**

35 * * *

36 Art. 306. Places of detention; juveniles subject to criminal court jurisdiction

37 * * *

38 B.(1) If a detention facility for juveniles is not available, he may be held in
39 an adult jail or lockup for identification or processing procedures or while awaiting
40 transportation only as long as necessary to complete these activities for up to six

1 hours, except that in nonmetropolitan areas, he may be held for up to twenty-four
2 hours if all of the following occur:

3 (1) (a) The child meets the age and offense criteria set out in Article 305.

4 (2) (b) A continued custody hearing in accordance with Articles 820 and 821
5 is held within twenty-four hours after his arrest.

6 (3) (c) There is no acceptable alternative placement to the jail or lockup in
7 which he is being held.

8 (4) (d) The sheriff or the administrator of the adult jail or lockup has certified
9 to the court that facilities exist providing for sight and sound separation of the
10 juvenile from adult offenders and that he can be given continuous visual supervision
11 while placed in the jail or lockup.

12 **(2) A child who is seventeen years of age at the time of the commission**
13 **of an offense enumerated in Article 305 that is also defined as a crime of**
14 **violence in R.S. 14:2(B) shall be held in an adult jail or lockup prior to the**
15 **continued custody hearing for the offense if the child has a history of prior**
16 **delinquent acts. The continued custody hearing provided for in Articles 820 and**
17 **821 shall be held within twenty-four hours after his arrest.**

18 C. If an indictment has not been returned, a bill of information filed, or a
19 continued custody hearing not held within twenty-four hours, the child held in an
20 adult jail or lockup in a nonmetropolitan area **or a child being held pursuant to**
21 **Paragraph (B)(2) of this Article,** shall be released or removed to a juvenile
22 detention facility.

23 D.(1) If at the conclusion of the continued custody hearing, the court
24 determines that the child meets the age requirements and that there is probable cause
25 that the child has committed one of the offenses enumerated in Article 305, the court
26 shall order him held for trial as an adult for the appropriate court of criminal
27 jurisdiction.

28 **(2)(a) If the child is seventeen years of age and the court determines at**
29 **the continued custody hearing that there is both probable cause that the child**
30 **has committed one of the offenses enumerated in Article 305 that is also a crime**
31 **of violence as defined in R.S. 14:2(B) and that it is in the interest of justice that**
32 **the child be held in the appropriate adult facility for detention prior to his trial**
33 **as an adult, then the court shall do one of the following:**

34 **(i) If the child is being held in an adult jail or lockup pursuant to**
35 **Paragraph (B)(2) of this Article, the child shall continue to be held in the adult**
36 **facility for detention prior to his trial as an adult.**

37 **(ii) If the child has been detained in a juvenile detention facility prior to**
38 **the finding of probable cause by the court, the court shall order the child**
39 **transferred to the appropriate adult facility for detention prior to his trial as an**
40 **adult.**

41 **(b) When the child is being held in an adult facility for detention prior**
42 **to his trial, the appropriate court of criminal jurisdiction shall review no less**
43 **than every thirty days prior to the child becoming eighteen years of age whether**
44 **the interest of justice continues to be served by the child being detained in an**
45 **adult facility. The child shall not be held in an adult facility beyond one hundred**
46 **eighty days unless the court determines there is good cause.**

47 **(3) If the court determines there is probable cause that the child has**
48 **committed one of the offenses enumerated in Article 305 and the child is not**
49 **already being detained in an adult facility,** ~~The~~ **the** appropriate court of criminal
50 jurisdiction may thereafter order that the child be held in any facility used for the
51 pretrial detention of accused adults and the child shall apply to the appropriate court
52 of criminal jurisdiction for a preliminary hearing, bail, and for any other rights to
53 which he may be entitled under the Code of Criminal Procedure.

54 * * *

55 Art. 821. Continued custody hearing

56 * * *

57 E.(1) If probable cause has been demonstrated, the court may release the
58 child. The court may also require bail or other security pursuant to Articles 823
59 through 825 if the court finds that ~~such~~ **it** is necessary to secure the child's
60 appearance for subsequent hearings.

1 (2) If probable cause has been demonstrated that a seventeen-year old
2 child committed any offense enumerated in Article 305 that is also defined as
3 a crime of violence in R.S. 14:2(B), the court shall determine whether it is in the
4 interest of justice for the child to be transferred to the appropriate adult facility
5 for detention prior to his trial as an adult. In making this determination, the
6 court shall consider the following:

- 7 (a) The age of the child.
- 8 (b) The physical and mental maturity of the child.
- 9 (c) The present mental state of the child, including whether the child
10 presents an imminent risk of harm to himself.
- 11 (d) The nature and circumstances of the alleged offense.
- 12 (e) The child's history of prior delinquent acts.
- 13 (f) The ability of the available adult and juvenile detention facilities to
14 meet the specific needs of the child and to protect the safety of the public and
15 other detained children.
- 16 (g) Any relevant factors the court deems appropriate.

17 * * *

18 Art. 857. Transfers for criminal prosecution; authority

19 A. The court on its own motion or on motion of the district attorney may
20 conduct a hearing to consider whether to transfer a child for prosecution to the
21 appropriate court exercising criminal jurisdiction if a delinquency petition has been
22 filed which alleges **either of the following:**

23 **(1) that ~~That~~ a child who is fourteen years of age or older at the time of the**
24 **commission of the alleged offense but is not otherwise subject to the original**
25 **jurisdiction of a court exercising criminal jurisdiction has committed any one or**
26 **more of the following crimes:**

- 27 ~~(1)~~ **(a)** First degree murder.
- 28 ~~(2)~~ **(b)** Second degree murder.
- 29 ~~(3)~~ **(c)** Aggravated kidnapping.
- 30 ~~(4)~~ **(d)** Aggravated or first degree rape.
- 31 ~~(5)~~ **(e)** Aggravated battery when committed by the discharge of a firearm.
- 32 ~~(6)~~ **(f)** Armed robbery when committed with a firearm.
- 33 ~~(8)~~ **(g)** Forcible or second degree rape if the rape is committed upon a child
34 at least two years younger than the rapist.

35 **(2) A child who is seventeen years of age at the time of the commission**
36 **of the alleged offense but is not otherwise subject to the original jurisdiction of**
37 **a court exercising criminal jurisdiction has committed either of the following:**

- 38 **(a) Simple burglary when committed with a firearm, or becomes armed**
39 **with or possesses a firearm after entering.**
- 40 **(b) Carjacking.**

41 * * *

42 Art. 862. Transfer hearing; required findings

43 A. **(1)** In order for a motion to transfer a child to be granted, the burden shall
44 be upon the state to prove all of the following:

45 ~~(1)~~ **(a)** Probable cause exists that the child meets the requirements of
46 Article 857.

47 ~~(2)~~ **(b)** By clear and convincing proof, there is no substantial opportunity
48 for the child's rehabilitation through facilities available to the court, based
49 upon the following criteria:

50 ~~(a)~~ **(i)** The age, maturity, both mental and physical, and sophistication
51 of the child.

52 ~~(b)~~ **(ii)** The nature and seriousness of the alleged offense to the
53 community and whether the protection of the community requires transfer.

54 ~~(e)~~ **(iii)** The child's prior acts of delinquency, if any, and their nature and
55 seriousness.

56 ~~(d)~~ **(iv)** Past efforts at rehabilitation and treatment, if any, and the child's
57 response.

