

2022 Regular Session

SENATE BILL NO. 418

BY SENATOR CATHEY

JUVENILE JUSTICE. Provides for the detention of seventeen-year-old juveniles under certain circumstances. (8/1/22)

1 AN ACT

2 To amend and reenact Children's Code Arts. 305(A)(2), and (B)(4), 306(B), (C), and (D),
3 821(E), and 857(A), 862(A), and 864(B), relative to juvenile court jurisdiction; to
4 provide relative to juvenile detention for certain offenses; to provide factors for
5 continued custody hearings; to provide relative to transfers for criminal prosecution;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Children's Code Arts. 305(A)(2), and (B)(4), 306(B), (C), and (D),
9 821(E), and 857(A), 862(A), and 864(B) are hereby amended and reenacted to read as
10 follows:

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

13 A.(1) * * *

14 (2) Thereafter, the child is subject to the exclusive jurisdiction of the
15 appropriate court exercising criminal jurisdiction for all subsequent procedures,
16 including the review of bail applications, and the court exercising criminal
17 jurisdiction may order that the child be transferred to the appropriate adult facility

1 for detention prior to his trial as an adult if the child has not been transferred
2 pursuant to Article 306.

3 B.(1) * * *

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

10 * * *

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

12 * * *

13 B.(1) If a detention facility for juveniles is not available, he may be held in
14 an adult jail or lockup for identification or processing procedures or while awaiting
15 transportation only as long as necessary to complete these activities for up to six
16 hours, except that in nonmetropolitan areas, he may be held for up to twenty-four
17 hours if all of the following occur:

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

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

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

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

27 (2) A child who is seventeen years of age at the time of the commission
28 of an offense enumerated in Article 305 that is also defined as a crime of
29 violence in R.S. 14:2(B) shall be held in an adult jail or lockup prior to the

1 continued custody hearing for the offense if the child has a history of prior
2 delinquent acts. The continued custody hearing provided for in Articles 820 and
3 821 should be held within twenty-four hours after his arrest.

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

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

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

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

23 (ii) If the child has been detained in a juvenile detention facility prior to
24 the finding of probable cause by the court, the court shall order the child
25 transferred to the appropriate adult facility for detention prior to his trial as an
26 adult.

27 (b) When the child is being held in an adult facility for detention prior
28 to his trial, the appropriate court of criminal jurisdiction shall review no less
29 than every thirty days prior to the child becoming eighteen years of age whether

1 the interest of justice continues to be served by the child being detained in an
 2 adult facility. The child shall not be held in an adult facility beyond one hundred
 3 eighty days unless the court determines there is good cause.

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

11 * * *

12 Art. 821. Continued custody hearing

13 * * *

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

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

24 (a) The age of the child.

25 (b) The physical and mental maturity of the child.

26 (c) The present mental state of the child, including whether the child
 27 presents an imminent risk of harm to himself.

28 (d) The nature and circumstances of the alleged offense.

29 (e) The child's history of prior delinquent acts.

1 **(f)The ability of the available adult and juvenile detention facilities to**
2 **meet the specific needs of the child and to protect the safety of the public and**
3 **other detained children.**

4 **(g) Any relevant factors the court deems appropriate.**

5 * * *

6 Art. 862. Transfer hearing; required findings

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

9 ~~(1)~~(a) Probable cause exists that the child meets the requirements of Article
10 857.

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

14 ~~(a)~~(i) The age, maturity, both mental and physical, and sophistication of the
15 child.

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

18 ~~(c)~~(iii) The child's prior acts of delinquency, if any, and their nature and
19 seriousness.

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

22 ~~(e)~~(v) Whether the child's behavior might be related to physical or mental
23 problems.

24 ~~(f)~~(vi) Techniques, programs, personnel, and facilities available to the
25 juvenile court which might be competent to deal with the child's particular problems.

26 **(2) If a transfer is granted for an offense enumerated in Article**
27 **857(A)(2), the court shall also determine whether the interest of justice is served**
28 **for the child to be transferred to the appropriate adult facility for detention**
29 **prior to his trial as an adult. In making this determination, the court shall**

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

* * *

Art. 864. Places of detention; before and after transfer

* * *

B. After the entry of a judgment ordering his transfer pursuant to Article 857(A)(2), the child shall be held in any facility used for the pretrial detention of accused adults and shall apply to the appropriate court of criminal jurisdiction for a preliminary hearing, bail, and for any other rights to which he may be entitled under the Code of Criminal Procedure if the court finds it is in the interest of justice. If the child is held in an adult facility, the provisions of Article 306(D)(2)(b) shall be applicable.

* * *

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

DIGEST

SB 418 Reengrossed 2022 Regular Session Cathey

Present law provides that a child is 15 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, is subject to the exclusive jurisdiction of the juvenile court until either:

- (1) An indictment charging one of these offenses is returned.
- (2) The juvenile court holds a continued custody hearing pursuant to present law and

finds probable cause that he committed one of these offenses, whichever occurs first.

Present law provides that a child is 15 years of age or older at the time of the commission of any one of certain enumerated is subject to the exclusive jurisdiction of the juvenile court until one of the following occurs first, whichever occurs first:

- (1) An indictment charging one of the enumerated offenses is returned.
- (2) The juvenile court holds a continued custody hearing and finds probable cause that the child has committed any of the offenses listed present law and a bill of information is filed.

Present law grants district attorney the discretion to file a petition alleging any of the offenses listed in present law in the juvenile court or, alternatively, to obtain an indictment or file a bill of information. Provides that if an indictment is returned or a bill of information is filed, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all subsequent procedures, including the review of bail applications, and the district court may order that the child be transferred to the appropriate adult facility for detention prior to his trial as an adult.

Present law provides that if a detention facility for juveniles is not available, he may be held in an adult jail or lockup for identification or processing procedures or while awaiting transportation only as long as necessary to complete these activities for up to six hours, except that in nonmetropolitan areas, he may be held for up to twenty-four hours if all of the following occur:

- (1) The child meets the age and offense criteria set out in present law.
- (2) A continued custody hearing in accordance with present law is held within 24 hours after his arrest.
- (3) There is no acceptable alternative placement to the jail or lockup in which he is being held.
- (4) The sheriff or the administrator of the adult jail or lockup has certified to the court that facilities exist providing for sight and sound separation of the juvenile from adult offenders and that he can be given continuous visual supervision while placed in the jail or lockup.

Proposed law provides that if a child who is 17 years of age at the time of the commission of an offense enumerated in present law that is also defined as a crime of violence be held in an adult jail or lockup prior to the continued custody hearing for the offense if the child has a history of prior delinquent acts. The continued custody hearing provided for in present law should be held within 24 hours after his arrest.

Present law provides that if an indictment has not been returned, a bill of information filed, or a continued custody hearing not held within 24 hours, the child held in an adult jail or lockup in a nonmetropolitan area shall be released or removed to a juvenile detention facility.

Present law provides that if, at the conclusion of the continued custody hearing, the court determines that the child meets the age requirements and that there is probable cause that the child has committed one of the offenses enumerated in present law, the court shall order him held for trial as an adult for the appropriate court of criminal jurisdiction.

Present law authorizes the appropriate court of criminal jurisdiction to order that the child be held in any facility used for the pretrial detention of accused adults and the child shall apply to the appropriate court for a preliminary hearing, bail, and for any other rights to

which he may be entitled under the Code of Criminal Procedure.

Proposed law provides that if the child is 17 years of age and the court determines at the continued custody hearing that there is both probable cause that the child has committed one of the offenses enumerated in present law that is also a crime of violence and that it is in the interest of justice that the child be held in the appropriate adult facility for detention prior to his trial as an adult, then the court shall do one of the following:

- (1) If the child is being held in an adult jail or lockup, the child shall continue to be held in the adult facility for detention prior to his trial as an adult.
- (2) If the child has been detained in a juvenile detention facility prior to the finding of probable cause by the court, the court shall order the child transferred to the appropriate adult facility for detention prior to his trial as an adult.

Proposed law provides that when the child is being held in an adult facility for detention prior to his trial, the appropriate court shall review no less than every 30 days prior to the child becoming 18 years of age whether the interest of justice continues to be served by the child being detained in an adult facility. The child shall not be held in an adult facility beyond 180 days unless the court determines there is good cause.

Proposed law provides that if the court determines there is probable cause that the child has committed one of the offenses enumerated in present law and the child is not already being detained in an adult facility, the appropriate court may thereafter order that the child be held in any facility used for the pretrial detention of accused adults and the child shall apply to the appropriate court of criminal jurisdiction for a preliminary hearing, bail, and for any other rights to which he may be entitled under present law.

Present law provides that if probable cause has been demonstrated, the court may release the child. The court may also require bail or other security pursuant to present law if the court finds that such is necessary to secure the child's appearance for subsequent hearings.

Proposed law provides that if probable cause has been demonstrated that a 17 year old child committed any offense enumerated in present law that is also defined as a crime of violence, the court shall determine whether it is in the interest of justice for the child to be transferred to the appropriate adult facility for detention prior to his trial as an adult. In making this determination, the court shall consider the following:

- (1) The age of the child.
- (2) The physical and mental maturity of the child.
- (3) The present mental state of the child, including whether the child presents an imminent risk of harm to himself.
- (4) The nature and circumstances of the alleged offense.
- (5) The child's history of prior delinquent acts.
- (6) The ability of the available adult and juvenile detention facilities to meet the specific needs of the child and to protect the safety of the public and other detained children.
- (7) Any relevant factors the court deems appropriate.

Present law provides that in order for a motion to transfer a child to be granted, the burden shall be upon the state to prove all of the following:

- (1) Probable cause exists that the child meets the requirements of present law.

- (2) By clear and convincing proof, there is no substantial opportunity for the child's rehabilitation through facilities available to the court, based upon the following criteria:
- (a) The age, maturity, both mental and physical, and sophistication of the child.
 - (b) The nature and seriousness of the alleged offense to the community and whether the protection of the community requires transfer.
 - (c) The child's prior acts of delinquency, if any, and their nature and seriousness.
 - (d) Past efforts at rehabilitation and treatment, if any, and the child's response.
 - (e) Whether the child's behavior might be related to physical or mental problems.
 - (f) Techniques, programs, personnel, and facilities available to the juvenile court which might be competent to deal with the child's particular problems.

Proposed law requires that if a transfer is granted for an offense enumerated in present law, the court also determine whether the interest of justice is served for the child to be transferred to the appropriate adult facility for detention prior to his trial as an adult. In making this determination, the court shall consider the following:

- (1) The age of the child.
- (2) The physical and mental maturity of the child.
- (3) The present mental state of the child, including whether the child presents an imminent risk of harm to himself.
- (4) The nature and circumstances of the alleged offense.
- (5) The child's history of prior delinquent acts.
- (6) The ability of the available adult and juvenile detention facilities to meet the specific needs of the child and to protect the safety of the public and other detained children.
- (7) Any other relevant factors the court deems appropriate.

Effective August 1, 2022.

(Amends Ch. C. Art. 305(A)(2), and (B)(4), 306(B), (C), and (D), 821(E), 862(A), and 864(B))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

- 1. Deleted provisions relative to the definition of a child for purposes of delinquency proceedings.
- 2. Adds provisions relative to divestiture of juvenile court jurisdiction for children between the ages of 15 and 18 under certain circumstances.