

2023 Regular Session

SENATE BILL NO. 159

BY SENATOR CATHEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUVENILE JUSTICE. Provides for the detention of seventeen year old juveniles under certain circumstances. (gov sig)

AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Arts. 305(A)(3) and (B)(4), 306(B), (C), and (D), and 821(E) are hereby amended and reenacted to read as follows:

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

A.(1) * * *

(3) Thereafter, if an indictment is returned, 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 court exercising criminal jurisdiction may order that the child be transferred to the appropriate adult facility for detention prior to his trial as an adult **if the child is not already being detained pursuant to Article 306.** If the district attorney elects to file

1 a petition and the child waives the right to a continued custody hearing, the child is
2 subject to the exclusive jurisdiction of the juvenile court for all subsequent
3 procedures, including the review of bail applications.

4 B.(1) * * *

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

11 * * *

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

13 * * *

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

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

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

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

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

28 **(2) A child who is seventeen years of age at the time of the commission**
29 **of an offense enumerated in Article 305 that is also defined as a crime of**

1 violence in R.S. 14:2(B) shall be held in an adult jail or lockup prior to the
2 continued custody hearing for the offense if the child has a history of prior
3 delinquent acts. Except for good cause shown, the continued custody hearing
4 shall be held within twenty-four hours and not later than seventy-two hours as
5 provided by Article 819.

6 C. ~~If~~ Except as provided in Subparagraph (B)(2) of this Article, if an
7 indictment has not been returned, a bill of information filed, or a continued custody
8 hearing not held within twenty-four hours, the child held in an adult jail or lockup
9 in a nonmetropolitan area shall be released or removed to a juvenile detention
10 facility.

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

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

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

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

29 (b) When the child is being held in an adult facility for detention prior

1 to his trial, the appropriate court of criminal jurisdiction shall review no less
2 than every thirty days prior to the child becoming eighteen years of age whether
3 the interest of justice continues to be served by the child being detained in an
4 adult facility. The child shall not be held in an adult facility beyond one hundred
5 eighty days unless the court determines there is good cause.

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

13 * * *

14 Art. 821. Continued custody hearing

15 * * *

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

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

26 (a) The age of the child.

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

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

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

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

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

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

7 * * *

8 Section 2. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

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

DIGEST

SB 159 Engrossed

2023 Regular Session

Cathey

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

- (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 in present law and a bill of information is filed.

Present law grants the 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 further clarifies that the district attorney has discretion to file a petition in juvenile court or obtain an indictment for certain serious felony offenses listed in present law. Present law further provides that if the district attorney files a petition in juvenile court, and the child waives a continued custody hearing, the jurisdiction remains for all further proceedings, including review of bail, with the juvenile court.

Present law provides that if a detention facility for juveniles is not available, the child 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 24 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 child from adult offenders and that he can be given continuous visual supervision while placed in the jail or lockup.

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.

Proposed law creates an exception to present law that provides that a child who is 17 years of age at the time of the commission of certain offenses enumerated in present law that is also a crime of violence must 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. Provides that except for good cause shown, the continued custody hearing shall be held within 24 hours and not later than 72 hours.

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 relative to continued custody hearings.

Proposed law amends present law and 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.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends Ch.C.Arts. 305(A)(3) and (B)(4), 306(B), (C), and (D), and 821(E))