HLS 15RS-972 REENGROSSED

2015 Regular Session

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HOUSE BILL NO. 385

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

AN ACT

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

CHILDREN/ABUSE: Provides with respect to mandatory reporters

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

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reporter under the following limited circumstances: (i) when the practitioner is engaged by an attorney to assist in the rendition of professional legal services to that child, (ii) when the information that would serve as the basis for reporting arises in furtherance of facilitating the rendition of those professional legal services to that child, and (iii) when the information that would serve as the basis for reporting is documented by the mental health/social service practitioner. The documentation shall be retained by the mental health/social service practitioner until one year after the child has reached the age of majority.

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10 Comments - 2015

11 (a) As in other areas of legal practice, re

- (a) As in other areas of legal practice, representation involving children and families is increasingly reliant upon the use of interdisciplinary assistance from mental health and social service practitioners as an essential element of providing effective assistance of counsel. The United States Supreme Court has long recognized that a defendant's constitutional right to prepare a defense may necessitate various types of assistance from mental health experts. See *Ake v. Oklahoma*, 470 U.S. 68 (1985). Additionally, state standards for the representation of parents in child in need of care and termination of parental rights proceedings provide that attorneys should use a "multidisciplinary approach to representation when available" and "engage or involve a social worker as part of the parent's 'team' to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers". Louisiana Administrative Code, Title 22, Part XV, Chapter 11, Section 1123(B).
- (b) Absent the additional protections provided by this revision, attorneys may be forced to choose between forgoing practitioner services necessary for effective representation or risking the mandatory reporting of confidential and privileged information by their representatives in a manner that is antithetical to the client's goals of representation. This revision carves out a narrow exception to the definition of a mandatory reporter by excluding mental health and social service practitioners only under the limited circumstances when the practitioner is acting as the representative of an attorney by providing services in furtherance of individual legal representation and, in the course of providing that assistance, becomes aware of information that would otherwise require mandatory reporting.
- (c) The revised language draws from Code of Evidence Article 506 to reconcile any potential conflict between mandatory reporting requirements and rules of lawyer-client privilege and confidentiality applicable to attorney representatives.
- (d) Nothing in this article shall be construed as to limit or abrogate any individual's obligation to report pursuant to any other law or profession's ethical standards.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 385 Reengrossed

2015 Regular Session

Nancy Landry

Abstract: Provides an exception to the definition of mandatory reporter for mental health/social service practitioners serving as part of an attorney's team rendering legal services to a client.

<u>Present law</u> defines "mandatory reporter" to include a mental health/social service practitioner who provides mental health care or social service diagnosis, assessment, counseling, or treatment, including a psychiatrist, psychologist, marriage or family counselor, social worker, member of the clergy, aide, or other individual who provides counseling services to a child or his family.

<u>Proposed law</u> retains <u>present law</u> but adds an exception to the definition for mental health/social service practitioners serving as part of the legal team rendering legal services to a child in an action arising out of the La. Children's Code, if the practitioner meets all of the following criteria:

- (1) The practitioner is engaged by an attorney to assist in the rendition of professional legal services to that child.
- (2) The practitioner obtained the information that would serve as the basis for reporting while facilitating the rendition of those professional legal services to that child.
- (3) The mental health/social service practitioner documented the information that would serve as the basis for reporting.

<u>Proposed law</u> requires mental health/social service practitioners who are not considered mandatory reporters under <u>proposed law</u> to retain the documentation of alleged abuse until one year after the child has reached the age of majority.

<u>Proposed law</u> shall not be construed as to limit or abrogate any individual's obligation to report pursuant to any other law or profession's ethical standards.

(Amends Ch.C. Art. 603(17)(b))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Health and Welfare</u> to the original bill:

- 1. Remove the proposed addition of behavioral health professional to the definition of mental health/social service practitioner.
- 2. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Narrow the exception to instances where the client is a child in an action arising out of the La. Children's Code.

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2. Require the mental health/social service practitioner to document the alleged abuse and retain the documentation until one year after the child has reached the age of majority.

3. Add a provision to the La. State Law Institute comments to clarify the intended effect of proposed law.