HLS 15RS-972 ORIGINAL

2015 Regular Session

HOUSE BILL NO. 385

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## 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 define mental health/social service practitioner; to establish an exception for
4	certain mental health/social service practitioners; and 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	behavioral health professional, member of the clergy, aide, or other individual who
17	provides counseling services to a child or his family. Notwithstanding any other
18	provision of law to the contrary, a mental health/social service practitioner shall not
19	be considered a mandatory reporter under the following limited circumstances: (i)
20	when the practitioner is engaged by an attorney to assist in the rendition of

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1 professional legal services to a client and (ii) when the knowledge that would serve 2 as the basis for reporting arises in furtherance of facilitating the rendition of those 3 professional legal services to that client. 4 5 Comments - 2015 6 (a) As in other areas of legal practice, representation involving children and 7 families is increasingly reliant upon the use of interdisciplinary assistance from 8 mental health and social service practitioners as an essential element of providing 9 effective assistance of counsel. The United States Supreme Court has long 10 recognized that a defendant's constitutional right to prepare a defense may 11 necessitate various types of assistance from mental health experts. See Ake v. Oklahoma, 470 U.S. 68 (1985). Additionally, state standards for the representation 12 13 of parents in child in need of care and termination of parental rights proceedings 14 provide that attorneys should use a "multidisciplinary approach to representation 15 when available" and "engage or involve a social worker as part of the parent's 'team' 16 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". 17 18 Louisiana Administrative Code, Title 22, Part XV, Chapter 11, Section 1123(B). 19 (b) Absent the additional protections provided by this revision, attorneys 20 may be forced to choose between forgoing practitioner services necessary for 21 effective representation or risking the mandatory reporting of confidential and 22 privileged information by their representatives in a manner that is antithetical to the 23 client's goals of representation. This revision carves out a narrow exception to the 24 definition of a mandatory reporter by excluding mental health and social service practitioners only under the limited circumstances when the practitioner is acting as 25 26 the representative of an attorney by providing services in furtherance of individual 27 legal representation and, in the course of providing that assistance, becomes aware 28 of information that would otherwise require mandatory reporting. 29

(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.

## 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 Original

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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.

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<u>Proposed law</u> retains <u>present law</u> and adds behavioral health professional to the definition.

<u>Proposed law</u> further adds an exception to the definition for mental health/social service practitioners serving as part of the legal team rendering legal services to a client.

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