2015 Regular Session

HOUSE BILL NO. 385

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute) Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. CHILDREN/ABUSE: Provides with respect to mandatory reporters

1	AN ACT		
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, a		
18	mental health/social service practitioner shall not be considered a mandatory reporter		
19	under the following limited circumstances: (i) when the practitioner is engaged by		

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1	an attorney to assist in the rendition of professional legal services to a client and (ii)
2	when the knowledge that would serve as the basis for reporting arises in furtherance
3	of facilitating the rendition of those professional legal services to that client.
4	* * *
5	Comments - 2015
6 7 8 9 10 11 12 13 14 15 16 17 18	(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 <i>Ake v. Oklahoma</i> , 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).
19 20 21 22 23 24 25 26 27 28	(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.
29 30 31	(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)]

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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.

Page 2 of 3

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<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 client.

(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 <u>original</u> bill:
- 1. Remove the proposed addition of behavioral health professional to the definition of mental health/social service practitioner.
- 2. Make technical changes.