

Regular Session, 2012

SENATE BILL NO. 390

BY SENATOR WHITE

JUVENILES. Provides relative to jurisdiction over certain juvenile proceedings. (8/1/12)

1 AN ACT

2 To amend and reenact Children's Code Article 305(B)(4) and (E) and Code of Criminal
3 Procedure Article 644.1, relative to juvenile proceedings; to amend provisions
4 relative to divestiture of juvenile court jurisdiction; to provide relative to the
5 jurisdiction over mental capacity determinations; to provide relative to mental
6 capacity determination proceedings; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Children's Code Article 305(B)(4) and (E) are hereby amended and
9 reenacted to read as follows:

10 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
11 jurisdiction over children; when acquired

12 * * *

13 B.

14 * * *

15 (4) If an indictment is returned or a bill of information is filed, the child is
16 subject to the exclusive jurisdiction of the appropriate court exercising criminal
17 jurisdiction for all subsequent procedures, including the review of bail applications,

1 and the **district court may order that the** child shall be transferred forthwith to the
2 appropriate adult facility for detention prior to his trial as an adult.

3 * * *

4 E.(1) If a competency or sanity examination is ordered, except for the filing
5 of a delinquency petition, **the return of an indictment, or the filing of a bill of**
6 **information,** no further steps to prosecute the child in a **the** court exercising
7 criminal jurisdiction shall occur ~~until:~~ **until the proper court exercising**
8 **jurisdiction determines the child's mental capacity to proceed.**

9 ~~(a) Counsel is appointed for the child and notified in accordance with Article~~
10 ~~809; and~~

11 ~~(b) The court determines mental capacity to proceed in accordance with~~
12 ~~Chapter 7 of Title VIII.~~

13 (2) ~~When a child has been charged with one or more of the crimes listed in~~
14 ~~Article 857, has reached twenty-one years of age and is incompetent, the court on its~~
15 ~~own motion or on the motion of the district attorney may conduct a hearing to~~
16 ~~consider whether to transfer the child for further proceedings to the appropriate court~~
17 ~~exercising criminal jurisdiction. **When an indictment has been returned or a bill**~~
18 **of information has been filed pursuant to this Subsection, the district court**
19 **exercising criminal jurisdiction shall be the proper court to determine the**
20 **child's mental capacity to proceed. In all other instances, the juvenile court**
21 **shall be the proper court to make this determination.**

22 Section 2. Code of Criminal Procedure Article 644.1 is hereby amended and
23 reenacted to read as follows:

24 Art. 644.1. Sanity proceedings for juvenile defendants transferred to criminal court

25 A. Any juvenile transferred for criminal trial in accordance with Articles 305
26 and 857 of the Louisiana Children's Code may seek a special sanity hearing. ~~That~~
27 hearing **which** shall be conducted in accordance with Articles 833 through 836 of the
28 Louisiana Children's Code.

29 B. The **determination of the juvenile's capacity or incapacity to proceed**

1 **to trial shall be governed by the provisions of Articles 837 and 838 of the**
 2 **Children's Code. In all other cases, the** provisions of Code of Criminal Procedure
 3 Articles 648 through 649.1 shall govern the determination of capacity or incapacity
 4 to proceed to trial.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Cathy R. Wells.

DIGEST

Present law provides that a child who is 15 years of age or older at the time of the commission of certain enumerated offenses is subject to the exclusive jurisdiction of the juvenile court until either an indictment charging one of those offenses is returned, or the juvenile court finds probable cause that he committed one of those offenses, whichever occurs first.

Present law 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 child shall be transferred to the appropriate adult facility for detention prior to his trial as an adult.

Present law provides that if a competency or sanity examination is ordered, the criminal proceedings are stayed except for the filing of a delinquency petition, and no further steps to prosecute the child shall occur until counsel is appointed for the child and notified, and the court determines mental capacity to proceed.

Proposed law amends present law and provides that the district court may order that the child be transferred to the appropriate adult facility for detention prior to his trial as an adult.

Proposed law amends present law and provides that if a competency or sanity examination is ordered, the criminal proceedings are stayed except for the filing of a delinquency petition, the return of an indictment, or the filing of a bill of information, and no further steps to prosecute the child shall occur until the child's mental capacity to proceed has been determined.

Proposed law provides that when an indictment has been returned or a bill of information is filed, the district court exercising criminal jurisdiction shall be the proper court to determine the child's mental capacity to proceed, and provides that in all other instances, the juvenile court shall be the proper court to make this determination.

Present law provides that any juvenile transferred for criminal trial in accordance with Ch.C. Arts. 305 and 857 may seek a special sanity hearing which shall be conducted in accordance with Ch.C. Arts. 833-836 and provides that the provisions of C.Cr.P. Arts. 648-649.1 shall govern the determination of capacity or incapacity to proceed to trial.

Proposed law retains present law and further provides that the determination of the juvenile's capacity to proceed to trial shall be governed by the provisions of Ch.C. Arts. 837-838.

Effective August 1, 2012.

(Amends Ch.C. Art. 305(B)(4) and (E) and C.Cr.P. Art. 644.1)