

Regular Session, 2010

HOUSE BILL NO. 702

BY REPRESENTATIVE LEGER

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A)
3 and (C), 855(B)(7), 858(B), 860(A) and (B), and 867(A) and (C) and to enact
4 Children's Code Articles 841(D) and 884.1, relative to the continuous revision of the
5 Children's Code; to provide for divestiture of juvenile court jurisdiction; to provide
6 for criminal court jurisdiction; to provide for definitions; to provide for advice of
7 rights; to provide for notice of a motion to transfer; to provide for sex offender
8 registration and notification requirements; to provide for informal adjustment
9 agreements; to provide for certain types of medical examinations in motions to
10 transfer and in adjudication hearings; to provide for the report of the sanity
11 commission; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and
14 (C), 855(B)(7), 858(B), 860(A) and (B), and 867(A) and (C) are hereby amended and
15 reenacted and Children's Code Articles 841(D) and 884.1 are hereby enacted to read as
16 follows:

17 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
18 jurisdiction over children; when acquired

19 A.(1) When a child is fifteen years of age or older at the time of the
20 commission of first degree murder, second degree murder, aggravated rape, or
21 aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile
22 court until either:

23 * * *

1 (b) The juvenile court holds a continued custody hearing pursuant to Articles
 2 819 and 820 and finds probable cause that he committed one of these offenses,
 3 whichever occurs first. During this hearing, when the child is charged with
 4 aggravated rape, the court shall inform him that if convicted he shall register as a sex
 5 offender for life, pursuant to Chapter 3-B of Title 15 of the Louisiana Revised
 6 Statutes of 1950.

7 * * *

8 B.(1) When a child is fifteen years of age or older at the time of the
 9 commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he
 10 is subject to the exclusive jurisdiction of the juvenile court until whichever of the
 11 following occurs first:

12 * * *

13 (b) The juvenile court holds a continued custody hearing and finds probable
 14 cause that the child has committed any of the offenses listed in Subparagraph (2) of
 15 this Paragraph and a bill of information charging any of the offenses listed in
 16 Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is
 17 charged with forcible rape or second degree kidnapping, the court shall inform him
 18 that if convicted he shall register as a sex offender for life, pursuant to Chapter 3-B
 19 of Title 15 of the Louisiana Revised Statutes of 1950.

20 * * *

21 Comment - 2010

22 Chapter 3-B of Title 15 requires registration as a sex offender for any
 23 juvenile who was transferred to adult court and has pled guilty or has been convicted
 24 after trial of second degree kidnapping, aggravated rape, or forcible rape.

25 * * *

26 Art. 804. Definitions

27 As used in this Title:

28 * * *

29 (3) "Delinquent act" means an act committed by a child of ten years of age
 30 or older which if committed by an adult is designated an offense under the statutes
 31 or ordinances of this state, or of another state if the ~~act~~ offense occurred ~~in another~~

1 state there, or under federal law, except traffic violations. It includes an act
2 constituting an offense under R.S. 14:95.8 and a direct contempt of court committed
3 by a child.

4 * * *

5 Comment - 2010

6 This revision shifts the illegal possession of a firearm offense from the
7 category of FINS cases to delinquency cases. This revision corrects a long standing
8 anomaly and follows the recent ruling in State ex rel. D.J., 5 So.3d 923 (La.Ct.App.
9 4th Cir. 2009).

10 * * *

11 Art. 841. Effect of agreement

12 A. An informal adjustment agreement shall not be considered an
13 adjudication. Evidence of the existence of ~~such~~ an agreement shall not be used
14 against the child over objection in any adjudication hearing or criminal trial. ~~Such~~
15 That evidence may be used in a disposition hearing in the juvenile court or for the
16 purpose of a presentence investigation after a criminal conviction.

17 * * *

18 C. Any incriminating statement made by the child to the person giving
19 counsel or advice and in the discussions or conferences incident to the informal
20 adjustment agreement shall not be used against the ~~declarant~~ child, over objection,
21 in an adjudication hearing or criminal trial. ~~Any such~~ The incriminating statement
22 may be used in a disposition hearing in the court or for the purpose of a presentence
23 investigation after a criminal conviction.

24 D. If any medical, mental health, sensory, or special competency evaluation
25 is performed during the period of an informal adjustment agreement, the report shall
26 not include any incriminating statement made by the child. The examination shall
27 not occur until five days after the clerk of court has given notice to all parties of the
28 examination order. Any incriminating statement made by the child to the evaluator,
29 which would violate the child's privilege against self-incrimination, shall not be used

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Comment - 2010

This is an amplification of the *Boykin* and "Adam Walsh" requirement that an accused be informed by the court of the maximum dispositions that may be imposed should he be convicted. After Louisiana enacted an "Adam Walsh" statute, Chapter 3-B of Title 15, conviction of a juvenile offender for certain sex offenses became a very serious matter with life-altering consequences. Registration is required for juvenile offenders who are transferred to criminal court and found guilty or who pleaded guilty to certain offenses. The revision to Subparagraph (7) lists the age and offense requirements of R.S. 15:542(A)(3). Adjudication for an "aggravated offense", as defined in R.S. 15:541(2) requires lifetime registration and quarterly in-person registration renewals.

* * *

Art. 858. Motion for transfer; notice

* * *

B. Notice in writing of the time, place, and purpose of the hearing ~~must~~ shall be given to the child and his parents and other custodian, if any, at least ten days before the hearing. In addition, if the petition charges the child with second degree kidnapping, aggravated rape, or forcible rape, the court shall inform the child regarding the applicable registration and duration requirements in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

Comment - 2010

R.S. 15:541(2) requires registration for any juvenile who was transferred to criminal court, pursuant to Article 857, and thereafter convicted or pleaded guilty to any of these three offenses.

* * *

Art. 860. Medical, sensory, psychological, and psychiatric examinations

A. On its own motion or on the motion of the child or district attorney, the court may order any child subject to a motion to transfer to be examined by a physician, optometrist, audiologist, psychologist, or psychiatrist. Unless waived by the child, the examination shall not occur until five days after the clerk of court has notified all parties of the examination order.

B. Any examination shall be made and the findings submitted to the court within three days of the transfer hearing. ~~Such~~ This time period may be extended by the court for good cause.

* * *

1 Art. 867. Medical, sensory, psychological, and psychiatric examinations

2 A. On its own motion or on the motion of the child or district attorney, the
3 court may order any child ~~concerning whom a petition has been filed~~ to be examined
4 by a physician, optometrist, or audiologist. Unless waived by the child, the
5 examination shall not occur until five days after the clerk of court notified all parties
6 of the examination order.

7 * * *

8 C. Any examination ~~as herein provided~~ shall be made and the findings
9 submitted to the court within thirty days of the date the order is entered. ~~Such~~ This
10 time period may be extended by the court for good cause.

11 * * *

12 Art. 884.1. Informing the child of sex offender registration and notification
13 requirements; form

14 A. When the child has admitted the allegations of the petition or when
15 adjudicated delinquent for any of the following offenses, the court shall provide him
16 with written notice of the requirements for registration as a sex offender:

17 (1) Aggravated rape as defined in R.S. 14:42.

18 (2) Forcible rape as defined in R.S. 14:42.1.

19 (3) Second degree sexual battery as defined in R.S. 14:43.2.

20 (4) Aggravated kidnapping of a child who has not attained the age of thirteen
21 years pursuant to either R.S. 14:44 or 44.2.

22 (5) Second degree kidnapping of a child who has not attained the age of
23 thirteen years as defined in R.S. 14:44.1.

24 (6) Aggravated incest involving circumstances defined by R.S. 14:78.1 as
25 an aggravated offense.

26 (7) Aggravated crime against nature as defined in R.S. 14:89.1.

1 (c) Name and physical address of place of employment. If you do not have
2 a fixed place of employment, you shall provide information with as much specificity
3 as possible regarding the places where you work, including but not limited to travel
4 routes.

5 (d) Name and physical address of the school in which you are a student.

6 (e) Two forms of proof of residence for each residential address provided,
7 including but not limited to a driver's license, bill for utility service, and bill for
8 telephone service. If those forms of proof are not available, you may provide an
9 affidavit of an adult resident living at the same address.

10 (f) The offense for which you were adjudicated and the date and place of the
11 adjudication, and if known, the court in which the adjudication was obtained, the
12 docket number of the case, the specific statute violated, and the disposition imposed.
13 Note that this information is all contained at the beginning of this form.

14 (g) A current photograph, fingerprints, palm prints, and a DNA sample.

15 (h) Your telephone numbers, including fixed location phone, mobile phone
16 numbers, or telephone number associated with any residence address.

17 (i) A description of every vehicle registered to or operated by you, including
18 license plate number and a copy of your driver's license or identification card.

19 (j) Your social security number and date of birth.

20 (k) A description of your physical characteristics, including but not limited
21 to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or other
22 identifying marks.

23 (l) Every e-mail address, online screen name, or other online identity you use
24 or have used to communicate on the Internet.

25 (m) Temporary lodging information regarding any place where you plan to
26 stay for seven or more days and the length of the planned stay.

27 (n) Travel and immigration documents, including but not limited to passports
28 and documents establishing immigration status.

29 (2) If you are committed to the office of juvenile justice, you shall provide
30 this information to that office within ten days prior to release from confinement.

1 You shall still appear in person at the sheriff's office within three business days of
2 release from confinement.

3 (3) During the declaration of an emergency if you enter an emergency
4 shelter, you shall, within the first twenty-four hours of admittance, notify the
5 management of the shelter, the chief of police of the municipality, and the sheriff of
6 the parish in which the shelter is located of your sex offender status.

7 (4) You have a duty to provide notice of change of address or other
8 registration information to the sheriff of the parish of residence within three business
9 days. If the new or additional residence is located in a different parish, then you
10 shall register with the sheriff of the parish in which the new or additional residence
11 is located. You shall also send written notice within three business days of
12 re-registering in the new parish to the sheriff of the parish of former registration.

13 (5) If you provide recreational instruction to persons under the age of
14 seventeen, you shall post a notice in the building or facility where such instruction
15 is being given.

16 (6) Within ten days prior to release from confinement in a correctional
17 facility, you shall provide a photograph and other relevant information noted in this
18 Article to the office of juvenile justice for purposes of the State Sex Offender and
19 Child Predator Registry.

20 (7) If you change your place of residence or establish a new or additional
21 residence, you shall appear in person at the office of the sheriff of your parish of
22 residence where you are currently registered within three business days of the change
23 to register the new address. If the new address is located in a different parish, then
24 you shall also appear in person at the office of the sheriff of your new parish of
25 residence within the same time period. If your parish of residence is in Orleans
26 Parish, then the registration shall take place at the New Orleans Police Department
27 and not with the Orleans Parish Sheriff's Office.

28 (8) If you are absent from your current address of registration for more than
29 thirty consecutive days or an aggregate of thirty days or more in a calendar year, and
30 are physically present at another address during that same period of time, you shall

1 register the new address in person as one of your addresses of residence. If the new
2 address is in a parish different from your current address, you shall also register in
3 person with the sheriff of the new parish within three business days of the tolling of
4 the time periods listed. This requirement notwithstanding, you shall still notify the
5 sheriff of one of your parishes of residence in person if you are to take up temporary
6 lodging for seven or more days. It is only after the thirty-day limit is exceeded that
7 the new registration shall occur. If your address of residence is in Orleans Parish,
8 this registration update shall take place at the New Orleans Police Department and
9 not with the Orleans Parish Sheriff's Office.

10 (9) You shall also appear in person at the office of the sheriff of any of your
11 parishes of residence when there is a change in your name, place of employment, or
12 enrollment. This appearance shall occur within three business days of the change.
13 If your address of residence is in Orleans Parish, this registration update shall take
14 place at the New Orleans Police Department and not with the Orleans Parish Sheriff's
15 Office.

16 (10) You shall also timely sign and return the periodic address verification
17 form sent to you by the Louisiana Bureau of Criminal Identification and Information
18 according to the instructions on the verification form.

19 (11) You shall update your registration annually on the anniversary of the
20 initial registration by appearing in person at the office of each law enforcement
21 agency with which you are required to register and shall pay an annual registration
22 fee of sixty dollars (\$60.00).

23 (12) Failure to comply with any of these registration and notification
24 requirements is a felony for which you may be punished by a fine of up to one
25 thousand dollars (\$1,000.00) and imprisonment at hard labor for not less than two
26 years nor more than ten years without benefit of parole, probation, or suspension of
27 sentence. Upon a second or subsequent conviction, you may be punished by a fine
28 of up to three thousand dollars (\$3,000.00) and imprisonment at hard labor for not
29 less than five years, nor more than twenty years without benefit of parole, probation,
30 or suspension of sentence.

