

2015 Regular Session

SENATE BILL NO. 245

BY SENATOR ERDEY

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

CHILDREN. Provides for the reasonable and prudent parent standard and for certain considerations in foster care case plans and licensing requirements. (gov sig)

AN ACT

To amend and reenact Children's Code Article 675(B) and R.S. 46:283(C)(1), and to enact R.S. 46:283(D),(E),(F) and (G), relative to foster parenting; to provide relative to foster care case plans; to provide relative to the reasonable and prudent parent standard; to provide relative to the greatest opportunity for normalcy in a foster child's life; to provide relative to the authority of caregivers making day-to-day decisions affecting a foster child; to provide for certain factors to be considered when making decisions regarding a foster child; to provide relative to extracurricular, enrichment, cultural, social or sporting activities for foster children; to provide relative to residual parental rights; to provide relative to out-of-state travel for a foster child; to provide regarding certain immunities; to provide for certain definitions, terms, requirements and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Article 675(B) is hereby amended and reenacted to read as follows:

Art. 675. Case plan purpose; contents

* * *

1 B. The case plan shall at least include all of the following:

2 (1) A description of the type of home or institution in which the child is
3 placed, including a discussion of the child's health and safety, the appropriateness of
4 the placement, and the reasons why the placement, if a substantial distance from the
5 home of the parents or in a different state, is in the best interests of the child.

6 (2) A plan for assuring that the child receives safe and proper care and that
7 services are provided to the parents, child, and foster parents in order to improve the
8 conditions in the parents' home, facilitate the safe return of the child to his own home
9 or other permanent placement of the child, or both, and address the needs of the child
10 while in foster care, including a plan for visitation and a discussion of the
11 appropriateness of the services that have been provided to the child under the plan.

12 **(3) A plan for assuring that the child is afforded the greatest opportunity**
13 **for normalcy through engagement in age- or developmentally-appropriate**
14 **activities on a regular basis. The child shall be consulted in an age-appropriate**
15 **manner about his interests and opportunities available to him. Recognizing the**
16 **greatest opportunity for normalcy lies in the day-to-day decisions affecting the**
17 **child's activities, the child's caretaker should be supported in making those**
18 **decisions through the use of the reasonable and prudent parent standard as set**
19 **forth in R.S. 46:283.**

20 (4) If the child has been committed to the custody of a person other than the
21 parents, the plan shall recommend an amount the parents are obligated to contribute
22 for the cost of care and treatment of their child in accordance with Article 685. When
23 appropriate for a child fifteen years of age or older, the plan shall include a written
24 description of the programs and services which will help the child prepare for the
25 transition from foster care to independent living.

26 ~~(3)~~**(5)** For a child fifteen years of age or older the plan shall include a
27 written, individualized, and thorough transitional plan, developed in collaboration
28 with the child and any agency, department, or individual assuming his custody, care,
29 or responsibility.

1 (a) The transitional plan shall identify the programs, services, and facilities
2 that will be used to assist the child in achieving a successful transition. The
3 transitional plan shall address the needs of the child, including but not limited to
4 education, health, permanent connections, living arrangements, and, if appropriate,
5 independent living skills and employment.

6 (b) The department shall ensure that all records in its files relevant to
7 securing needed services in the community in which the child will live shall be
8 immediately transmitted to the appropriate service provider.

9 ~~(4)~~**(6)** Documentation of the efforts the agency is making to safely return the
10 child home or to finalize the child's placement in an alternative safe and permanent
11 home in accordance with the child's permanent plan. For children whose permanent
12 plan is adoption or placement in another permanent home, this documentation shall
13 include child-specific recruitment efforts such as the use of state, regional, and
14 national adoption exchanges, including electronic exchange systems, to facilitate
15 orderly and timely in-state and interstate placements. For children whose permanent
16 plan is guardianship, the documentation shall include the facts and circumstances
17 supporting guardianship, including the reasons that the plan is in the best interest of
18 the child and that reunification with a parent and adoption are not appropriate
19 permanent plans. The documentation shall also address the suitability and
20 commitment of the proposed guardian to offer a wholesome, stable home for the
21 child throughout minority.

22 ~~(5)~~**(7)** Assessment of the child's relationships with his parents, grandparents,
23 and siblings, including a plan for assuring that continuing contact with any relative
24 by blood, adoption, or affinity with whom the child has an established and significant
25 relationship is preserved while the child is in foster care. The preservation of such
26 relationships shall be considered when the child's permanent plan is adopted.

27 ~~(6)~~**(8)** Documentation of the compelling reasons for determining that filing
28 a petition for termination of parental rights would not be in the best interest of the
29 child, when appropriate.

1 Section 2. R.S. 46:283(C)(1) is hereby amended and reenacted and R.S. 46:283(D),
2 (E), (F) and (G) are hereby enacted to read as follows:

3 §283. Determination of fitness; award of contract

4 * * *

5 C.(1)(a) After January 1, 1984, no new contract for foster care services shall
6 be awarded to any person who has not completed a training program approved by the
7 department, including but not limited to the following areas:

8 (i) Obtaining needed services for foster children.

9 (ii) Discipline and foster children.

10 (iii) Legal aspects of foster care.

11 (iv) Working with parents and the agency.

12 **(v) Knowledge and skills relating to the reasonable and prudent parent**
13 **standard for participation by the child in age- or developmentally-appropriate**
14 **activities as defined in Subsection D of this Section.**

15 (b) The Department of Children and Family Services shall provide such
16 training through its own personnel or by contracting with outside persons or
17 agencies.

18 * * *

19 **D. For purposes of this Section, the following definitions shall apply:**

20 **(1) "Age- or developmentally-appropriate" means activities or items**
21 **that are generally accepted as suitable for children of the same chronological**
22 **age or level of maturity or that are determined to be developmentally**
23 **appropriate for a child, based on the development of cognitive, emotional,**
24 **physical, and behavioral capacities that are typical for an age or age group; and**
25 **in the case of a specific child, activities or items that are suitable for the child**
26 **based on the developmental stages attained by the child with respect to the**
27 **cognitive, emotional, physical, and behavioral capacities of the child.**

28 **(2) "Reasonable and prudent parent standard" means the standard**
29 **characterized by careful and sensible parental decisions that maintain the**

1 health, safety, and best interests of a child while at the same time encouraging
2 the emotional and developmental growth of the child, that a caregiver shall use
3 when determining whether to allow a child in foster care under the
4 responsibility of the state to participate in extracurricular, enrichment, cultural,
5 social, and sporting activities. No decisions shall be made that conflict with the
6 child's parents residual parental rights.

7 E. (1) Each caregiver shall use the reasonable and prudent parent
8 standard in determining whether to give permission for a child living in foster
9 care to participate in extracurricular, enrichment, cultural, social, or sporting
10 activities.

11 (2) When using the reasonable and prudent parent standard, the
12 caregiver shall consider all of the following:

13 (a) The child's age, maturity, and developmental level in order to
14 maintain the overall health and safety of the child.

15 (b) The potential risk factors and the appropriateness of the
16 extracurricular enrichment, cultural, social, or sporting activity.

17 (c) The best interest of the child, based on information known by the
18 caregiver.

19 (d) The importance of encouraging the child's emotional and
20 developmental growth.

21 (e) The importance of providing the child with the most family-like
22 living experience possible.

23 (f) The behavioral history of the child and the child's ability to safely
24 participate in the proposed activity.

25 (3) Nothing in this Subsection shall be construed to authorize any
26 decision that conflicts with the residual parental rights of a parent of a child as
27 defined in Children's Code Article 116.

28 F. Each child in foster care shall be allowed to travel out of state with
29 his foster parent or another department-approved adult so long as the foster

1 parent confirms with the department in advance of the departure date that no
2 reason exists to prevent such travel, and provides a travel itinerary to the
3 department.

4 G.(1) A foster caregiver who approves a foster child's participation in
5 an age- and developmentally-appropriate extracurricular, enrichment, cultural,
6 social, or sporting activity is not liable for harm caused to the child at such
7 activity, provided that the caregiver has acted in accordance with the
8 reasonable and prudent parent standard.

9 (2) Nothing in this Section shall be construed to remove or limit any
10 existing liability protection afforded by law.

11 Section 3. This Act shall become effective upon signature by the governor, or if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

SB 245 Engrossed

2015 Regular Session

Erdey

Present law provides that for a child in the care of the state, a case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' homes, consistent with the best interest and special needs of the child. Further provides that the health and safety of the child shall be the paramount concern in the development of the case plan.

Proposed law retains present law.

Present law provides that such case plans shall at least include all of the following:

- (1) A description of the type of home or institution in which the child is placed, including a discussion of the child's health and safety, the appropriateness of the placement, and the reasons why the placement, if a substantial distance from the home of the parents or in a different state, is in the best interests of the child.
- (2) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate the safe return of the child to his own home or other permanent placement of the child, or both, and address the needs of the child while in foster care, including a plan for visitation and a discussion of the appropriateness of the services that have been provided to the child under the plan. If the child has

been committed to the custody of a person other than the parents, the plan shall recommend an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685. When appropriate for a child fifteen years of age or older, the plan shall include a written description of the programs and services which will help the child prepare for the transition from foster care to independent living.

Proposed law retains present law and adds that the case plan must include a plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age- or developmentally-appropriate activities on a regular basis. Proposed law provides that the child shall be consulted in an age-appropriate manner about their interests and opportunities available to them. Proposed law further provides that recognizing the greatest opportunity for normalcy lies in the day-to-day decisions affecting the child's activities, the child's caretaker should be supported in making those decisions through the use of the reasonable and prudent parent standard as set forth in proposed law.

Present law provides that, after January 1, 1984, no new contract for foster care services shall be awarded to any person who has not completed a training program approved by the department, including but not limited to the following areas:

- (1) Obtaining needed services for foster children.
- (2) Discipline and foster children.
- (3) Legal aspects of foster care.
- (4) Working with parents and the agency.

Proposed law retains present law and adds that the required training program for a person who seeks a contract for foster care services shall also include knowledge and skills relating to the reasonable and prudent parent standard for participation by the child in age- or developmentally-appropriate activities as defined in proposed law.

Proposed law adds the following definitions:

- (1) "Age- or developmentally-appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical and behavioral capacities of the child.
- (2) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. Provides that no decisions shall be made that conflict with the child's parents residual parental rights.

Proposed law adds that each caregiver shall use the reasonable and prudent parent standard in determining whether to give permission for a child living in foster care to participate in extracurricular, enrichment, cultural, social or sporting activities.

Proposed law adds that when using the reasonable and prudent parent standard, the caregiver

shall consider all of the following:

- (1) The child's age, maturity, and developmental level in order to maintain the overall health and safety of the child.
- (2) The potential risk factors and the appropriateness of the extracurricular enrichment, cultural, social or sporting activity.
- (3) The best interest of the child, based on information known by the caregiver.
- (4) The importance of encouraging the child's emotional and developmental growth.
- (5) The importance of providing the child with the most family-like living experience possible.
- (6) The behavioral history of the child and the child's ability to safely participate in the proposed activity.

Proposed law provides that nothing in proposed law shall be construed to authorize any decision that conflicts with the residual parental rights of a parent of a child as defined in Children's Code Article 116.

Proposed law provides that each child in foster care shall be allowed to travel out of state with his foster parent or another department-approved adult so long as the foster parent confirms with the department in advance of the departure date that no reason exists to prevent such travel, and provides a travel itinerary to the department.

Proposed law provides that a foster caregiver who approves a foster child's participation in an age- and developmentally-appropriate extracurricular, enrichment, cultural, social or sporting activity is not liable for harm caused to the child at such activity, provided that the caregiver has acted in accordance with the reasonable and prudent parent standard. Proposed law further provides that nothing in proposed law shall be construed to remove or limit any existing liability protection afforded by law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends Ch. C. Art. 675(B) and R.S. 46:283 (C)(1); adds R.S. 46:283(D),(E),(F) and (G))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Removes the word "natural" so that nothing in proposed law shall be construed to authorize any decision that conflicts with the residual parental rights of a parent of a child, rather than with the residual rights of only a "natural" parent of the child.