

SENATE BILL NO. 333

BY SENATOR CLOUD

1 AN ACT

2 To amend and reenact Children's Code Arts. 603(24) through (32), 623(A), (B), and (E),  
3 679(D) and (F), 695(A) and (D), 705(A) and (D), 710(A)(2), and 1004.2 and to enact  
4 Children's Code Arts. 581.1 through 581.4 and 603(33), relative to child in need of  
5 care proceedings; to provide relative to disposition and permanency hearings; to  
6 provide relative to a caregiver providing care to a child in need of care proceedings  
7 in certain circumstances; to provide relative to notice requirements and right to be  
8 heard; to provide relative to civil procedure and evidence; to provide relative to  
9 written reasons for judicial findings; to provide for termination of parental rights in  
10 certain circumstances; to provide for definitions; to provide relative to rights,  
11 conditions, and limitations of a caregiver in certain circumstances; and to provide for  
12 related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Children's Code Arts. 603(24) through (32), 623(A), (B), and (E), 679(D)  
15 and (F), 695(A) and (D), 705(A) and (D), 710(A)(2), and 1004.2 are hereby amended and  
16 reenacted and Children's Code Arts. 581.1 through 581.4 and 603(33) are hereby enacted to  
17 read as follows:

18 **Art. 581.1. Contractual agreement; Title IV-E eligible legal representation**  
19 **costs; claims; definitions**

20 **For purposes of this Chapter:**

21 **(1) "Department" means the Department of Children and Family**

1           Services.

2                   (2) "Legal representation agency" includes the office of the state public  
3                   defender, office of the district attorney, Louisiana Bar Foundation, Mental  
4                   Health Advocacy Service, and any other entity providing legal representation  
5                   to children, parents, or caregivers eligible for Title IV-E eligible legal  
6                   representation costs.

7                   (3) "Title IV-E eligible legal representation costs" refers to federal  
8                   financial participation for the legal representation costs necessary for the  
9                   proper and efficient administration of the Title IV-E plan as provided in 45  
10                  CFR 1356.60(c).

11           Art. 581.2. Contractual agreement; duty to negotiate

12                   A.(1) The department shall, in good faith, negotiate contractual  
13                   agreements with legal representation agencies operating within the state to  
14                   allow the agencies to claim reimbursement for Title IV-E eligible legal  
15                   representation costs as provided for in this Article.

16                   (2) The department shall provide technical assistance to a legal  
17                   representation agency to ensure compliance with federal requirements to make  
18                   a claim for Title IV-E eligible legal representation costs.

19                   (3) The department shall have the right to incorporate a reasonable  
20                   administrative fee in the agreement as needed.

21                   (4) A legal representation agency seeking initial Title IV-E  
22                   reimbursement shall submit notice to the department by August first of each  
23                   year for inclusion in the next fiscal year. A new agreement shall not take effect  
24                   before July first of the following fiscal year. The department shall exercise good  
25                   faith in limiting the number of new agencies receiving Title IV-E  
26                   reimbursement each year based on capacity.

27                   B. The contractual agreement shall include provisions for all of the  
28                   following:

29                   (1) Title IV-E eligible legal representation cost reimbursement  
30                   methodology and rates consistent with standard legal representation billing.



1 in the child's case plan or permanency plan as the prospective adoptive parent  
 2 or to whom a court has granted custody of the child when the child's  
 3 permanency plan is adoption pursuant to an order of a court.

4 ~~(25)~~ (26) "Prenatal neglect" means exposure to chronic or severe use of alcohol  
 5 or the unlawful use of any controlled dangerous substance, as defined by R.S. 40:961  
 6 et seq., or in a manner not lawfully prescribed, which results in symptoms of  
 7 withdrawal in the newborn or the presence of a controlled substance or a metabolic  
 8 thereof in his body, blood, urine, or meconium that is not the result of medical  
 9 treatment, or observable and harmful effects in his physical appearance or  
 10 functioning.

11 ~~(25)~~(26) "Protective capacity" means the cognitive, behavioral, and emotional  
 12 knowledge, abilities, and practices that prevent or control threats of danger to  
 13 children.

14 ~~(26)~~(27) "Reasonable efforts" means the exercise of ordinary diligence and  
 15 care by the department throughout the pendency of a case pursuant to the obligations  
 16 imposed on the state by federal and state law to provide services and supports  
 17 designed and intended to prevent or eliminate the need for removing a child from the  
 18 child's home, to reunite families after separation, and to achieve safe permanency for  
 19 children. Reasonable efforts shall be determined by the particular facts and  
 20 circumstances of each case, including the individualized needs of each child and the  
 21 family, the imminence and potential severity of the threat of danger, the strengths of  
 22 each child and the family, and the community of support available to the family. In  
 23 making reasonable efforts, the health, welfare, and safety of the child shall be the  
 24 paramount concern.

25 ~~(27)~~(28) "Relative" means an individual with whom the child has established  
 26 a significant relationship by blood, adoption, or affinity.

27 ~~(28)~~(29) "Removal" means placing a child in the custody of the state or with  
 28 someone other than the parent or caretaker during or after the course of an  
 29 investigation of abuse and neglect to secure the child's health, welfare, and safety.

30 ~~(29)~~(30) "Safe" and "safety" mean the condition of not being unsafe. Whether

1 a child is unsafe shall be determined by the particular facts and circumstances of  
 2 each case, including consideration of the threat of danger to the child, whether the  
 3 child is vulnerable to the threat, and the parent's or caretaker's protective capacity to  
 4 manage or control the threat.

5 ~~(30)~~**(31)** "Safety plan" means a plan for the purpose of assuring a child's  
 6 health, welfare, and safety by imposing conditions for the child to safely remain in  
 7 the home, or, after a child has been removed from the home, for the continued  
 8 placement of the child with a custodian and terms for contact between the child and  
 9 the child's parents or other persons.

10 ~~(31)~~**(32)** "Threat of danger" exists when the behavior of a parent or caretaker  
 11 or the family situation indicates serious harm, in the near future, to the child's  
 12 physical, mental, or emotional health, welfare, and safety.

13 ~~(32)~~**(33)** "Vulnerable" means the inability to protect oneself from identified  
 14 threats of danger.

15 \* \* \*

16 Art. 623. Notice; **presence at hearing**; right to be heard

17 A.**(1)** The department shall give notice of any order regarding the child issued  
 18 in accordance with Article 619(C) or 620 to the child's parents, the district defender  
 19 or other entity designated for the jurisdiction by the Indigent Parents' Representation  
 20 Program for representing parents, the entity designated for the jurisdiction by the  
 21 Louisiana Supreme Court to provide qualified, independent counsel for the child, and  
 22 other parties.

23 **(2)** The department shall also give **written** notice regarding any child in  
 24 foster care to any foster parent, pre-adoptive parent, and relative providing care.

25 **(3)** The department shall notify the court of each party's address and shall  
 26 have a continuing duty to provide current information to the court about each party's  
 27 whereabouts.

28 B.**(1)** The notice shall state the date, time, and place of any scheduled hearing  
 29 and inform the recipient of the right to attend and be heard.

30 **(2)** The notice to the district defender and the entity designated for the

1 jurisdiction by the Louisiana Supreme Court to provide qualified, independent  
2 counsel for the child shall also include a copy of the verified complaint, the affidavit  
3 required in Article 620(B), and any order issued by the court.

4 \* \* \*

5 E.~~(1)~~ The court shall solicit and consider information regarding the care and  
6 treatment of the child from any foster parent, pre-adoptive parent, or relative  
7 providing care for the child who appears for the hearing. The court shall provide  
8 any foster caregiver, pre-adoptive parent, or relative providing care for the  
9 child who appears at the hearing a reasonable opportunity to be heard  
10 regarding the care and treatment of the child and may receive evidence from  
11 each person. The court shall consider this information in conjunction with all  
12 other admissible evidence.

13 (2) The information provided by the foster parent, pre-adoptive parent,  
14 or relative shall be limited to personal knowledge, defined as firsthand  
15 observations of the daily care, functioning, development, behavior, activities,  
16 health, education, and interactions of the child, including visitation,  
17 communication with parents as it relates to the child, sibling relationships, and  
18 any needs for services or support in the home of the caregiver.

19 \* \* \*

20 Art. 679. Notice; presence at disposition hearing; right to be heard

21 \* \* \*

22 D. The department shall give written notice of the right to appear at the  
23 disposition hearing to any foster parent, pre-adoptive parent, or relative providing  
24 care for the child. The notice shall state the date, time, and place of any  
25 scheduled hearing and inform the recipient of the right to attend and be heard.

26 \* \* \*

27 F.~~(1)~~ The court shall solicit and consider information regarding the care and  
28 treatment of the child from any foster parent, pre-adoptive parent, or relative  
29 providing care for the child who appears for the hearing. The court shall provide  
30 any foster caregiver, pre-adoptive parent, or relative providing care for the

1 child who appears at the hearing a reasonable opportunity to be heard  
2 regarding the care and treatment of the child and may receive evidence from  
3 each person. The court shall consider this information in conjunction with all  
4 other admissible evidence.

5 (2) The information provided by the foster parent, pre-adoptive parent,  
6 or relative shall be limited to personal knowledge, defined as firsthand  
7 observations of the daily care, functioning, development, behavior, activities,  
8 health, education, and interactions of the child, including visitation,  
9 communication with parents as it relates to the child, sibling relationships, and  
10 any needs for services or support in the home of the caregiver.

11 \* \* \*

12 Art. 695. Notice; ~~foster parents, pre-adoptive parents, relatives providing care;~~

13 presence at case review hearing; right to be heard

14 A. The department shall give written notice of the right to appear at each  
15 case review hearing to any foster parent, pre-adoptive parent, or relative providing  
16 care for the child.

17 \* \* \*

18 ~~D.(1) The court shall solicit and consider information regarding the care and~~  
19 ~~treatment of the child from any foster parent, pre-adoptive parent, or relative~~  
20 ~~providing care for the child who appears for the hearing. The court shall provide~~  
21 ~~any foster caregiver, pre-adoptive parent, or relative providing care for the~~  
22 ~~child who appears at the hearing a reasonable opportunity to be heard~~  
23 ~~regarding the care and treatment of the child and may receive evidence from~~  
24 ~~each person. The court shall consider this information in conjunction with all~~  
25 ~~other admissible evidence.~~

26 (2) The information provided by the foster parent, pre-adoptive parent,  
27 or relative shall be limited to personal knowledge, defined as firsthand  
28 observations of the daily care, functioning, development, behavior, activities,  
29 health, education, and interactions of the child, including visitation,  
30 communication with parents as it relates to the child, sibling relationships, and

1 any needs for services or support in the home of the caregiver.

2 \* \* \*

3 Art. 705. Notice; **presence at permanency hearing;** right to be heard

4 A. The department shall give written notice of the right to appear at each  
5 permanency hearing to any foster parent, pre-adoptive parent, or relative providing  
6 care for the child.

7 \* \* \*

8 ~~D.(1) The court shall solicit and consider information regarding the care and~~  
9 ~~treatment of the child from any foster parent, pre-adoptive parent, or relative~~  
10 ~~providing care for the child who appears for the hearing. The court shall provide~~  
11 ~~any foster caregiver, pre-adoptive parent, or relative providing care for the~~  
12 ~~child who appears at the hearing a reasonable opportunity to be heard~~  
13 ~~regarding the care and treatment of the child and may receive evidence from~~  
14 ~~each person. The court shall consider this information in conjunction with all~~  
15 ~~other admissible evidence.~~

16 (2) The information provided by the foster parent, pre-adoptive parent,  
17 or relative shall be limited to personal knowledge, defined as firsthand  
18 observations of the child's daily care, functioning, development, behavior,  
19 activities, health, education, and interactions of the child, including visitation,  
20 communication with parents as it relates to the child, sibling relationships, and  
21 any needs for services or support in the home of the caregiver.

22 \* \* \*

23 Art. 710. Order; appeal

24 A. In a written judgment, the court shall make findings of fact regarding:

25 \* \* \*

26 (2) The permanent plan that is most appropriate and in the best interest of the  
27 child in accordance with the priorities of Article 702 (C), including the basis for the  
28 permanent plan determination of the child.

29 \* \* \*

30 Art. 1004.2. Termination of rights; children in state custody

1                   The department shall file and pursue to judgment in the trial court a petition  
2                   to terminate the parental rights of the parent or parents if the child has been in state  
3                   custody for ~~seventeen~~ **fifteen** of the last twenty-two months, unless the department  
4                   has documented in the case plan a compelling reason why filing is not in the best  
5                   interest of the child.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_