
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)]

HB 625 Engrossed

2015 Regular Session

Simon

Abstract: Revises various provisions of the Children's Code and statutory law relative to child in need of care proceedings, guardianship, and foster care.

General Provisions

Present law provides, generally, for actions known as child in need of care proceedings (CINC proceedings), which are brought by the state to protect children who are abused, neglected, abandoned, or endangered. Proposed law retains present law and adds provisions authorizing electronic delivery of documents, notifications, and reports relating to CINC proceedings; provisions relative to case plans for children in CINC proceedings; and provisions for temporary and successor guardianship.

Present law provides, generally, for duties of the Dept. of Children and Family Services (DCFS) and of caregivers with respect to children who are removed from their parents' custody and enter foster care. Proposed law retains present law and adds provisions relative to parental decisions by foster caregivers and participation in activities by foster children.

Present law stipulates that extraordinary procedures established by present law for state intervention in relationships between parents and children are meant to be used only when required by necessity; and then with due respect for the rights of the parents, the children, and the institution of the family. Proposed law retains present law, and stipulates further that such procedures are to be used only to the extent that they are not prohibited by present La. constitution.

Provisions Relative to Child in Need of Care (CINC) Proceedings

Proposed law requires courts to request that each parent involved in CINC proceedings provide an email address at which he or she is willing to receive service and notice of future proceedings in each of the following instances:

- (1) At the continued custody or continued safety plan hearing.
- (2) At any appearance by a parent to answer a petition prior to the adjudication hearing.

Present law authorizes transmittal by mail of documents, notices, and reports relating to CINC proceedings. Proposed law retains present law and adds authorizations for such materials to be transmitted by courts and DCFS via email in the following instances, provided that the receiving

party has provided an email address for these purposes to the entity sending the materials:

- (1) Service of the petition, summons, and notice at the initiation of CINC proceedings to a parent of the child involved in the proceedings.
- (2) Transmittal of the case plan and case review reports for a child involved in CINC proceedings to a parent of the child.
- (3) If surrender of parental rights results from CINC proceedings, transmittal of the notice of filing of a father's or mother's surrender of parental rights to the other parent.

Proposed law stipulates that service and notice may be provided electronically to a parent involved in CINC proceedings until the parent provides notice to the court and all parties in writing or in open court that he is no longer able to receive service or notice electronically.

Proposed law provides that service by electronic mail to a parent involved in CINC proceedings is complete upon transmission, but is not effective if the serving party learns the transmission did not reach the party to be served.

Proposed law requires that all persons before the court in CINC proceedings be advised of their responsibility in achieving timely permanency for the child. Requires further that the court direct all such persons to identify the name, address and whereabouts of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child in each of the following instances:

- (1) At the continued custody or continued safety plan hearing.
- (2) When a curator *ad hoc* gives notice to a parent of the pendency and nature of CINC proceedings.
- (3) At a disposition hearing in which a court concludes that a child is to be removed from his parents' custody.
- (4) At the conclusion of a case review hearing.

Proposed law authorizes DCFS to provide a copy of the case plan for a child involved in CINC proceedings by either mail or email to counsel of record.

Present law provides requirements for the content of case plans for children involved in CINC proceedings. Proposed law retains present law and adds requirements that the case plan also include the following:

- (1) 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.

- (2) For children whose permanent plan is placement in the least restrictive, most family-like alternative permanent living arrangement, documentation of the efforts made by DCFS to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, a legal guardian, or an adoptive parent.

Present law, relative to permanency for children involved in CINC proceedings, requires that the court determine the permanent plan for the child that is most appropriate and in his best interest in accordance with a set of priorities of placement. Provides that one such priority is placement of a child in the least restrictive, most family-like alternative permanent living arrangement. Proposed law revises present law to stipulate that this permanency plan applies to a child 16 years of age or older. Proposed law provides further that when this placement option is selected, the court or administrative body conducting the hearing shall ask the child about his desired permanency outcome.

Proposed law provides that for children whose permanent plan is placement in the least restrictive, most family-like alternative permanent living arrangement, the written judgment providing for this placement shall address the following:

- (1) The reason the plan is best for the child.
- (2) Compelling reasons why it is not in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.

Provisions Relative to Guardianship

Present law provides that after a child has been adjudicated to be in need of care, a motion for guardianship may be filed by DCFS, a parent, or counsel for the child. Proposed law adds that in cases when a guardian is deceased, an individual previously named as a successor guardian by the guardian in an agreement with DCFS provided for in proposed law may file such motion.

Present law provides that DCFS, counsel for the child, the guardian, a parent permitted to intervene under present law, or the court on its own motion may seek to enforce, modify, or terminate a guardianship order. Proposed law adds that in cases when a guardian is incapacitated, an individual previously named as a successor guardian by the guardian in an agreement with DCFS provided for in proposed law may take such actions relative to a guardianship order.

Proposed law provides that a guardian who has entered into a guardianship subsidy agreement with DCFS may name an individual as a successor guardian for the purpose of continued eligibility of the subsidy in the event of the death or incapacity of the guardian. Stipulates that nothing in proposed law shall be construed to confer any right of legal guardianship, as such legal guardianship shall be established or modified pursuant to applicable provisions of present law exclusively.

Proposed law provides that an individual who has been named as a successor guardian may request an *ex parte* order of temporary guardianship of the child in a motion authorized by applicable provisions of present law. Provides that such order of temporary guardianship may be granted to the

successor only if all of the following conditions are satisfied:

- (1) The current guardian is incapacitated or deceased.
- (2) It clearly appears from facts shown by a verified motion, or by supporting affidavit, that the individual is able to provide a safe, stable, and wholesome home for the child pending the hearing.
- (3) The mover was previously named as a successor guardian in a guardianship subsidy agreement with DCFS as shown by the agreement.
- (4) The mover certifies to the court in writing the efforts he has undertaken to give notice to the child's parents, DCFS, and the child's attorney of the request for the order granting temporary guardianship, or the reasons supporting his claim that notice should not be required.

Proposed law provides that an *ex parte* order of temporary guardianship shall:

- (1) Continue until a hearing on the motion for guardianship or modification of guardianship is held and guardianship is established or denied by the court.
- (2) Provide the date on which the order is signed and the date and hour of the hearing on the motion for guardianship or modification of the guardianship.

Provisions Relative to Foster Care

Present law provides that no contract for foster care services shall be awarded to any person who has not completed a training program approved by DCFS that includes certain specified topics. Proposed law retains present law and adds to the training topics 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 provides that for purposes of proposed law relative to foster care, the following definitions shall apply:

- (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 to participate in extracurricular, enrichment, cultural, social, and sporting activities.

Proposed law stipulates that the reasonable and prudent parent standard established by proposed law shall not authorize any decision that conflicts with the child's parents' residual parental rights.

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

(Amends Ch.C. Arts. 101, 625(A) and (D), 640(A), 641, 644(A)(7), 645(A), 646(D), 674, 675(B), 682(B)(5), 689, 700, 702(C)(5) and (J), 720(A), 724(B), 1133, and 1134 and R.S. 46:283(C)(1)(a)(intro. para.); Adds Ch.C. Arts. 640(C), 644(A)(8) and (9), 646(E), 682(B)(6), 684(E)(5), 702(K), 710(A)(4), 724.1, and R.S. 46:283(C)(1)(a)(v) and (D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Stipulate that service and notice of proceedings may be provided electronically to a parent involved in child in need of care (CINC) proceedings until he provides notice to the court and all parties in writing or in open court that he is no longer able to receive service or notice electronically.
2. Provide that service by electronic mail to a parent involved in CINC proceedings is complete upon transmission, but is not effective if the serving party learns the transmission did not reach the party to be served.
3. Add a reference to sporting activities among the various activities referred to in the definition of "reasonable and prudent parent standard" provided in proposed law.
4. Make technical changes.