

2015 Regular Session

HOUSE BILL NO. 625

BY REPRESENTATIVES SIMON, ARMES, COX, HARRISON, HAZEL, HODGES,
HOFFMANN, HOWARD, ROBERT JOHNSON, LORUSSO, MORENO, JAY
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WILLMOTT

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

CHILDRENS CODE: Revises provisions of law relative to child in need of care proceedings, guardianship, and foster care

1 AN ACT
2 To amend and reenact Children's Code Articles 101, 625(A) and (D), 640(A), 641,
3 644(A)(7), 645(A), 646(D), 674, 675(B), 682(B)(5), 689, 700, 702(C)(5) and (J),
4 720(A), 724(B), 1133, and 1134 and R.S. 46:283(C)(1)(a)(introductory paragraph)
5 and to enact Children's Code Articles 640(C), 644(A)(8) and (9), 646(E), 682(B)(6),
6 684(E)(5), 702(K), 710(A)(4), 724.1, and R.S. 46:283(C)(1)(a)(v) and (D), relative
7 to children who enter state custody through child in need of care proceedings; to
8 authorize means of delivery of documents, notifications, and reports relating to such
9 proceedings; to require instruction to persons before the court relative to achieving
10 permanency in child placement; to provide for duties of persons to advise the court
11 of the whereabouts of relatives of children involved in child in need of care
12 proceedings; to provide relative to case plans and case review reports for children
13 involved in such proceedings; to provide relative to hearings and dispositions on
14 custody, safety plans, and permanency; to provide for notice of filing of surrender
15 of parental rights; to provide for temporary and successor guardianship; to establish
16 a standard applicable to parental decisions by foster caregivers; to provide relative
17 to training for prospective foster care providers; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Children's Code Articles 101, 625(A) and (D), 640(A), 641, 644(A)(7),
3 645(A), 646(D), 674, 675(B), 682(B)(5), 689, 700, 702(C)(5) and (J), 720(A), 724(B), 1133,
4 and 1134 are hereby amended and reenacted and Children's Code Articles 640(C),
5 644(A)(8) and (9), 646(E), 682(B)(6), 684(E)(5), 702(K), 710(A)(4), and 724.1 are hereby
6 enacted to read as follows:

7 Art. 101. Preamble

8 The people of Louisiana recognize the family as the most fundamental unit
9 of human society; that preserving families is essential to a free society; that the
10 relationship between parent and child is preeminent in establishing and maintaining
11 the well-being of the child; that parents have the responsibility for providing the
12 basic necessities of life as well as love and affection to their children; that parents
13 have the paramount right to raise their children in accordance with their own values
14 and traditions; that parents should make the decisions regarding where and with
15 whom the child shall reside, the educational, moral, ethical, and religious training of
16 the child, the medical, psychiatric, surgical, and preventive health care of the child,
17 and the discipline of the child; that children owe to their parents respect, obedience,
18 and affection; that the role of the state in the family is limited and should only be
19 asserted when there is a serious threat to the family, the parents, or the child; and that
20 extraordinary procedures established by law are meant to be used only when required
21 by necessity, and then with due respect for the rights of the parents, the children, and
22 the institution of the family, and only to the extent that such procedures are not
23 prohibited by the Louisiana Constitution of 1974, as amended.

24 * * *

25 Art. 625. Advice of rights and responsibilities of parents, counsel, and department;
26 absent parents

27 A.(1) At the continued custody or continued safety plan hearing, the court
28 shall advise the parents and may advise the child, insofar as practicable, of:

29 ~~(+)~~ (a) The nature of the proceedings in terms understandable to the child.

1 ~~(2)~~ (b) The nature of the allegations in terms understandable to the child.

2 ~~(3)~~ (c) The right to an adjudication hearing.

3 ~~(4)~~ (d) The right to be represented by counsel and the right of indigent
4 parents to representation by the Indigent Parents' Representation Program in
5 accordance with Children's Code Article 608.

6 (2) At the continued custody or continued safety plan hearing, the court shall
7 request the parent and all counsel of record to provide an electronic mail address at
8 which the parent is willing to receive service and notice of future proceedings. The
9 court shall advise the parent that once an electronic mail address is provided, all
10 service and notice of future proceedings may be sent electronically until such time
11 he provides notice to the court and all parties in writing or in open court that he is no
12 longer able to receive service or notice at such address.

13 * * *

14 D.(1) The court shall ~~also~~ direct all persons before the court to identify the
15 name, address, and whereabouts of each parent and any relative or other individual
16 willing and able to offer a wholesome and stable home for the child.

17 (2) The court shall advise all persons before the court of their responsibility
18 in achieving timely permanency for the child, and further shall direct all such
19 individuals to identify the name, address, and whereabouts of all grandparents, all
20 parents of a sibling where such parent has legal custody of such sibling, and all other
21 adult relatives of the child.

22 * * *

23 Art. 640. Service and return; resident parent

24 A. If a parent resides within the state, service of the petition, summons, and
25 notice shall be made ~~personally or by domiciliary service or by certified mail~~ as soon
26 as possible₂, and not less than fifteen days prior to commencement of the adjudication
27 hearing on the matter, by any of the following means:

28 (1) Personal service.

29 (2) Domiciliary service.

1 (3) Certified mail.

2 (4) Electronic mail to the electronic mail address expressly designated by the
3 parent in a pleading, at the continued custody or continued safety plan hearing, or at
4 any other hearing at which the parent personally appeared before the court.

5 * * *

6 C. Service by electronic mail is complete upon transmission but is not
7 effective if the serving party learns the transmission did not reach the party to be
8 served.

9 Art. 641. Service and return; nonresident parent

10 A. If a parent does not reside within this state, service of the petition and
11 notice, and summons if issued by the court, shall be made ~~by certified mail, return~~
12 ~~receipt requested, to the address indicated in the petition,~~ not less than five days prior
13 to commencement of the adjudication hearing on the matter by any of the following
14 means:

15 (1) Certified mail, return receipt requested, to the address indicated in the
16 petition.

17 (2) Electronic mail to the electronic mail address expressly designated by the
18 parent in a pleading, at the continued custody or continued safety plan hearing, or at
19 any other hearing at which the parent personally appeared before the court.

20 B. ~~The~~ If service was made by certified mail, the person effecting the service
21 shall file the return receipt as proof of service.

22 C. Service by electronic mail is complete upon transmission but is not
23 effective if the serving party learns the transmission did not reach the party to be
24 served.

25 * * *

26 Art. 644. Duties of curator ad hoc

27 A. The curator ad hoc shall make a diligent effort to locate the parent and
28 notify him of the pendency and nature of the proceedings. Such notice shall include:

29 * * *

1 (7) The parent's responsibility to support the achievement of timely
2 permanency for the child.

3 (8) The parent's responsibility to advise the department and the court in
4 writing of the whereabouts, including the address, cellular number, telephone
5 number, and any other contact information, of all grandparents, all parents of a
6 sibling where such parent has legal custody of such sibling, and all other adult
7 relatives of the child.

8 (9) The possibility that a judicial certification for adoption proceeding may
9 be initiated if the child remains in the custody of the state.

10 * * *

11 Art. 645. Department of Children and Family Services to provide information
12 concerning the parents' location; cooperation of the department

13 A. Notwithstanding any other provision of the law to the contrary, the
14 department shall obtain and provide to the district attorney with any request for a
15 petition all available information pertinent to the location of every parent, including
16 names and addresses of known relatives and any parents of a sibling where such
17 parent has legal custody of the sibling, and any information available from the parent
18 locator service. If a curator ad hoc is appointed, the department shall supply this
19 information to him within fifteen days of its receipt of a copy of the order appointing
20 the curator ad hoc. This duty shall be a continuing one as long as the child remains
21 subject to the jurisdiction of the court.

22 * * *

23 Art. 646. Answer; appearance; objection

24 * * *

25 D. At this hearing, the parent shall be asked to provide an electronic mail
26 address at which the parent is willing to receive service and notice of future
27 proceedings. The court shall advise the parent that once an electronic mail address
28 is provided, all service and notice of future proceedings may be sent electronically

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 until such time he provides notice to the court and all parties in writing or in open
2 court that he is no longer able to receive service or notice at such address.

3 E. The court may schedule future hearings and serve notice in open court.

4 * * *

5 Art. 674. Filing

6 A. ~~Copies~~ A copy of the case plan shall be filed with the court ten days
7 before any scheduled disposition, permanency, or case review hearing. Upon filing,
8 the department shall ~~mail copies~~ provide a copy of the case plan to counsel of record
9 either by mail or electronic mail and shall mail ~~them~~ a copy by certified mail to any
10 unrepresented parent at his last known address or send the copy by electronic mail
11 at the electronic mail address expressly designated by the parent in a pleading, at the
12 continued custody or continued safety plan hearing, or at any other hearing at which
13 the parent personally appeared before the court, unless otherwise ordered by the
14 court for good cause.

15 B. Service by electronic mail is complete upon transmission but is not
16 effective if the serving party learns the transmission did not reach the party to be
17 served.

18 Art. 675. Case plan purpose; contents

19 * * *

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

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

25 (2) A plan for assuring that the child receives safe and proper care and that
26 services are provided to the parents, child, and foster parents in order to improve the
27 conditions in the parents' home, facilitate the safe return of the child to his own home
28 or other permanent placement of the child, or both, and address the needs of the child

1 while in foster care, including a plan for visitation and a discussion of the
2 appropriateness of the services that have been provided to the child under the plan.

3 (3) A plan for assuring that the child is afforded the greatest opportunity for
4 normalcy through engagement in age- or developmentally appropriate activities on
5 a regular basis. The child shall be consulted in an age-appropriate manner about
6 their interests and opportunities available to them. Recognizing the greatest
7 opportunity for normalcy lies in the day to day decisions affecting the child's
8 activities, the child's caretaker should be supported in making those decisions
9 through the use of the reasonable and prudent parent standards as set forth in R.S.
10 46:283.

11 (4) If the child has been committed to the custody of a person other than the
12 parents, the plan shall recommend an amount the parents are obligated to contribute
13 for the cost of care and treatment of their child in accordance with Article 685.

14 (5) When appropriate for a child ~~fifteen~~ fourteen years of age or older, the
15 plan shall include a written description of the programs and services which will help
16 the child prepare for the transition from foster care to independent living.

17 ~~(3)~~ (6)(a) For a child ~~fifteen~~ fourteen years of age or older, the plan shall
18 include a written, individualized, and thorough transitional plan, developed in
19 collaboration with the child and any agency, department, or individual assuming his
20 custody, care, or responsibility.

21 ~~(a)~~ (b) The transitional plan shall identify the programs, services, and
22 facilities that will be used to assist the child in achieving a successful transition. The
23 transitional plan shall address the needs of the child, including but not limited to
24 education, health, permanent connections, living arrangements, and, if appropriate,
25 independent living skills and employment.

26 ~~(b)~~ (c) The department shall ensure that all records in its files relevant to
27 securing needed services in the community in which the child will live shall be
28 immediately transmitted to the appropriate service provider.

1 ~~(4)~~ (7)(a) Documentation of the efforts the agency is making to safely return
2 the child home or to finalize the child's placement in an alternative safe and
3 permanent home in accordance with the child's permanent plan.

4 (b) For children whose permanent plan is adoption or placement in another
5 permanent home, this documentation shall include child-specific recruitment efforts
6 such as the use of state, regional, and national adoption exchanges, including
7 electronic exchange systems, to facilitate orderly and timely in-state and interstate
8 placements.

9 (c) For children whose permanent plan is guardianship, the documentation
10 shall include the facts and circumstances supporting guardianship, including the
11 reasons that the plan is in the best interest of the child and that reunification with a
12 parent and adoption are not appropriate permanent plans. The documentation shall
13 also address the suitability and commitment of the proposed guardian to offer a
14 wholesome, stable home for the child throughout minority.

15 (d) For children whose permanent plan is placement in the least restrictive,
16 most family-like alternative permanent living arrangement, the documentation shall
17 include the intensive, ongoing, and as of the date of the hearing, efforts made by the
18 department to return the child home or secure a placement for the child with a fit and
19 willing relative, including adult siblings, a legal guardian, or an adoptive parent.

20 ~~(5)~~ (8) Assessment of the child's relationships with his parents, grandparents,
21 and siblings, including a plan for assuring that continuing contact with any relative
22 by blood, adoption, or affinity with whom the child has an established and significant
23 relationship is preserved while the child is in foster care. The preservation of such
24 relationships shall be considered when the child's permanent plan is adopted.

25 ~~(6)~~ (9) Documentation of the compelling reasons for determining that filing
26 a petition for termination of parental rights would not be in the best interest of the
27 child, when appropriate.

28 * * *

1 Art. 682. Removal of a child from parental custody or control

2 * * *

3 B. If the court concludes that the child is to be removed from his parents'
4 custody, it shall:

5 * * *

6 (5) Inform the parties and all persons before the court of their continuing
7 responsibility to support the achievement of timely permanency for the child and
8 further direct such individuals to advise the department and the court in writing of
9 the whereabouts, including the address, cellular number, telephone number, and any
10 other contact information, of all grandparents, all parents of a sibling where such
11 parent has legal custody of such sibling, and all other adult relatives of the child.

12 (6) Inform the parents of their obligation to support their child, including
13 their obligation to contribute to the care and treatment of their child as provided in
14 Article 685.

15 * * *

16 Art. 684. Judgment of disposition

17 * * *

18 E. In all cases in which the child is removed from his parents' custody and
19 assigned to the department, the court shall advise the parties and all persons before
20 the court of the following:

21 * * *

22 (5) The continuing responsibility of all persons before the court to support
23 the achievement of timely permanency for the child and the requirement that those
24 persons advise the department and the court in writing of the whereabouts, including
25 the address, cellular number, telephone number, and any other contact information,
26 of all grandparents, all parents of a sibling where such parent has legal custody of
27 such sibling, and all other adult relatives of the child.

28 * * *

1 Art. 689. Case review reports; service

2 ~~A. Copies~~ A copy of the report shall be served ~~by certified mail to the last~~
3 ~~known address~~ upon counsel of record either by mail or electronic mail and upon any
4 unrepresented party either by certified mail at his last known address or by the
5 department by electronic mail at the electronic mail address expressly designated by
6 the party in a pleading, at the continued custody or continued safety plan hearing, or
7 at any other hearing at which the party personally appeared before the court prior to
8 or at the same time it is filed with the court.

9 B. Service by electronic mail is complete upon transmission but is not
10 effective if the serving party learns the transmission did not reach the party to be
11 served.

12 * * *

13 Art. 700. Order; appeal

14 A. At the conclusion of the case review hearing, the court may take one of
15 the following actions:

16 (1) Approve the plan as consistent with the health and safety of the child and
17 order compliance by all parties.

18 (2) Find that the case plan is not appropriate, in whole or in part, based on
19 the evidence presented at the contradictory hearing, and order the department to
20 revise the case plan accordingly.

21 ~~B. The~~ At the conclusion of the case review hearing, the court shall inform
22 the parents that of all of the following:

23 ~~(1)~~ (1) It is their obligation to cooperate with the department, comply with
24 the requirements of the case plan, including their duty to keep the department
25 apprised of their current address, and to correct the conditions requiring the child to
26 be in care.

27 (2) It is their continuing responsibility to support the achievement of timely
28 permanency for the child and to advise the department and the court in writing of the
29 whereabouts, including the address, cellular number, telephone number, and any

1 other contact information, of all grandparents, all parents of a sibling where such
2 parent has legal custody of such sibling, and all other adult relatives of the child.

3 ~~(b)~~ (3) A termination of parental rights petition may be filed based on their
4 failure to comply with the case plan, failure to make significant measurable progress
5 toward achieving case plan goals and to correct the conditions requiring the child to
6 be in care, or on any other ground authorized by Article 1015.

7 ~~(2) Find that the case plan is not appropriate, in whole or in part, based on~~
8 ~~the evidence presented at the contradictory hearing and order the department to~~
9 ~~revise the case plan accordingly.~~

10 ~~B. C.~~ C. Any person directly affected may appeal the findings or orders of the
11 court rendered pursuant to this Article.

12 * * *

13 Art. 702. Permanency hearing

14 * * *

15 C. The court shall determine the permanent plan for the child that is most
16 appropriate and in the best interest of the child in accordance with the following
17 priorities of placement:

18 * * *

19 (5)(a) Placement in the least restrictive, most family-like alternative
20 permanent living arrangement. The department shall document in the child's case
21 plan and its report to the court the compelling reason for recommending this plan
22 over the preceding higher priority alternatives.

23 (b) The permanent plan provided for in this Paragraph may be considered
24 only if the child is sixteen years of age or older.

25 * * *

26 J. In the case of a child ~~fifteen~~ fourteen years of age or older, the hearing
27 shall include a review of the transitional plan developed with the child and the
28 agency in accordance with Subparagraph ~~(B)(3)~~ (B)(6) of Article 675.

1 K. In any permanency hearing for a child whose permanent plan is
2 placement in the least restrictive, most family-like alternative permanent living
3 arrangement, the court or administrative body conducting the hearing shall ask the
4 child about the desired permanency outcome for the child.

5 * * *

6 Art. 710. Order; appeal

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

8 * * *

9 (4) For children whose permanent plan is placement in the least restrictive,
10 most family-like alternative permanent living arrangement, why, as of the date of the
11 hearing, the plan is the best permanency plan for the child and provide compelling
12 reasons why it continues to not be in the best interests of the child to return home,
13 be placed for adoption, be placed with a legal guardian, or be placed with a fit and
14 willing relative.

15 * * *

16 Art. 720. Motion for guardianship

17 A. After a child has been adjudicated to be in need of care, a motion for
18 guardianship may be filed by the department, parent, ~~or~~ counsel for the child, or,
19 when the guardian is deceased, an individual previously named as a successor
20 guardian by the guardian in a guardianship subsidy agreement with the department;
21 or the department may submit a case plan along with the case review report to the
22 court and all counsel of record recommending guardianship in accordance with
23 Children's Code Articles 674, 688, and 689.

24 * * *

25 Art. 724. Motion for modification of guardianship; termination of guardianship

26 * * *

27 ~~B.(1) The department, counsel for the child, the guardian, a parent permitted~~
28 ~~to intervene under Children's Code Article 707, or the court on its own motion~~ Any

1 of the following parties may seek to enforce, modify or terminate a guardianship
2 order;

3 (a) The department.

4 (b) Counsel for the child.

5 (c) The guardian or, if the guardian is incapacitated, an individual previously
6 named as a successor guardian by the guardian in a guardianship subsidy agreement
7 with the department.

8 (d) A parent permitted to intervene under Children's Code Article 707.

9 (e) The court on its own motion.

10 (2) A copy of the motion to modify shall be personally served on the parents,
11 and the court shall promptly notify the programs representing the child and indigent
12 parents, respectively, in child in need of care proceedings.

13 * * *

14 Art. 724.1. Temporary guardianship; designated successor guardian; construction

15 A.(1) A guardian who has entered into a guardianship subsidy agreement
16 with the department may name an individual as a successor guardian in the
17 agreement for the purpose of continued eligibility of the subsidy in the event of the
18 death or incapacity of the guardian.

19 (2) Nothing relative to the subsidy agreement provided for in this Subsection
20 shall be construed to confer any right of legal guardianship, as such legal
21 guardianship shall be established or modified pursuant to Articles 720 through 724
22 exclusively.

23 B. An individual who has been named as a successor guardian in the
24 guardianship subsidy agreement may request an ex parte order of temporary
25 guardianship of the child in a motion for guardianship or modification of
26 guardianship pursuant to Article 720 or 724.

27 C. An ex parte order of temporary guardianship of the child may be granted
28 to the named successor only if all of the following conditions are satisfied:

29 (1) The current guardian is incapacitated or deceased.

1 (2) It clearly appears from specific facts shown by a verified motion or by
2 supporting affidavit that the individual is able to provide a safe, stable, and
3 wholesome home for the child pending the hearing.

4 (3) The mover was previously named as a successor guardian in a
5 guardianship subsidy agreement with the department as shown by the agreement.

6 (4) The mover certifies to the court in writing the efforts he has undertaken
7 to give notice to the child's parents, the department, and the child's attorney of the
8 request for the ex parte order granting temporary guardianship or the reasons
9 supporting his claim that notice should not be required.

10 D. An ex parte order of temporary guardianship shall:

11 (1) Continue until a hearing on the motion for guardianship or modification
12 of guardianship is held and guardianship is established or denied by the court.

13 (2) Provide the date on which the ex parte order is signed and the date and
14 hour of the hearing on the motion for guardianship or modification of the
15 guardianship.

16 * * *

17 Art. 1133. Notice of filing of surrender; service upon resident alleged or adjudicated
18 father

19 A. Notice of the filing of a mother's surrender shall be promptly served upon
20 the alleged or adjudicated father. Notice of the filing shall not be required if an
21 alleged or adjudicated father waives notice of service. If he resides within this state,
22 service shall be made by ~~either registered or certified mail, return receipt requested,~~
23 ~~postage prepaid and properly addressed to his last known address~~ any of the
24 following means:

25 (1) Registered or certified mail, return receipt requested, postage prepaid and
26 properly addressed to his last known address.

27 (2) Electronic mail at the electronic mail address expressly designated by the
28 father in a pleading, at the continued custody or continued safety plan hearing, or at
29 any other hearing at which he personally appeared before the court.

1 B. Service by electronic mail is complete upon transmission but is not
2 effective if the serving party learns the transmission did not reach the party to be
3 served.

4 Art. 1134. Notice of filing of surrender; service upon nonresident alleged or
5 adjudicated father

6 A. Notice of the filing of a mother's surrender shall be promptly served upon
7 the alleged or adjudicated father. Notice of the filing shall not be required if an
8 alleged or adjudicated father waives notice of service. If he does not reside within
9 this state, service shall be made by ~~either registered or certified mail, return receipt~~
10 ~~requested, postage prepaid and properly addressed to his last known address~~ any of
11 the following means:

12 (1) Registered or certified mail, return receipt requested, postage prepaid and
13 properly addressed to his last known address.

14 (2) Electronic mail at the electronic mail address expressly designated by the
15 father in a pleading, at the continued custody or continued safety plan hearing, or at
16 any other hearing at which he personally appeared before the court.

17 B. Service by electronic mail is complete upon transmission but is not
18 effective if the serving party learns the transmission did not reach the party to be
19 served.

20 Section 2. R.S. 46:283(C)(1)(a)(introductory paragraph) is hereby amended and
21 reenacted and R.S. 46:283(C)(1)(a)(v) and (D) are hereby enacted to read as follows:

22 §283. Determination of fitness; award of contract

23 * * *

24 C.(1)(a) After January 1, 1984, no new contract for foster care services shall
25 be awarded to any person who has not completed a training program approved by the
26 department, ~~including~~ that includes but is not limited to the following areas:

27 * * *

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

4 * * *

5 D.(1) For purposes of this Section, the following definitions shall apply:

6 (a) "Age- or developmentally appropriate" means activities or items that are
7 generally accepted as suitable for children of the same chronological age or level of
8 maturity or that are determined to be developmentally appropriate for a child, based
9 on the development of cognitive, emotional, physical, and behavioral capacities that
10 are typical for an age or age group; and in the case of a specific child, activities or
11 items that are suitable for the child based on the developmental stages attained by the
12 child with respect to the cognitive, emotional, physical, and behavioral capacities of
13 the child.

14 (b) "Reasonable and prudent parent standard" means the standard
15 characterized by careful and sensible parental decisions that maintain the health,
16 safety, and best interests of a child while at the same time encouraging the emotional
17 and developmental growth of the child, that a caregiver shall use when determining
18 whether to allow a child in foster care under the responsibility of the state to
19 participate in extracurricular, enrichment, cultural, social, and sporting activities.

20 (2) Nothing in this Section shall be construed to authorize any decision that
21 conflicts with the residual parental rights, as defined in Children's Code Article 116,
22 of a parent of a child.

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

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 Reengrossed

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 residual parental rights of a parent of a child.

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.

The House Floor Amendments to the engrossed bill:

1. Relocate within proposed law a provision stipulating that the reasonable and prudent parent standard established by proposed law shall not authorize any decision that conflicts with the residual parental rights of a parent of a child.