

2016 Regular Session

HOUSE BILL NO. 809

BY REPRESENTATIVE SCHRODER

1 AN ACT

2 To amend and reenact Children's Code Articles 571, 572(1), 573, and 575 and R.S.  
3 15:185.1, 185.2(2), (6), and (7), 185.3(A), (B)(1), (2), (6)(introductory paragraph),  
4 (11), (12), (13), (14), (15), (19)(a) and (c), 185.4(B)(1), (2)(a), (c), (d), and (e),  
5 (3)(introductory paragraph) and (a), (5), (7), (13), (14), and (15), 185.6(C), 185.7,  
6 185.8(introductory paragraph), and 185.9(A)(1) and (B)(2) and to repeal Children's  
7 Code Article 1023(C), relative to children; to provide for the Indigent Parents'  
8 Representation Program; to provide with respect to legal representation of indigent  
9 or absent parents; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Articles 571, 572(1), 573, and 575 are hereby amended  
12 and reenacted to read as follows:

13 Art. 571. Legislative Findings

14 A. The legislature finds that society has a responsibility to provide indigent  
15 or absent parents with quality legal representation, including curatorship  
16 appointments, in child abuse and neglect cases. Provision of counsel for indigent  
17 parents or curators for absent parents ~~is an~~ are essential due process ~~right~~ rights  
18 provided by Louisiana law to ensure sound and fair ~~decisionmaking~~ decision-making  
19 concerning children's safety, permanency, and well-being. Legal counsel providing  
20 representation in child abuse and neglect cases should have specialized knowledge  
21 and skills essential for effective representation. Resources to support the provision  
22 of legal representation, including curatorship appointments, of indigent or absent

1 parents should be used efficiently and equitably to assure qualified representation  
2 throughout the state.

3 B. The legislature finds that there is a need for a uniform system of  
4 representation of indigent or absent parents statewide that provides for appropriate  
5 oversight, minimization of potential conflicts, and adequate local and state funding.  
6 To this end, the legislature finds that local public defender offices best serve the  
7 interests of children and families by representing indigent or absent parents, which  
8 shall include curatorship appointments, in child abuse and neglect cases consistent  
9 with the provisions of R S. 15:185.1 et seq., and with the Trial Court Performance  
10 Standards for Attorneys Representing Parents in Child in Need of Care and  
11 Termination of Parental Right Cases provided in Chapter 11 of Part XV of Title 22  
12 of the Louisiana Administrative Code.

13 Art. 572. Definitions

14 As used in this Chapter:

15 (1) "Child abuse and neglect case" means a child protection proceeding  
16 conducted by a court exercising juvenile jurisdiction involving the abuse or neglect  
17 of children as provided specifically in Titles VI, ~~and X,~~ and XI of the Louisiana  
18 Children's Code.

19 \* \* \*

20 Art. 573. Purpose

21 The purpose of this Part is to provide for an effective and efficient system of  
22 providing qualified legal representation, which shall include curatorship  
23 appointments, for indigent or absent parents in child abuse and neglect cases.

24 \* \* \*

25 Art. 575. Duties of the program; qualifications of counsel

26 A. The program shall provide qualified legal counsel, which shall include  
27 curatorship appointments, to indigent or absent parents in child abuse and neglect  
28 cases in accordance with the provisions of R.S. 15:185.1 through 185.9.

29 B. Legal representation, which shall include curatorship appointments, of  
30 indigent or absent parents in child abuse and neglect cases shall comply with

1 standards promulgated by the Louisiana Public Defender Board, or any successor to  
2 that board in accordance with R.S. 15:185.1 through 185.9 to ensure competent and  
3 fair representation.

4 \* \* \*

5 Section 2. R.S. 15:185.1, 185.2(2), (6), and (7), 185.3(A), (B)(1), (2),  
6 (6)(introductory paragraph), (11), (12), (13), (14), (15), (19)(a) and (c), 185.4(B)(1), (2)(a),  
7 (c), (d), and (e), (3)(introductory paragraph) and (a), (5), (7), (13), (14), and (15), 185.6(C),  
8 185.7, 185.8(introductory paragraph), and 185.9(A)(1) and (B)(2) are hereby amended and  
9 reenacted to read as follows:

10 §185.1. Purpose

11 The purpose of this Part is to provide for an effective and efficient system of  
12 providing qualified legal representation, including curatorship appointments, for  
13 indigent or absent parents in child abuse and neglect cases as required by the  
14 provisions of the Louisiana Children's Code. The uniform standards and guidelines  
15 and the program to provide for representation, including curatorship appointments,  
16 of indigent or absent parents in child abuse and neglect cases shall be incrementally  
17 implemented and effected throughout the state, ~~with a full implementation goal of~~  
18 ~~July 1, 2012.~~

19 §185.2. Definitions

20 As used in this Part, the following words shall have the following meanings:

21 \* \* \*

22 (2) "Child abuse and neglect case" means a child protection proceeding  
23 conducted by a court exercising juvenile jurisdiction involving the abuse or neglect  
24 of children as provided specifically in Titles VI, ~~and X,~~ and XI, of the Louisiana  
25 Children's Code.

26 \* \* \*

27 (6) "Indigent parent representation" means the providing of legal services to  
28 indigent or absent parents in child abuse and neglect cases as required by the  
29 provisions of the Louisiana Children's Code.

1 (7) "Public defender" or "indigent defender" means an attorney employed by  
 2 or under contract with the board, the district public defender, or a nonprofit  
 3 organization contracting with the board or the district public defender to provide  
 4 representation, including curatorship appointments, to indigent or absent parents in  
 5 child abuse and neglect cases as required by the provisions of the Louisiana  
 6 Children's Code.

7 \* \* \*

8 §185.3. Indigent Parents' Representation Program; duties of the board; subject to  
 9 appropriation

10 A.(1) Subject to appropriation, or the availability of other monies made  
 11 available to the program, the board shall administer a program to provide  
 12 representation, including curatorship appointments, of indigent or absent parents in  
 13 child abuse and neglect cases as required by the Louisiana Children's Code.

14 (2) Except for the inherent regulatory authority of the Louisiana Supreme  
 15 Court provided for in Article V, Section 5 of the Constitution of Louisiana, regarding  
 16 the regulation of the practice of law, the Louisiana Public Defender Board or any  
 17 successor to that board, shall have all regulatory authority, control, supervision, and  
 18 jurisdiction, including auditing and enforcement, and all power incidental or  
 19 necessary thereto to administer a program to provide for the delivery of indigent or  
 20 absent parent representation throughout the courts of the state of Louisiana.

21 B. In the administration of the Indigent Parents' Representation Program, the  
 22 board shall:

23 (1) Regularly collect detailed data from judicial districts, where applicable,  
 24 relating to workload, resources, employees, and expenditures relating to  
 25 representation of indigent or absent parents.

26 (2) Review and evaluate the operations of the program and emphasize  
 27 special training for counsel representing indigent or absent parents.

28 \* \* \*

1 (6) Make an annual report to the legislature regarding the state of the board's  
2 operations and the status of representation of indigent or absent parent services it  
3 regulates. Such report shall include at a minimum:

4 \* \* \*

5 (11) Provide for the employing or contracting with and training of attorneys  
6 and other professional and nonprofessional staff that may be necessary to carry out  
7 the functions of the program. All attorneys representing indigent or absent parents  
8 through this program shall be licensed to practice law in Louisiana and qualified in  
9 accordance with standards and guidelines adopted by rule of the board.

10 (12) Have the ability to contract with organizations or individuals for the  
11 provision of legal services for indigent or absent parents in child abuse and neglect  
12 cases.

13 (13) Administer an efficient and effective statewide program for the  
14 representation, including curatorship appointments of indigent or absent parents  
15 which safeguards their rights and facilitates timely and fair decision making  
16 concerning children's safety, permanency, and well-being.

17 (14)(a) Establish, and modify as necessary, a plan of organization to conduct  
18 the business of regulating and controlling the delivery of services for the  
19 representation of indigent or absent parents under its jurisdiction efficiently and  
20 thoroughly.

- 21 (b) The plan of organization shall provide for the capacity to:
- 22 (i) Administer the granting of contracts.
- 23 (ii) Analyze and review investigative and audit reports and findings.
- 24 (iii) Provide for enforcement of board rules as is necessary for the efficient  
25 and thorough regulation and governance of representation of indigent or absent  
26 parent services under its jurisdiction.

27 (15) Develop and disseminate standards, procedures, and policies that will  
28 ensure that the representation, including curatorship appointments, of indigent or  
29 absent parents is provided consistently throughout the state.

30 \* \* \*

1 (19) Assign appropriate staff to:

2 (a) Coordinate training of attorneys representing indigent or absent parents  
3 in current aspects of criminal and civil law and procedure involving the  
4 representation of indigent or absent parents.

5 \* \* \*

6 (c) Establish specialized training and educational programs for all attorneys  
7 providing indigent or absent parent representation. Such programs shall not be  
8 "continuing legal education" as mandated by the Louisiana State Bar Association.  
9 The training sponsored by the state program shall be practical training based on  
10 models in other states, including trial advocacy and civil and criminal procedure in  
11 the nature of mock trials, working seminars, and mentoring. Such educational  
12 programs shall also include annual educational programs and introductory  
13 educational programs for attorneys prior to providing indigent or absent parent  
14 representation.

15 \* \* \*

16 §185.4. Standards and guidelines for representation of indigent parents; rulemaking

17 \* \* \*

18 B. The rules shall include but not be limited to:

19 (1) Creating mandatory statewide standards and guidelines for the  
20 representation, including curatorship appointments, of indigent or absent parents in  
21 child abuse and neglect cases that require those services to be provided in a manner  
22 that is uniformly fair and consistent throughout the state and recognizing the unique  
23 and critical role of parents' attorneys in safeguarding fundamental rights and  
24 promoting the safety, permanency, and well-being of children in the child welfare  
25 system.

26 (2) Ensuring the standards and guidelines shall take into consideration all of  
27 the following:

28 (a) Manageable indigent or absent parent representation workloads. The  
29 board shall adopt manageable indigent or absent parent representation workloads that  
30 permit the rendering of competent representation through an empirically based case-

1 weighting system that does not count all cases of similar case type equally but rather  
2 denotes the actual amount of attorney effort needed to bring a specific case to an  
3 appropriate disposition.

4 \* \* \*

5 (c) Documentation of communication. The board shall adopt standards and  
6 guidelines to ensure that defense attorneys providing indigent or absent parent  
7 representation provide documentation of communications with clients to meet  
8 standards and guidelines established by the board.

9 (d) Performance supervision protocols. The board shall adopt standards and  
10 guidelines to ensure that all defense attorneys providing indigent or absent parent  
11 representation undergo periodic review of their work against the performance  
12 standards and guidelines in a fair and consistent manner throughout the state,  
13 including creating a uniform evaluation protocol.

14 (e) Performance of attorneys in all assigned indigent or absent parent  
15 representation cases or curatorship appointments. The board shall adopt general  
16 standards and guidelines that alert defense counsel to courses of action that may be  
17 necessary, advisable, or appropriate to providing competent indigent or absent parent  
18 representation or curatorship appointments, including performance standards in the  
19 nature of job descriptions.

20 (3) Creating mandatory qualification standards for attorneys representing  
21 indigent or absent parents in child abuse and neglect cases that ensure that those  
22 services are provided by competent counsel. Qualification standards shall include  
23 both of the following:

24 (a) The specific training programs that must be completed to provide  
25 representation, including curatorship appointments, to indigent or absent parents.

26 \* \* \*

27 (5) Establishing methods of monitoring and evaluating compliance with the  
28 mandatory indigent or absent parent representation standards and guidelines and the

1 performance of counsel in order to ensure competent representation of indigent  
2 parents in all courts of the state.

3 \* \* \*

4 (7) Establishing appropriate sanctions for failure to adhere to the mandatory  
5 standards and guidelines for the delivery of indigent or absent parent representation.

6 \* \* \*

7 (13) Providing for minimum salary and compensation standards for attorney,  
8 investigator, paraprofessional, and any and all other staff necessary for the adequate  
9 representation, including curatorship appointments, of indigent or absent parents  
10 comparable to other positions of similar stature throughout the state.

11 (14) Establishing processes and procedures to ensure that when a case that  
12 is assigned presents a conflict of interest for an attorney providing indigent or absent  
13 parent representation, the conflict is identified and handled appropriately and  
14 ethically.

15 (15) Establishing procedures for managing workloads and assigning cases  
16 in a manner that ensures that attorneys representing indigent or absent parents are  
17 assigned cases according to experience, training, and manageable workloads and  
18 caseloads, taking into account case complexity, potential outcomes of the case, and  
19 the legal skills required to provide effective assistance of counsel.

20 \* \* \*

21 §185.6. Special reporting requirements; indigent parent representation cases;  
22 penalties

23 \* \* \*

24 C. For purposes of this Section, a "case" is defined as a proceeding initiated  
25 by the state against an indigent or absent parent or parents pursuant to Title VI or  
26 Title X of the Louisiana Children's Code. Any appeal from a final judgment in such  
27 cases shall be counted as a separate case. In the event that a case involves multiple  
28 children, the district public defender, or regional director, where applicable, shall  
29 track, record, and report the number of children per case.

30 \* \* \*



1 §185.7. Rights of action; interpretation of Part

2 A. It is not the intent of the legislature to create any new right, right of  
3 action, or cause of action or eliminate any right, right of action, or cause of action  
4 existing under current law. Nothing contained in the provisions of this Part shall  
5 create, expressly or by implication, any right, claim, or cause of action in favor of  
6 anyone in connection with the delivery of indigent and absent parent representation.

7 B. In addition to the provisions of Subsection A of this Section, nothing  
8 herein, nor any standards, guidelines, or rules adopted as a result hereof, shall be  
9 construed to provide any person the basis of any claim that the attorney or attorneys  
10 appointed to him pursuant to this statute performed in an ineffective manner. It shall  
11 be presumptive evidence that any attorney performing indigent or absent parent  
12 representation pursuant to the auspices of this statute is currently certified to have  
13 met the standards and guidelines adopted by the board to provide indigent or absent  
14 parent representation in an effective manner.

15 C. Nothing contained in this Part shall be construed to overrule, expand, or  
16 extend, directly or by analogy, the duties of attorneys providing representation of  
17 indigent or absent parents as otherwise required by the provisions of the Louisiana  
18 Children's Code.

19 §185.8. Auditing; district reporting

20 Each district public defender shall work in conjunction with the legislative  
21 auditor in developing uniform audit reports regarding the representation of indigent  
22 or absent parents as required by R.S. 24:515.1, which shall require the following to  
23 be included in that report:

24 \* \* \*

25 §185.9. Implementation of indigent parent representation program; timeline

26 A. In the development of the Indigent Parents' Representation Program, the  
27 board shall consider all of the following:

28 (1) Forms of delivery of representation that maximize the efficient and  
29 effective provision of counsel to indigent or absent parents.

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B.

\* \* \*

(2) The board shall determine the best method of incremental implementation of the Indigent Parents' Representation Program that is the most efficient, feasible, practicable, and appropriate to provide for the delivery of indigent or absent parent representation as required by the provisions of this Part and rules adopted by the board.

\* \* \*

Section 3. Children's Code Article 1023(C) is hereby repealed in its entirety.

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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