

Regular Session, 2014

SENATE BILL NO. 290

BY SENATOR JOHNS

CHILDREN'S CODE. Provides relative to safety plan order for child in need of care.
(8/1/14)

1 AN ACT
2 To amend and reenact Children's Code Articles 603(27), 612(A)(2), 615(B)(2), 619, 620,
3 624(A), (C)(1) and (D), the introductory paragraph of 625(A), 627(E) and (F), and
4 632(A) and (C) and to enact Children's Code Articles 626(E) and 627(G), relative to
5 child in need of care; to provide relative to terms and definitions; to provide relative
6 to child abuse reporting and investigation; to provide with respect to assignment of
7 reports for investigation and assessment; to provide with respect to disposition of
8 reports; to provide relative to procedures for protection of a child; to provide with
9 respect to instant orders of custody; to provide relative to continued custody
10 hearing and custody order; to provide relative to rights and responsibilities of certain
11 person; to provide relative time for filing of petition; to provide relative to grounds
12 for continued safety plan; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Children's Code Articles 603(27), 612(A)(2), 615(B)(2), 619, 620,
15 624(A), (C)(1) and (D), the introductory paragraph of 625(A), 627(E) and (F), and 632(A)
16 and (C) are hereby amended and reenacted and Children's Code Articles 626(E) and 627(G)
17 are hereby enacted to read as follows:

1 Art. 603. Definitions

2 As used in this Title:

3 * * *

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

9 * * *

10 Art. 612. Assignment of reports for investigation and assessment

11 A. * * *

12 (2) Reports of high and intermediate levels of risk shall be investigated
13 promptly. This investigation shall include a preliminary investigation as to the
14 nature, extent, and cause of the abuse or neglect and the identity of the person
15 actually responsible for the child's condition. This preliminary investigation shall
16 include an interview with the child and his parent or parents or other caretaker and
17 shall include consideration of all available medical information provided to the
18 department pertaining to the child's condition. Such preliminary investigation shall
19 also include an immediate assessment of any existing visitation or custody order or
20 agreement involving the alleged perpetrator and the child. The department shall
21 request a temporary restraining order pursuant to Article 617, ~~or~~ a protective order
22 pursuant to Article 618, **or an instanter safety plan order pursuant to Article 619**
23 **or Article 620** if the department determines that any such previously ordered
24 visitation or custody would put the child's health and safety at risk. Admission of the
25 investigator on school premises or access to the child in school shall not be denied
26 by school personnel. However, the request for a temporary restraining order or a
27 protective order in accordance with this Article shall not independently confer
28 exclusive jurisdiction on the juvenile court in accordance with Article 303.

29 * * *

1 Art. 615. Disposition of reports

2 * * *

3 B. After investigation, the local child protection unit shall make one of the
4 following determinations:

5 * * *

6 (2) The report appears to be justified, in that there is evidence of child abuse,
7 or neglect, and a protective order or instanter safety plan order would eliminate
8 the need for removal of the child in order to protect him from further abuse, in which
9 case it may apply for a temporary restraining order or protective order authorized by
10 Article 617 and Article 618, or an instanter safety plan order authorized by
11 Article 619 or Article 620.

12 * * *

13 Art. 619. Instanter ~~orders of custody~~ **orders; instanter safety plan orders**

14 A.(1) A peace officer, district attorney, or employee of the local child
15 protection unit of the department may file a verified complaint alleging facts
16 showing that there are reasonable grounds to believe that the child is in need of care
17 and that emergency removal or the implementation of a safety plan is necessary
18 to secure the child's protection.

19 (2) After the complaint has been filed, the parent is without authority to place
20 the child with any individual or institution except the department until legal custody
21 is returned to the parent or the safety plan is terminated.

22 B. ~~The~~ If removal of the child is requested, the court shall immediately
23 determine whether reasonable efforts have been made by the department to prevent
24 or eliminate the need for the child's removal, including whether the department has
25 requested a temporary restraining order pursuant to Article 617, ~~or~~ a protective order
26 pursuant to Article 618, or a safety plan order pursuant to this article. In making
27 and determining reasonable efforts, the child's health and safety shall be the
28 paramount concern. However, the court may authorize the removal of the child even
29 if the department's efforts have not been reasonable.

1 C. (1) Upon presentation of the verified complaint, the court shall
2 immediately determine whether emergency removal or the issuance of a safety plan
3 order is necessary to secure the child's protection.

4 (2) If the court determines that the child's welfare cannot be safeguarded
5 without removal, the court shall immediately issue a written instanter order directing
6 that the child be placed in the provisional custody of a suitable relative or other
7 suitable individual capable of protecting the health and safety of the child or taken
8 into the custody of the state. The order shall contain written findings of fact
9 supporting the necessity for the child's removal in order to safeguard his welfare. If
10 ~~the court determines that emergency removal is not necessary to secure the child's~~
11 ~~protection, the court shall issue a written order denying the request for custody. If~~
12 custody is given to a suitable relative or other suitable individual, ~~the~~ a safety plan
13 shall be made an order of the court and shall direct the provisional custodian to
14 adhere to the conditions of the safety plan. The safety plan shall set forth conditions
15 of contact with parents or other third parties.

16 (3) If, upon request by the state, the court determines that with the
17 issuance of a safety plan order that the child's welfare can be safeguarded
18 without removal, the court shall immediately issue a written instanter order
19 directing compliance with the terms of the safety plan. The order shall contain
20 written findings of fact supporting the necessity for the safety plan to safeguard
21 his welfare. The safety plan shall set forth conditions as determined by or
22 agreed upon by the state as necessary for the protection of the child's health and
23 safety while remaining in the home.

24 (4) If the court determines that emergency removal or the issuance of a
25 safety plan order is not necessary to secure the child's protection, the court shall
26 issue a written order denying the request for custody or for the implementation of
27 a safety plan.

28 D. An instanter order shall be executed by either an employee of the local
29 child protection unit or any peace officer having territorial jurisdiction over the child.

1 E. Any peace officer having territorial jurisdiction over the child is authorized
2 to serve a summons upon a parent or caretaker, commanding him to appear at court
3 for a continued custody **or continued safety plan** hearing. The summons shall
4 expressly notify the parent or caretaker that the court may issue a binding order in
5 his absence if he fails to appear. A copy of the summons shall be filed in the record
6 as proof of service. An employee of the local child protection unit shall provide
7 written notice to the parents or caretaker of the date, time, and location of the
8 continued custody **or continued safety plan** hearing.

9 Art. 620. Oral instanter orders

10 A. In exceptional circumstances, the facts supporting the issuance of an
11 instanter order and the exceptional circumstances may be relayed orally, including
12 telephonically, to the judge and his order directing that a child be taken into custody
13 **or, upon request by the state, that a safety plan order be implemented** may be
14 issued orally.

15 B. In such cases, an affidavit containing the information previously relayed
16 orally, including telephonically, shall be filed with the clerk of the court within
17 twenty-four hours and a written order shall be issued. The written order shall include
18 the court's findings of fact supporting the necessity for the child's removal **or the**
19 **implementation of a safety plan order** in order to safeguard his welfare and, **if the**
20 **child has been removed**, shall determine the child's custodian in accordance with
21 Article 619.

22 C. The affidavit filed after the child has been placed shall indicate whether
23 the child was released to his parents or remains removed.

24 D. The department shall promptly notify the parents or caretaker of the nature
25 of the allegations and, if the child is not released, of the time and place of the
26 continued custody hearing.

27 **E. If the court ordered the implementation of a safety plan, the**
28 **department shall promptly notify the parents or caretaker of the nature of the**
29 **allegations, the conditions of the safety plan, and the time and place of a**

1 **continued safety plan order hearing.**

2 * * *

3 Art. 624. Continued custody hearing; **continued safety plan hearing**

4 A. If a child is not released to the care of his parents, a hearing shall be held
5 by the court within three days after the child's removal or entry into custody. **If a**
6 **safety plan has been ordered, a hearing shall be held by the court within three**
7 **days from the issuance of the safety plan order, unless the parents are in**
8 **agreement with the safety plan. The parents' signature on the safety plan shall**
9 **constitute evidence of their agreement with the plan.**

10 * * *

11 C.(1) If it appears from the record that the parent cannot be found or has been
12 served a summons or notified by the department to appear at the continued custody
13 **or continued safety plan** hearing and fails to appear at the hearing, then the hearing
14 may be held in the parent's absence.

15 * * *

16 D. At this hearing, the state has the burden to prove the existence of a ground
17 for continued custody **or the continued implementation of a safety plan** pursuant
18 to Article 626.

19 * * *

20 Art. 625. Advice of rights and responsibilities of parents, counsel, and department;
21 absent parents

22 A. At the continued custody **or continued safety plan** hearing, the court shall
23 advise the parents and may advise the child, insofar as practicable, of:

24 * * *

25 Art. 626. Grounds for continued custody; reasonable efforts; **grounds for continued**
26 **safety plan**

27 * * *

28 **E. The court may authorize, with the consent of the state, continued**
29 **implementation of a safety plan prior to the adjudication if there are reasonable**

1 grounds to believe the child is in need of care and that the continued
2 implementation of the safety plan is necessary for his safety and protection. The
3 safety plan shall continue to set forth conditions as determined or agreed upon
4 by the state as necessary for the protection of the child's health and safety while
5 remaining in the home.

6 Art. 627. Continued custody order; special provisions; appointments; continued
7 safety plan order

8 * * *

9 E. ~~The court shall order the appointment of counsel for the child and the~~
10 ~~appointment of a curator for any parent who is an absentee. The court may order the~~
11 ~~appointment of counsel for the parents or the appointment of a court-appointed~~
12 ~~special advocate.~~ If the court finds that the child can safely remain in or return
13 to the home with the implementation of a safety plan developed and agreed
14 upon by the state pending adjudication, the court may order compliance with
15 the conditions of the safety plan.

16 F. If the court orders that the child be placed in the custody of a suitable
17 relative or other suitable individual, it shall make ~~the~~ a safety plan part of its order.

18 G. The court shall order the appointment of counsel for the child and the
19 appointment of a curator for any parent who is an absentee. The court may
20 order the appointment of counsel for the parents or the appointment of a court-
21 appointed special advocate.

22 * * *

23 Art. 632. Time for filing of petition; child in custody

24 A. If a child is continued in custody prior to adjudication, or if a protective
25 order is issued, a petition requesting that the child be adjudicated in need of care
26 shall be filed within thirty days of the hearing to determine continued custody. If the
27 child remains in the home and a safety plan order has been issued, a petition
28 requesting that the child be adjudicated in need of care shall be filed within
29 forty-five days of the issuance of the safety plan order.

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C. If no petition is filed within the applicable time period, the child shall be

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returned to the parent **or the safety plan shall automatically be terminated.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

Johns (SB 290)

Present law provides that "safety plan" means a short-term plan for the purpose of assuring a child's immediate health and safety by imposing conditions for the continued placement of the child with a custodian and terms for contact between the child and his parents or other persons.

Proposed law provides that "safety plan" means a plan for the purpose of assuring a child's health and safety by imposing conditions for the child to safely remain in the home, or, after a child has been removed from the home, for the continued placement of the child with a custodian and terms for contact between the child and his parents or other persons.

Present law provides that reports of high and intermediate levels of risk shall be investigated promptly. The investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse or neglect and the identity of the person actually responsible for the child's condition. The preliminary investigation shall include an interview with the child and his parent or parents or other caretaker and shall include consideration of all available medical information provided to the department pertaining to the child's condition.

Present law provides that such preliminary investigation shall also include an immediate assessment of any existing visitation or custody order or agreement involving the alleged perpetrator and the child.

Present law provides the department shall request a temporary restraining order pursuant to present law, or protective order pursuant to present law if the department determines that any such previously ordered visitation or custody would put the child's health and safety at risk.

Present law provides that the admission of the investigator on school premises or access to the child in school shall not be denied by school personnel. However, the request for a temporary restraining order or a protective order in accordance with this present law shall not independently confer exclusive jurisdiction on the juvenile court in accordance with present law.

Proposed law provides that the department shall request a temporary restraining order pursuant to present law, or protective order pursuant to present law, or an instanter safety plan order pursuant to present law, if the department determines that any such previously ordered visitation or custody would put the child's health and safety at risk.

Present law provides that after investigation, the local child protection unit shall make one of the following determinations: the report appears to be justified, in that there is evidence of child abuse, or neglect, and a protective order would eliminate the need for removal of the child in order to protect him from further abuse, in which case it may apply for a temporary restraining order or protective order authorized by present law.

Proposed law retains present law and adds an instanter safety plan order as an additional option prior to removal of a child in need of care.

Present law provides that a peace officer, district attorney, or employee of the local child protection unit of the department may file a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal is necessary to secure the child's protection.

Proposed law includes the implementation of a safety plan as an option available to a peace officer, district attorney, or employee of the local child protection unit of the department to include in a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care to secure the child's protection.

Present law provides that after the complaint has been filed, the parent is without authority to place the child with any individual or institution except the department until legal custody is returned to the parent.

Proposed law provides that after the complaint has been filed, the parent is without authority to place the child with any individual or institution except the department until legal custody is returned to the parent or the safety plan is terminated.

Present law provides that the court shall immediately determine whether reasonable efforts have been made by the department to prevent or eliminate the need for the child's removal, including whether the department has requested a temporary restraining order pursuant to present law or protective order pursuant to present law.

Present law provides that in making and determining reasonable efforts, the child's health and safety shall be the paramount concern. However, the court may authorize the removal of the child even if the department's efforts have not been reasonable.

Proposed law retains present law and provides that if removal of the child is requested, the court shall immediately determine whether reasonable efforts have been made by the department to prevent or eliminate the need for the child's removal, including whether the department has requested a temporary restraining order pursuant to present law, a protective order pursuant to present law, or a safety plan order pursuant to proposed law.

Present law provides that upon presentation of the verified complaint, the court shall immediately determine whether emergency removal is necessary to secure the child's protection.

Proposed law adds whether the issuance of a safety plan order is necessary to secure the child's protection.

Present law provides that if the court determines that the child's welfare cannot be safeguarded without removal, the court shall immediately issue a written instanter order directing that the child be placed in the provisional custody of a suitable relative or other suitable individual capable of protecting the health and safety of the child or taken into the custody of the state.

Present law provides that the order shall contain written findings of fact supporting the necessity for the child's removal in order to safeguard his welfare. If the court determines that emergency removal is not necessary to secure the child's protection, the court shall issue a written order denying the request for custody.

Present law provides that if custody is given to a suitable relative or other suitable individual, the safety plan shall be made an order of the court and shall direct the provisional custodian to adhere to the conditions of the safety plan. The safety plan shall set forth conditions of contact with parents or other third parties.

Proposed law removes the provision that if the court determines that emergency removal is not necessary to secure the child's protection, the court shall issue a written order denying

the request for custody.

Proposed law provides that if, upon request by the state, the court determines that with the issuance of a safety plan order that the child's welfare can be safeguarded without removal, the court shall immediately issue a written instanter order directing compliance with the terms of the safety plan.

Proposed law provides that the order shall contain written findings of fact supporting the necessity for the safety plan to safeguard his welfare. The safety plan shall set forth conditions as determined by or agreed upon by the state as necessary for the protection of the child's health and safety while remaining in the home.

Proposed law provides that if the court determines that emergency removal or the issuance of a safety plan order is not necessary to secure the child's protection, the court shall issue a written order denying the request for custody or for the implementation of a safety plan.

Proposed law provides that any peace officer having territorial jurisdiction over the child is authorized to serve a summons upon a parent or caretaker, commanding him to appear at court for a continued custody or continued safety plan hearing.

Present law provides that the summons shall expressly notify the parent or caretaker that the court may issue a binding order in his absence if he fails to appear. A copy of the summons shall be filed in the record as proof of service.

Proposed law provides that an employee of the local child protection unit shall provide written notice to the parents or caretaker of the date, time, and location of the continued custody or continued safety plan hearing. Proposed law retains present law and adds a continued safety plan.

Proposed law provides that in exceptional circumstances, the facts supporting the issuance of an instanter order and the exceptional circumstances may be relayed orally, including telephonically, to the judge and his order directing that a child be taken into custody or, upon request by the state, that a safety plan order be implemented may be issued orally.

Proposed law provides that in such cases, an affidavit containing the information previously relayed orally, including telephonically, shall be filed with the clerk of the court within 24 hours and a written order shall be issued.

Proposed law provides that the written order shall include the court's findings of fact supporting the necessity for the child's removal or the implementation of a safety plan order in order to safeguard his welfare and, if the child has been removed, shall determine the child's custodian in accordance with present law.

Proposed law provides that if the court ordered the implementation of a safety plan, the department shall promptly notify the parents or caretaker of the nature of the allegations, the conditions of the safety plan, and the time and place of a continued safety plan order hearing.

Present law provides that if a child is not released to the care of his parents, a hearing shall be held by the court within three days after the child's removal or entry into custody.

Proposed law provides that if a safety plan has been ordered, a hearing shall be held by the court within three days from the issuance of the safety plan order, unless the parents are in agreement with the safety plan. The parents' signature on the safety plan shall constitute evidence of their agreement with the plan.

Proposed law provides that if it appears from the record that the parent cannot be found or has been served a summons or notified by the department to appear at the continued custody or continued safety plan hearing and fails to appear at the hearing, then the hearing may be

held in the parent's absence.

Proposed law provides that at this hearing, the state has the burden to prove the existence of a ground for continued custody or the continued implementation of a safety plan pursuant to present law.

Proposed law provides that the court may authorize, with the consent of the state, continued implementation of a safety plan prior to the adjudication if there are reasonable grounds to believe the child is in need of care and that the continued implementation of the safety plan is necessary for his safety and protection. The safety plan shall continue to set forth conditions as determined or agreed upon by the state as necessary for the protection of the child's health and safety while remaining in the home.

Present law provides that the court shall order the appointment of counsel for the child and the appointment of a curator for any parent who is an absentee. The court may order the appointment of counsel for the parents or the appointment of a court-appointed special advocate.

Proposed law provides that if the court finds that the child can safely remain in or return to the home with the implementation of a safety plan developed and agreed upon by the state pending adjudication, the court may order compliance with the conditions of the safety plan.

Proposed law provides that the court shall order the appointment of counsel for the child and the appointment of a curator for any parent who is an absentee. The court may order the appointment of counsel for the parents or the appointment of a court-appointed special advocate.

Present law provides that if a child is continued in custody prior to adjudication, or if a protective order is issued, a petition requesting that the child be adjudicated in need of care shall be filed within 30 days of the hearing to determine continued custody.

Proposed law provides that if the child remains in the home and a safety plan order has been issued, a petition requesting that the child be adjudicated in need of care shall be filed within 45 days of the issuance of the safety plan order.

Present law provides that if no petition is filed within the applicable time period, the child shall be returned to the parent. Proposed law retains present law and adds that the safety plan shall automatically be terminated.

Effective August 1, 2014.

(Amends Ch.C. Arts. 603(27), 612(A)(2), 615(B)(2), 619, 620, 624(A), (C)(1) and (D), 625(A)(intro para) 627(E) and (F), and 632(A) and (C); adds Ch.C. Arts. 626(E) and 627(G))