
DIGEST

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HB 360 Reengrossed

2022 Regular Session

Hilferty

Abstract: Provides for the continuous revision of the Children's Code.

Present law (Ch.C. Art. 320) provides for the determination of indigency at any stage of the proceedings.

Proposed law retains present law but provides an exception for child in need of care cases.

Present law (Ch.C. Art. 335) provides for the preparation of the record for appeal and sets forth who pays the costs.

Proposed law provides that if a child requests a transcript for appeal or supervisory writ, neither the child nor his parents shall be assessed costs.

Proposed law further provides that if a parent requests a transcript for appeal or supervisory writ, the parent shall pay the costs unless the court determines that the parent is unable to pay due to poverty or lack of means.

Proposed law authorizes the court to waive the costs of transcription for any other party if justice so requires.

Present law (Ch.C. Art. 502) provides definitions of "abuse" and "neglect".

Proposed law retains present law but changes the terminology within the definitions from "health and safety" to the broader phrase "health, welfare, and safety".

Present law (Ch.C. Art. 575) requires the Indigent Parents' Representation Program to provide legal counsel to indigent or absent parents.

Proposed law retains present law and provides correct cross-references. Proposed law further provides that the Indigent Parents' Representation Program may adopt policies to provide counsel to indigent parents prior to the commencement of court proceedings.

Present law (Ch.C. Art. 601) provides for the purpose of the Child In Need of Care proceedings.

Proposed law retains present law but changes the terminology from "health and safety" to the broader phrase "health, welfare, and safety".

Present law (Ch.C. Art. 603) provides definitions of "abuse" and "neglect".

Proposed law retains present law but changes the terminology within the definitions from "health and safety" to the broader phrase "health, welfare, and safety".

Proposed law moves the definition of "relative" from the definition of "other suitable individual" to its own Subparagraph.

Proposed law provides new definitions for "protective capacity", "reasonable efforts", "safe and safety", "threat of danger", and "vulnerable".

Present law (Ch.C. Art. 607) provides for the child's right to the appointment of counsel.

Proposed law retains present law and also authorizes counsel for the child to be appointed upon the issuance of an instant order.

Present law (Ch.C. Art. 608) provides for the parent's right to counsel.

Proposed law retains present law and also authorizes the right to counsel to attach upon the issuance of an instant order or upon the filing of a petition. Proposed law further provides that parents are presumed indigent until the court makes a determination and requires the district public defender or the La. Public Defender Board to provide representation.

Present law (Ch.C. Art. 612) provides for the investigation and assessment of abuse and neglect reports.

Proposed law retains present law but changes the terminology from "health and safety" to the broader phrase "health, welfare, and safety".

Present law (Ch.C. Art. 615) provides for the disposition of abuse and neglect reports.

Proposed law retains present law but changes the terminology from "health and safety" to the broader phrase "health, welfare, and safety".

Present law (Ch.C. Art. 619) provides for instant custody orders and instant safety plans for the removal of a child from the parental home.

Proposed law retains present law but changes the terminology from "health and safety" to the broader phrase "health, welfare, and safety".

Proposed law further provides factors for the court's consideration in determining whether reasonable efforts were made to prevent removal of the child and, regardless, authorizes the court to remove the child if necessary to secure the safety of the child.

Present law (Ch.C. Art. 620) provides for oral instant orders.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 621) provides for taking a child into custody without a court order.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 622) provides for placement of a child who appears to be in need of care.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 623) provides for notice of proceedings to a child's parents.

Proposed law retains present law and also requires notice to be given to the district defender or the entity designated for representing both parents and children.

Proposed law requires the notice to include a copy of the verified complaint, the affidavit upon which the instant order is based, and any orders issued by the court.

Present law (Ch.C. Art. 624) provides for procedures related to the continued custody hearing.

Proposed law provides that when an instant custody or safety plan order is signed, the court shall hold a hearing within three days from issuance of the order.

Present law (Ch.C. Art. 625) provides for advice of rights during the pendency of the case.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 626) provides for continued custody and reasonable efforts to secure the child.

Proposed law clarifies terminology and authorizes the court to determine if the efforts by the department to prevent removal are reasonable.

Present law (Ch.C. Art. 627) provides for continued custody orders.

Proposed law retains present law and corrects terminology.

Present law (Ch.C. Art. 635.1) provides for notice of the petition to the program designated to provide counsel for the child.

Proposed law retains present law and corrects terminology.

Present law (Ch.C. Art. 638) provides for service of the petition.

Proposed law retains present law and also requires service of the petition on the entity designated

to provide counsel for the child.

Present law (Ch.C. Art. 639) provides a specific notice to be served on parents in a child in need of care proceeding.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 640) provides for service and return for resident parents.

Proposed law retains present law and also requires notice on the child through counsel for the child. Proposed law further provides for service by commercial courier and clarifies that electronic service is complete if the sender receives electronic confirmation of delivery.

Present law (Ch.C. Art. 646.1) provides for prehearing conferences.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 672.1) provides for reunification.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 673) provides for the creation of a case plan.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 675) provides for the contents of a case plan.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 677) provides for the review of a case plan.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 681) provides dispositional alternatives for a child adjudicated in need of care.

Proposed law authorizes the court to impose terms and conditions upon the parents to ensure the safety of the child while remaining in the home.

Present law (Ch.C. Art. 682) provides for the removal of a child from parental custody.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 683) provides for disposition alternatives for a child.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 684) provides for a judgment of disposition.

Proposed law retains present law, clarifies terminology, and requires the court to make specific findings supporting removal of the child from the parental home.

Present law (Ch.C. Art. 700) provides for courts orders and appeal thereof.

Proposed law retains present law, clarifies terminology, and requires the court to make specific findings as to whether the child can return to the custody of the parent.

Present law (Ch.C. Art. 702) provides for the permanency hearing.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 710) provides for courts orders and appeal thereof.

Proposed law retains present law, clarifies terminology, and requires the court to make specific findings as to whether the child can return to the custody of the parent.

Present law (Ch.C. Art. 716) provides for the modification of a judgment of disposition.

Proposed law retains present law and further requires a modification to return the child to the parent if the court finds that it is safe to do so.

Present law (Ch.C. Art. 722) provides for the burden of proof to place a child under guardianship.

Proposed law retains present law, clarifies terminology, and changes the standard for reunification from the child's best interest to the child's safety.

Present law (Ch.C. Art. 724.1) provides for temporary guardianship.

Proposed law retains present law and clarifies terminology.

Present law (Ch.C. Art. 1003), relative to the certification of children for adoption, provides definitions of "abuse" and "neglect".

Proposed law retains present law but changes the terminology within the definitions from "health and safety" to the broader phrase "health, welfare, and safety".

Present law (Ch.C. Art. 1016) provides for the right to counsel for both the parent and the child.

Proposed law retains present law and corrects terminology.

Proposed law (Ch.C. Art. 1019.1) provides for notice to the entity providing counsel for either a child or a parent of a child.

Proposed law (Ch.C. Art. 1019.2) provides for service of the petition upon every parent and the entity designated to provide counsel for the child.

Present law (Ch.C. Art. 1021) provides for service for resident parents either personally or by domiciliary service at least five days prior to a hearing.

Proposed law requires notice on the child through counsel for the child and notice on the parent to be made as soon as possible, and not less than 15 days prior to a hearing.

Proposed law further provides for service by certified mail, electronic mail, or commercial courier and clarifies that electronic service is complete if the sender receives electronic confirmation of delivery.

Present law (Ch.C. Art. 1404) provides for the definition of Mental Health Advocacy Service.

Proposed law retains present law and provides a cross-reference.

(Amends Ch.C. Arts. 320(B), (C), and (D), 335(D) and (E), 502(1)(intro. para.) and (5), 575, 601, 603(2)(intro. para.), (18), (20), (25), (26), and (27), 607(A) and (C), 608(A)(intro. para.), (3), and (4), (B), and (C), 612(A)(2) and (4), 615(B)(1), 619(A)(1), (B), and (C), 620(A), (B), and (C), 621(A) and (B), 622(B)(intro. para.), (1), (2), and (3), 623(A) and (B), 624(A), (C)(1), (F), and (H), 625(D)(1), 626, 627(C), 635.1, 638, 639, 640(A) and (C), 646.1(B)(2) and (D), 672.1(B), 673, 675(A) and (B)(1), (2), (3), (6)(a), and (8), 677(B) and (C), 681(A)(intro. para.) and (1), 682(A) and (B)(intro. para.), (4), and (5), 683(A), (B), and (D), 684(B) and (C), 700(A)(intro. para.) and (1), 702(C)(1) and (4), (E), (G), and (J), 710(A) and (D), 716, 722(A)(2) and (4) and (B), 724.1(C)(2) and (4), 1003(1)(intro. para.) and (10), 1016(A) and (B), 1021, and 1404(13); Adds Ch.C. Arts. 335(F) and (G), 603(28)- (32), 1019.1, and 1019.2)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Change the phrase "welfare and safety" to "health, welfare, and safety".
2. Provide for uniform use of the term "suitable relative" and "suitable individual".
3. Change the definition of "safety" to allow the determination to be based on the particular facts and circumstances of each case.
4. Change the definition of "threat of danger" to require that the danger be in the near future rather than imminent.

5. Remove provisions allowing for a parent or child to file a motion for a continued safety plan hearing following issuance of an instant safety plan order.
6. Provide that a hearing on an instant order shall be held within three rather than seven days.
7. Allow, rather than require, the court to deem the Dept. of Children and Family Services reasonable in its efforts to prevent or eliminate the need for removal in continued custody determinations.
8. Limit the possibility of a reasonableness determination of the Dept. of Children and Family Services to times when the department's first contact with the family occurred during an emergency.