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## DIGEST

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Schroder

HB No. 1061

**Abstract:** Provides relative to legal representation for children and indigent parents in child protection cases and establishes the La. Child Representation System under the oversight of the La. Supreme Court.

Present law comprising Titles V through VII of the Louisiana Children's Code provides relative to cases of child abuse and neglect, and to child in need of care (CINC) and families in need of services (FINS) proceedings. Proposed law generally retains present law and revises certain provisions relative to legal representation for children and indigent parents in child protection cases.

Proposed law establishes the La. Child Representation System under the oversight of the La. Supreme Court. Requires that the supreme court, through such program as it may designate, provide child representation services to each court exercising jurisdiction over abuse and neglect cases in accordance with a service delivery plan developed by the program and approved by the supreme court.

Proposed law retains and relocates provisions of present law creating the La. Child Advocacy Program within the Mental Health Advocacy Service and providing for governance and duties of the program.

Present law provides legislative finding that local public defender offices representing children in child abuse and neglect cases should transition to representing indigent parents per a statewide implementation plan to be developed by the La. Indigent Defense Assistance Board, or any successor. Proposed law updates finding to indicate that local public defender offices best serve the interests of children and families by representing indigent parents in child abuse and neglect cases consistent with the provisions of present law, R S. 15:185.1 et seq., and the Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Right Cases provided in present Administrative Code (LAC 22:XV.1101 et seq.).

Proposed law relocates the Indigent Parents' Representation Program from the La. Indigent Defense Assistance Board to the La. Public Defender Board.

Proposed law adds provisions requiring that the child be a party to CINC proceedings. Provides that the attorney for the child shall have the authority to represent the child at all stages of the proceedings, and to do all of the following:

- (1) Accompany the child and be present for all court appearances, school hearings, and educational and other meetings related to the child.
- (2) View and copy the child's medical, dental, psychological, psychiatric, educational, or counseling records.

Present law provides that the parents of a child who is the subject of a CINC proceeding shall be entitled to counsel, and that the parents may waive such right. Proposed law revises present law to stipulate that a parent may waive such right if he has been instructed by the court about his rights and the possible consequences of waiver. Provides that before accepting a waiver of counsel, the court shall ensure that the parent is 18 years of age or older and is informed of all of the following:

- (1) The Dept. of Children and Family Services (DCFS) cannot provide legal advice to the parent or represent the parent's interest.
- (2) The child's attorney cannot provide legal advice to the parent and does not represent the parent's interest.
- (3) A proceeding brought under present law and proposed law may ultimately result in a termination of parental rights and a complete and permanent separation of the parent from the child.
- (4) If he is unable to afford an attorney, one will be provided by the Indigent Parents' Representation Program.

Proposed law establishes that if a parent of a child in a CINC proceeding is entitled to representation by the Indigent Parents' Representation Program, the unavailability of counsel to represent the parent shall be good cause for a continuance of the continued custody hearing for up to three days and the hearing shall not proceed until a qualified, independent attorney is provided to the parent.

Proposed law requires that an order setting a continued custody hearing provide for appointment of counsel for the child and notice to the child representation program.

Proposed law provides that upon the filing of a petition for commencement of a CINC proceeding, the court shall provide notice and a copy of the petition to the child representation program designated in accordance with proposed law.

Proposed law provides that after a child has been adjudicated to be in need of care, DCFS may submit a case plan along with the case review report to the court and all counsel of record recommending guardianship in accordance with present law.

Proposed law stipulates that the program providing legal representation to a child in CINC proceedings and the program representing the indigent parents in those proceedings also provide representation in guardianship proceedings.

Proposed law requires that a copy of any motion to modify a guardianship order be personally served on the parents, and that the court promptly notify the programs representing the child and indigent parents, respectively, in CINC proceedings.

Present law provides that within 10 days after filing of a petition relative to continuing contact with a child, DCFS or the attorney for the prospective adoptive parents shall file in the court in which the adoption is pending an agreement for continuing contact. Proposed law adds an attorney for the child and an attorney for the parent as parties authorized to file such agreement within the specified time frame.

Present law provides that a juvenile court may adopt rules not in conflict with provisions of present law relative to the conduct of proceedings. Proposed law establishes that a juvenile court may only establish such rules on the condition that applicable procedures are not otherwise provided through rules promulgated by the La. Supreme Court. Requires that local rules of juvenile courts be made available to the public by filing a copy with the Judicial Council of the supreme court and with the clerk of court.

Proposed law establishes the Child Protection Representation Commission (commission) for the purpose of reviewing the system of representation of children and indigent parents in child protection cases provided in proposed law. Provides that the commission shall be composed of the following members:

- (1) The secretary of the Dept. of Children and Family Services or his designee.
- (2) The chief justice of the La. Supreme Court or his designee.
- (3) The chairman of the House Committee on Civil Law and Procedure or his designee.
- (4) The chairman of the Senate Committee on Judiciary A or his designee.
- (5) The president or designee of the La. Bar Association.
- (6) The executive director or designee of the La. District Attorneys Association.
- (7) The state public defender or designee of the La. Public Defender Board.
- (8) The president or designee of the La. Council of Juvenile and Family Court Judges.

Proposed law provides that the commission shall ascertain the continued effectiveness and efficiency of the representation system and the adequacy of funding and may, at its discretion, issue such reports and recommendations as it deems necessary to ensure programmatic efficacy and fiscal viability of the system.

Proposed law authorizes the La. State Law Institute to prepare comments and explanatory notes following provisions of proposed law. Stipulates that such comments shall be neither enactments of the legislature nor law, and may be included only as explanatory language when printed in the official edition of the La. Children's Code.

(Amends Ch.C. Arts. 401, 552(2), 553(A) and (B), the heading of Part II of Chapter 6 of Title V

of the Louisiana Children's Code, Ch.C. Arts. 558, 560(A), 571(B), 574, 575(B), 607, 608, 624(A), 625(A)(4), 627(E), 631(B), 720(A), (B)(intro. para.) and (6), (C), and (D), 723(D), 724(A) and (B), 1016(B) and (C), and 1269.4(A); Adds Ch.C. Arts. 581, 635.1, and 1405.1; Repeals Ch.C. Arts. 559 and 571(C))

### Summary of Amendments Adopted by House

#### House Floor Amendments to the engrossed bill.

1. Added provision authorizing the La. State Law Institute to prepare comments and explanatory notes following provisions of proposed law and stipulating that such comments shall not be either enactments of the legislature nor law, and may be included only as explanatory language when printed in the official edition of the La. Children's Code.
2. Made technical changes and corrections.