

Regular Session, 2014

HOUSE BILL NO. 1061

BY REPRESENTATIVE SCHRODER

1 AN ACT

2 To amend and reenact Children's Code Articles 401, 552(2), 553(A) and (B), the heading of  
3 Part II of Chapter 6 of Title V of the Louisiana Children's Code, Children's Code  
4 Articles 558, 560(A), 571(B), 574, 575(B), 607, 608, 624(A), 625(A)(4), 627(E),  
5 631(B), 720(A), (B)(introductory paragraph) and (6), (C), and (D), 723(D), 724(A)  
6 and (B), 1016(B) and (C), and 1269.4(A), to enact Chapter 7 of Title V of the  
7 Louisiana Children's Code, to be comprised of Children's Code Article 581, and  
8 Children's Code Articles 635.1 and 1405.1, and to repeal Children's Code Articles  
9 559 and 571(C), relative to legal representation for children and indigent parents in  
10 child protection cases; to establish and provide for functions of the Louisiana Child  
11 Representation System and the Child Protection Representation Commission; to  
12 provide for the Child Advocacy Program of the Mental Health Advocacy Service;  
13 to provide relative to child in need of care proceedings; to provide for designation  
14 of programs by the Louisiana Supreme Court for provision of child representation  
15 services in certain courts; to provide for right to counsel for parents and conditions  
16 for waiving such right; to provide for custody hearings and orders; to provide for  
17 motions, case review reports, case plans, and filing in child protection cases; to  
18 provide for local rules of juvenile courts; and to provide for related matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. Children's Code Articles 401, 552(2), 553(A) and (B), the heading of Part  
21 II of Chapter 6 of Title V of the Louisiana Children's Code, Children's Code Articles 558,  
22 560(A), 571(B), 574, 575(B), 607, 608, 624(A), 625(A)(4), 627(E), 631(B), 720(A),  
23 (B)(introductory paragraph) and (6), (C), and (D), 723(D), 724(A) and (B), 1016(B) and (C),  
24 and 1269.4(A) are hereby amended and reenacted and Chapter 7 of Title V of the Louisiana

1 Children's Code, comprised of Children's Code Article 581, and Children's Code Articles  
2 635.1 and 1405.1 are hereby enacted to read as follows:

3 Art. 401. Adoption of local rules of court

4 A. ~~★ Unless procedures are otherwise provided through rules promulgated~~  
5 by the Louisiana Supreme Court, a court may adopt administrative rules governing  
6 internal operating procedures not in conflict with provisions of this Code, or of other  
7 laws ~~for the conduct of proceedings before it.~~ When a court has more than one  
8 judge, its rules shall be adopted or amended by a majority of the judges thereof  
9 sitting en banc.

10 B. The rules shall be ~~entered on the minutes of the court,~~ made available to  
11 the public by filing a copy with the Judicial Council of the Louisiana Supreme Court  
12 and by filing a copy with the clerk of court, and a copy shall be furnished on request  
13 to any attorney licensed to practice law in this state.

14 \* \* \*

15 Art. 552. Definitions

16 As used in this Chapter:

17 \* \* \*

18 (2) "Program" means ~~the Child Advocacy Program established in accordance~~  
19 ~~with Children's Code Article 558~~ a program approved by the Louisiana Supreme  
20 Court to provide qualified legal representation of children in child abuse and neglect  
21 cases.

22 Art. 553. Access to child; records; communication

23 A. Any attorney representing a child in a child abuse and neglect case as  
24 defined herein shall have reasonable access to and the opportunity to consult with the  
25 child whenever and wherever necessary in the performance of his duties and shall  
26 have ready access to view and copy all medical, mental health, developmental  
27 disability, and education records pertaining to his client whether such records are in  
28 hard copy or electronic form.

1           B. The person with whom or facility ~~with whom~~ in which the child is placed  
2 shall provide ~~adequate~~ reasonable access and privacy for the purpose of attorney-  
3 client consultation.

4   \*       \*       \*

5           PART II. LOUISIANA CHILD ADVOCACY PROGRAM

6   REPRESENTATION SYSTEM

7   \*       \*       \*

8           Art. 558. Louisiana Child Advocacy Program Representation System; establishment  
9                       ~~A Child Advocacy Program~~ The statewide Louisiana Child Representation  
10                   System is hereby established ~~within the Mental Health Advocacy Service authorized~~  
11                   ~~pursuant to R.S. 28:64~~ under the oversight of the Louisiana Supreme Court.

12   \*       \*       \*

13           Art. 560. ~~Duties of the program~~ Provision of services; qualifications of counsel

14                       A. ~~The program shall provide qualified legal counsel to children in child~~  
15                   ~~abuse and neglect cases, subject to availability as determined by the director~~ A  
16                   program designated by the Louisiana Supreme Court shall provide child  
17                   representation services to each court exercising jurisdiction over abuse and neglect  
18                   cases in accordance with a plan for service delivery developed by the program and  
19                   approved by the supreme court.

20   \*       \*       \*

21           Art. 571. Legislative findings

22   \*       \*       \*

23                       B. The legislature finds that there is a need for a ~~more~~ uniform system of  
24 representation of indigent parents statewide that provides for appropriate oversight,  
25 minimization of potential conflicts, and adequate local and state funding. To this  
26 end, the legislature finds that local public defender offices ~~representing children in~~  
27 ~~child abuse and neglect cases should transition within a defined period of time to~~  
28 ~~representing indigent parents consistent with a statewide implementation plan to be~~  
29 ~~developed by the Louisiana Indigent Defense Assistance Board, or any successor to~~  
30 ~~that board in conjunction with the Task Force on Legal Representation in Child~~

1           ~~Protection Cases created by House Concurrent Resolution No. 44 of the 2003~~  
 2           ~~Regular Session of the Legislature~~ best serve the interests of children and families  
 3           by representing indigent parents in child abuse and neglect cases consistent with the  
 4           provisions of R.S. 15:185.1 et seq., and with the Trial Court Performance Standards  
 5           for Attorneys Representing Parents in Child in Need of Care and Termination of  
 6           Parental Right Cases provided in Chapter 11 of Part XV of Title 22 of the Louisiana  
 7           Administrative Code.

\* \* \*

Art. 574. Indigent Parents' Representation Program; establishment

          An Indigent Parents' Representation Program is hereby established ~~to be~~  
~~developed~~ within the Louisiana ~~Indigent Defense Assistance~~ Public Defender Board,  
 or its successor in accordance with the provisions of R.S. 15:185.1 through 185.9.

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

\* \* \*

          B. Legal representation of indigent parents in child abuse and neglect cases  
 shall comply with standards promulgated by the ~~Indigent Defense Assistance~~  
Louisiana Public Defender Board, or any successor to that board in accordance with  
 R.S. 15:185.1 through 185.9 to ensure competent and fair representation.

CHAPTER 7. CHILD PROTECTION REPRESENTATION COMMISSION

Art. 581. Child Protection Representation Commission; establishment; purpose and functions

A. The Child Protection Representation Commission, referred to hereinafter  
as the "commission", is hereby established for the purpose of reviewing the system  
of representation of children and indigent parents in child protection cases as  
provided in Chapters 5 and 6 of this Title. The commission shall be composed of the  
following members:

(1) The secretary of the Department of Children and Family Services or his  
designee.

(2) The chief justice of the Louisiana Supreme Court or his designee.

1                   (3) The chairman of the House Committee on Civil Law and Procedure or  
2                   his designee.

3                   (4) The chairman of the Senate Committee on Judiciary A or his designee.

4                   (5) The president or designee of the Louisiana Bar Association.

5                   (6) The executive director or designee of the Louisiana District Attorneys  
6                   Association.

7                   (7) The state public defender or designee of the Louisiana Public Defender  
8                   Board.

9                   (8) The president or designee of the Louisiana Council of Juvenile and  
10                  Family Court Judges.

11                  B. The members of the commission shall serve without compensation,  
12                  except for the members of the legislature who shall receive a per diem in accordance  
13                  with R.S. 42:3.1.

14                  C. The commission shall request and have the authority to obtain all  
15                  information necessary to review the system of representation and shall meet  
16                  periodically but in no event less than once annually. The commission shall ascertain  
17                  the continued effectiveness and efficiency of the system and the adequacy of funding  
18                  and may, at its discretion, issue such reports and recommendations as it deems  
19                  necessary to ensure the programmatic efficacy and fiscal viability of the system.

20    \*         \*         \*

21                  Art. 607. Child's right to appointed counsel; payment

22                  A. ~~In every proceeding under this Title, the~~ The court shall appoint the  
23                  program designated for the jurisdiction by the Louisiana Supreme Court to provide  
24                  qualified, independent counsel for the child, including a referral to the district public  
25                  defender at the time the order setting the first court hearing is signed. If attorneys  
26                  are available through the Child Advocacy Program, the court shall contact the office  
27                  of the program and request the assignment of an attorney who shall be appointed.  
28                  Neither the child nor anyone purporting to act on his behalf may be permitted to  
29                  waive this right.

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

1           B. The child shall be a party to the proceedings, and the attorney for the child  
 2           shall have the authority to represent the child at all stages of the proceedings. The  
 3           attorney for the child shall have the authority to take actions, including but not  
 4           limited to the following:

5                 (1) Accompany the child and be present for all court appearances, school  
 6                 hearings, and educational and other meetings related to the child.

7                 (2) View and copy the child's medical, dental, psychological, psychiatric,  
 8                 educational, or counseling records.

9           C. If the court finds that the parents of the child are financially able, it may  
 10           order the parents to pay some or all of the costs of the child's representation in  
 11           accordance with Children's Code Articles 320 and 321.

12           ~~E. D.~~ In any dispositional or postdispositional hearing which may result in  
 13           the mental health institutionalization of a child who is in the custody of the state, the  
 14           child shall be entitled to representation by an attorney appointed by the Mental  
 15           Health Advocacy Service, unless unavailable as determined by the director, ~~or~~  
 16           ~~representation by retained private counsel who shall represent only the interest of the~~  
 17           ~~child.~~

18           Art. 608. Parents' right to counsel; payment

19           A. The parents of a child who is the subject of a child in need of care  
 20           proceeding shall be entitled to qualified, independent counsel at the continued  
 21           custody hearing and at all stages of the proceedings thereafter, ~~which~~ This right  
 22           may be waived by ~~the parents.~~ a parent if the court determines that the parent  
 23           choosing to waive his right to representation has been instructed by the court about  
 24           his rights and the possible consequences of waiver. Before accepting a waiver of  
 25           counsel, the court shall ensure each of the following:

26                 (1) The parent has been informed by the court that the Department of  
 27                 Children and Family Services cannot provide legal advice to the parent or represent  
 28                 the parent's interest.

29                 (2) The parent has been informed by the court that the child's attorney cannot  
 30                 provide legal advice to the parent and does not represent the parent's interest.

1           (3) The parent has been informed by the court that a proceeding brought  
 2           under this Title may ultimately result in a termination of parental rights and a  
 3           complete and permanent separation of the parent from the child.

4           (4) The parent has been informed by the court that if he is unable to afford  
 5           an attorney, one will be provided by the Indigent Parents' Representation Program.

6           (5) That the parent is eighteen years of age or older.

7           B. If ~~the parents~~ a parent of a child ~~are~~ is financially unable to afford  
 8           counsel, the court shall ~~appoint counsel, or refer the parents~~ parent for representation  
 9           by the ~~district public defender, or any program created by law to provide~~  
 10          ~~representation to indigent parents in child abuse and neglect cases and to be~~ Indigent  
 11          Parents' Representation Program administered by the Louisiana Public Defender  
 12          Board.

13          C. If a parent of the child is entitled to representation by the Indigent Parents'  
 14          Representation Program, the unavailability of counsel to represent the parent shall  
 15          be good cause for a continuance of the continued custody hearing for up to three  
 16          days and the hearing shall not proceed until a qualified, independent attorney is  
 17          provided to the parent.

18                                 \*         \*         \*

19          Art. 624. Continued custody hearing

20                 A. If a child is not released to the care of his parents, a hearing shall be held  
 21                 by the court within three days after the child's removal or entry into custody. An  
 22                 order setting the hearing shall provide for appointment of counsel for the child and  
 23                 notice to the program approved to represent children.

24                                 \*         \*         \*

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

27                 A. At the continued custody hearing, the court shall advise the parents and  
 28                 may advise the child, insofar as practicable, of:

29                                 \*         \*         \*

1                   (4) The right to be represented by counsel and the right to ~~have counsel~~  
 2                   ~~appointed as provided in Chapter 4 of this Title~~ of indigent parents to representation  
 3                   ~~by the Indigent Parents' Representation Program in accordance with Children's Code~~  
 4                   Article 608.

\* \* \*

6                   Art. 627. Continued custody order; special provisions; appointments

\* \* \*

8                   E. The court shall order the appointment of ~~counsel for the child and the~~  
 9                   ~~appointment of a curator for any parent who is an absentee.~~ The court may order the  
 10                  ~~appointment of counsel for the parents or the appointment~~ of a court-appointed  
 11                  special advocate.

\* \* \*

13                  Art. 631. Authority to file petition; custody

\* \* \*

15                  B. ~~During the pendency of a child in need of care proceeding~~ At any time  
 16                  prior to adjudication, any person, including a relative of the child, may petition the  
 17                  court for the provisional or permanent legal custody of the child.

\* \* \*

19                  Art. 635.1. Notice to counsel

20                  Upon the filing of the petition, the court shall provide notice and a copy of  
 21                  the petition to the program designated for the jurisdiction to provide counsel for the  
 22                  child in accordance with Children's Code Article 607, and to the program  
 23                  representing indigent parents in accordance with Children's Code Article 608.

\* \* \*

25                  Art. 720. Motion for guardianship

26                  A. After a child has been adjudicated to be in need of care, a motion for  
 27                  guardianship may be filed by the department, parent, or counsel for the child; or the  
 28                  department may submit a case plan along with the case review report to the court and  
 29                  all counsel of record recommending guardianship in accordance with Children's  
 30                  Code Articles 674, 688, and 689.



1           B. The motion, case review report, or case plan shall include all of the  
2 following:

3   \*       \*       \*

4           (6) A plain and concise statement of the facts on which the motion, case  
5 review report, or case plan for guardianship is sought and why neither adoption nor  
6 reunification with a parent is in the best interest of the child.

7           C. If any of the information required by Paragraph B of this Article is  
8 unknown, the motion, case review report, or case plan shall state that fact. In  
9 addition, if the location of either parent is unknown, the motion, case review report,  
10 or case plan shall disclose efforts to locate him.

11           D. Unless not yet completed, the home study, as required by Children's Code  
12 Article 721, shall be attached to the motion, case review report, or case plan. If not  
13 attached, ~~it~~ the home study shall be submitted to the court as soon as it is completed.

14   \*       \*       \*

15           Art. 723. Order of guardianship

16   \*       \*       \*

17           D. The guardianship order continues until the child ~~obtains~~ attains eighteen  
18 years of age, unless earlier modified or terminated by the court in accordance with  
19 Article 724.

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

21           A. The court shall retain jurisdiction to enforce, modify, or terminate a  
22 guardianship order until the child ~~obtains~~ attains eighteen years of age. The program  
23 representing the child in the child of need of care proceedings pursuant to Children's  
24 Code Article 607 and the program representing the indigent parents in the child in  
25 need of care proceedings pursuant to Children's Code Article 608 shall provide  
26 representation in guardianship proceedings.

27           B. The department, counsel for the child, the guardian, a parent permitted to  
28 intervene under Children's Code Article 707, or the court on its own motion may  
29 seek to enforce, modify or terminate a guardianship order. A copy of the motion to  
30 modify shall be personally served on the parents, and the court shall promptly notify

1           the programs representing the child and indigent parents, respectively, in child in  
2           need of care proceedings.

3   \*       \*       \*

4           Art. 1016. Right to counsel

5   \*       \*       \*

6                           B. The court shall appoint a the program designated for the jurisdiction by  
7                           the Louisiana Supreme Court to provide qualified, independent attorney ~~to represent~~  
8                           counsel for the child in such a proceeding. ~~If attorneys are available through the~~  
9                           ~~Child Advocacy Program, the court shall contact the office of the program and~~  
10                           ~~request the assignment of an attorney who shall be appointed.~~

11                           C. If the court determines that the parent is indigent and unable to employ  
12                           counsel solely for that reason, ~~an attorney shall be appointed to represent the parent~~  
13                           ~~in accordance with Article 320~~ the court shall refer the parent for representation by  
14                           the Indigent Parents' Representation Program.

15   \*       \*       \*

16           Art. 1269.4. Filing with court; time limitations

17                           A. Within ten days after the petition is filed, the department, attorney for the  
18                           child, attorney for the parent, or attorney for the prospective adoptive parents shall  
19                           file in the court in which the adoption is pending an agreement for continuing  
20                           contact.

21   \*       \*       \*

22           Art. 1405.1. Child Advocacy Program; establishment within Mental Health  
23                           Advocacy Service; duties

24                           A. The Child Advocacy Program, referred to hereafter in this Article as the  
25                           "program", is hereby established within the Mental Health Advocacy Service  
26                           authorized pursuant to R.S. 28:64.

27                           B. The program shall provide qualified legal counsel to children in child  
28                           abuse and neglect cases, subject to availability as determined by the director of the  
29                           program, in those jurisdictions designated by the Louisiana Supreme Court and  
30                           pursuant to Children's Code Article 560.

1           C. The program shall be governed by the board of trustees established  
2           pursuant to R.S. 28:64(A)(3).

3           D. The duties of the board of trustees shall include those enumerated in R.S.  
4           28:64(B) and all of the following specific duties:

5           (1) To establish general policy guidelines for the operation of the program  
6           to provide legal counsel and representation for children in child abuse and neglect  
7           cases of this state in order to ensure that their legal rights are protected; however, the  
8           board shall not have supervisory power over the conduct of particular cases.

9           (2) To review and evaluate the operations of the program and emphasize  
10          special training for attorneys hired by the service.

11          (3) To review and approve an annual budget for the program.

12          (4) To review and approve an annual report on the operation of the program  
13          and submit such report to the legislature, the governor, and the chief justice of the  
14          Louisiana Supreme Court.

15          E. The duties of the director of the program shall include those enumerated  
16          in R.S. 28:64(C) and all of the following specific duties:

17          (1) To organize and administer a program to provide legal counsel and  
18          representation for children in child abuse and neglect cases subject to the approval  
19          of the board of trustees and in accordance with a plan for service delivery approved  
20          by the Louisiana Supreme Court.

21          (2) To identify the needs of children in child abuse and neglect cases for  
22          legal counsel and representation within the state and the resources necessary to meet  
23          those needs, subject to the approval of the board of trustees.

24          (3) To institute or cause to be instituted such legal proceedings as may be  
25          necessary to enforce and give effect to any of the duties or powers of the program.

26          (4) To hire and train attorneys and other professional and nonprofessional  
27          staff that may be necessary to carry out the functions of the program. All attorneys  
28          representing children through this program shall be licensed to practice law in  
29          Louisiana and be qualified in accordance with Louisiana Supreme Court Part J,  
30          Special Rules for Cases Involving the Protection of Children.

1                   (5) To establish official rules and regulations for the conduct of work of the  
2                   program, subject to the approval of the board of trustees.

3                   (6) To take such actions as he deems necessary and appropriate to secure  
4                   private and state, federal, or other public funds to help support the program, subject  
5                   to the approval of the board of trustees.

6                   (7) To have the ability to contract with organizations or individuals for the  
7                   provision of legal services for children in child abuse and neglect cases, subject to  
8                   the approval of the board of trustees and in accordance with a plan for service  
9                   delivery approved by the Louisiana Supreme Court.

10                  Section 2. Children's Code Articles 559 and 571(C) are hereby repealed in their  
11                  entirety.

12                  Section 3. The Louisiana State Law Institute is hereby authorized and requested to  
13                  prepare comments and explanatory notes following any provision of Section 1 of this Act.  
14                  These comments shall not be enactments of the legislature, shall not be law, and may be  
15                  included only as explanatory language when printed in the official edition of the Louisiana  
16                  Children's Code.

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

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

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

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