

2016 Regular Session

HOUSE BILL NO. 809

BY REPRESENTATIVE SCHRODER

CHILDREN/WELFARE SVCS: Provides with respect to representation of indigent or absent parents

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

9 Be it enacted by the Legislature of Louisiana:

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

12 Art. 571. Legislative Findings

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

1 of legal representation, including curator appointments, of indigent or absent parents
2 should be used efficiently and equitably to assure qualified representation throughout
3 the state.

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

14 Art. 572. Definitions

15 As used in this Chapter:

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

20 * * *

21 Art. 573. Purpose

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

25 * * *

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

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

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

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

10 * * *

11 §185.3. Indigent Parents' Representation Program; duties of the board; subject to
12 appropriation

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

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

24 B. In the administration of the Indigent Parents' Representation Program, the
25 board shall:

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

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

3 * * *

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

7 * * *

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

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

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

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

24 (b) The plan of organization shall provide for the capacity to:

25 (i) Administer the granting of contracts.

26 (ii) Analyze and review investigative and audit reports and findings.

27 (iii) Provide for enforcement of board rules as is necessary for the efficient
28 and thorough regulation and governance of representation of indigent or absent
29 parent services under its jurisdiction.

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

4 * * *

5 (19) Assign appropriate staff to:

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

9 * * *

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

19 * * *

20 C. During the incremental implementation period, the board shall continue
21 working in conjunction with the Task Force on Legal Representation in Child
22 Protection Cases to transform the existing legal representation system for children
23 and indigent or absent parents in child abuse and neglect cases to a more efficient
24 and effective statewide system and to facilitate securing of necessary funding for the
25 system. This transformation includes the board developing standards and oversight
26 mechanisms for providing for quality representation, including curatorship
27 appointments, of indigent or absent parents and determining how funding currently
28 administered by the Department of Children and Family Services, office of children
29 and family services, for representation of indigent or absent parents and children

1 shall be redistributed to the board and the Child Advocacy Program of the Mental
2 Health Advocacy Service by July 1, 2012.

3 * * *

4 §185.4. Standards and guidelines for representation of indigent parents; rulemaking

5 * * *

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

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

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

16 (a) Manageable indigent or absent parent representation workloads. The
17 board shall adopt manageable indigent or absent parent representation workloads that
18 permit the rendering of competent representation through an empirically based case-
19 weighting system that does not count all cases of similar case type equally but rather
20 denotes the actual amount of attorney effort needed to bring a specific case to an
21 appropriate disposition.

22 * * *

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

27 (d) Performance supervision protocols. The board shall adopt standards and
28 guidelines to ensure that all defense attorneys providing indigent or absent parent
29 representation undergo periodic review of their work against the performance

1 standards and guidelines in a fair and consistent manner throughout the state,
2 including creating a uniform evaluation protocol.

3 (e) Performance of attorneys in all assigned indigent or absent parent
4 representation cases or curatorship appointments. The board shall adopt general
5 standards and guidelines that alert defense counsel to courses of action that may be
6 necessary, advisable, or appropriate to providing competent indigent or absent parent
7 representation or curatorship appointments, including performance standards in the
8 nature of job descriptions.

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

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

15 * * *

16 (5) Establishing methods of monitoring and evaluating compliance with the
17 mandatory indigent or absent parent representation standards and guidelines and the
18 performance of counsel in order to ensure competent representation of indigent
19 parents in all courts of the state.

20 * * *

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

23 * * *

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

28 (14) Establishing processes and procedures to ensure that when a case that
29 is assigned presents a conflict of interest for an attorney providing indigent or absent

1 parent representation, the conflict is identified and handled appropriately and
2 ethically.

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

8 * * *

9 §185.6. Special reporting requirements; indigent parent representation cases;
10 penalties

11 * * *

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

18 * * *

19 §185.7. Rights of action; interpretation of Part

20 * * *

21 B. In addition to the provisions of Subsection A of this Section, nothing
22 herein, nor any standards, guidelines, or rules adopted as a result hereof, shall be
23 construed to provide any person the basis of any claim that the attorney or attorneys
24 appointed to him pursuant to this statute performed in an ineffective manner. It shall
25 be presumptive evidence that any attorney performing indigent or absent parent
26 representation pursuant to the auspices of this statute is currently certified to have
27 met the standards and guidelines adopted by the board to provide indigent or absent
28 parent representation in an effective manner.

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

5 §185.8. Auditing; district reporting

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

10 * * *

11 §185.9. Implementation of indigent parent representation program; timeline

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

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

16 * * *

17 B.

18 * * *

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

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

25 Section 4. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 809 Original

2016 Regular Session

Schroder

Abstract: Provides legal representation of indigent or absent parents in child abuse and neglect cases.

Present law provides for legal representation of indigent parents with respect to child abuse and neglect cases.

Proposed law retains present law and extends the obligation to also represent absent parents in child abuse and neglect cases, including curatorship appointments.

Present law requires the petitioner to pay the fees and costs of a curator ad hoc.

Proposed law repeals present law.

(Amends Ch.C. Arts. 571, 572(1), 573, and 575 and R.S. 15:185.1, 185.2(2), (6), and (7), 185.3(A), (B)(1), (2), (6), (11), (12), (13), (14), (15), (19)(a) and (c), 185.4(B)(1), (2)(a), (c), (d), and (e), (3)(a), (5), (7), (13), (14), and (15), 185.6(C), 185.7(B) and (C), 185.8(intro. para.), and 185.9(A)(1) and (B)(2); Repeals Ch.C. Art. 1023(C))