

Regular Session, 2012

SENATE BILL NO. 152

BY SENATOR BROOME (On Recommendation of the Louisiana State Law Institute)

CHILDREN'S CODE. Provides relative to the presence of the child and caregiver in certain hearings involving foster care and parental rights proceedings. (8/1/12)

AN ACT

To amend and reenact Children's Code Articles 623(B) and (C), 661(B),(C) and (D), 675(B)(3),(4), and (5), 679(C) and (D), 695(Heading) and (A), (B), and (C), 696(B), 702(J), 705, 706(B), 776(B), 853, 908(Heading) and (C), 1015(3)(k), 1030(2), 1211(Introductory Paragraph) and to enact Children's Code Articles 623(D) and (E), 661(E), 675(B)(6), 679(E) and (F), 695(D), 696(C), 706(C), and 908(D), and to repeal Children's Code Article 730(10), relative to continuous revision of the Children's Code; to provide relative to notice and who has the right to be heard at a continued custody Child in Need of Care ("CINC") hearing; to provide for who shall be present at an adjudication hearing; to provide for the purpose and contents of the case plan; to provide for who receives notice of and who may be present at the disposition hearing; to provide for who shall receive notice of the right to appear and be heard at a case review hearing; to provide for the rights of the parties at a case review hearing; to provide for permanency hearings; to provide for notice of, the right to be heard, and the rights of the parties at permanency hearings; to provide for permanency planning reports; to provide for the effect of a parent's non-appearance at a delinquency hearing; to provide for the juvenile's care and treatment by the

1 department; to provide for the grounds for termination of parental rights; to provide  
 2 for suspension of the right of voluntary surrender of parental rights by initiation of  
 3 a termination proceeding; to provide for the final decree at an adoption hearing; to  
 4 provide for the grounds upon which an allegation that a family is a Family in Need  
 5 of Services (or "FINS") must be based; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Children's Code Articles 623(B) and (C), 661(B), (C) and (D),  
 8 675(B)(3),(4),and (5), 679(C) and (D), 695(Heading) and (A), (B), and (C), 696(B), 702(J),  
 9 705, 706(B), 776(B), 853, 908(Heading) and (C), 1015(3)(k), 1030(2), 1211(Introductory  
 10 Paragraph) and to enact Children's Code Articles 623(D) and (E), 661(E), 675(B)(6), 679(E)  
 11 and (F), 695(D), 696(C), 706(C), and 908(D) are hereby amended and reenacted to read as  
 12 follows.

13 Art. 623. Notice; right to be heard

14 \* \* \*

15 B. The notice shall state the ~~day~~ **date**, time, and place of the hearing and  
 16 inform the recipient of his right to attend and be heard.

17 C. **A child twelve years of age or older shall be present in court unless**  
 18 **his presence is waived by the court upon motion of the child's counsel. A child**  
 19 **below the age of twelve years shall be present in court upon the request of**  
 20 **counsel for the child or the court. If the child is present in court, he may choose**  
 21 **to testify as to his wishes, and the court shall consider his testimony in the**  
 22 **matter. Any testimony given by a child may be taken by a videotaped interview**  
 23 **or by closed-circuit television, as authorized by Title 3, Chapter 8 of this Code,**  
 24 **or by an in-chambers conference attended only by the judge and court reporter**  
 25 **and by counsel for the child, for the petitioner, and for the parents.**

26 ~~C.~~ **D.** If a foster parent, pre-adoptive parent, or relative providing care for the  
 27 child fails to appear at a hearing, the department shall report to the court whether  
 28 notice was given or, if not, what diligent efforts were made to locate and notify the  
 29 absent person. The court may permit the hearing to be held in the person's absence.







1 force supports and employment services." In accordance with best practices, the  
2 State of Louisiana has by policy adopted the lower age of fifteen years. The Patient  
3 Protection and Affordable Care Act of 2010 (P.L. 111-148) further mandates the  
4 provision of information about health care treatment decision-making and specific  
5 health care options, including the option to execute a health care power of attorney,  
6 health care proxy, or other similar document recognized under state law.  
7

8 (b) The child's caseworker and other representatives are expected to assist  
9 and support the child in developing the personal transitional plan. The child's  
10 caregivers should also assist and support the child in developing the plan. Other  
11 community and state agencies involved with the child currently or prospectively  
12 should also contribute to plan development. Such agencies may include local  
13 educational authorities, the Office of Juvenile Justice, the Department of Health and  
14 Hospitals, and other child-serving organizations at the community or state level.  
15

16 (c) The common transitional plan form developed and used by the  
17 Department of Children and Family Services and by Youth Services, Office of  
18 Juvenile Justice, is available on the website of each agency.

19 \* \* \*

20 Art. 679. Notice; presence at disposition

21 \* \* \*

22 C. ~~The child need not be present when the court enters a judgment of~~  
23 ~~disposition.~~ **A child twelve years of age or older shall be present in court unless**  
24 **his presence is waived by the court upon motion of the child's counsel. A child**  
25 **below the age of twelve years shall be present in court upon the request of**  
26 **counsel for the child or the court. If the child is present in court, he may choose**  
27 **to testify as to his wishes, and the court shall consider his testimony in the**  
28 **matter. Any testimony given by a child may be taken by a videotaped interview**  
29 **or by closed- circuit television, as authorized by Title 3, Chapter 8 of this Code,**  
30 **or by an in-chambers conference attended only by the judge and court reporter**  
31 **and by counsel for the child, for the petitioner, and for the parents.**

32 **D. The department shall give notice of the right to appear at the**  
33 **disposition hearing to any foster parent, pre-adoptive parent, or relative**  
34 **providing care for the child.**

35 ~~D.~~ **E.** If a foster parent, pre-adoptive parent, ~~adoptive parent,~~ or relative  
36 providing care for the child fails to appear at the disposition hearing, the department  
37 shall report to the court whether notice was given, or, if not, what diligent efforts  
38 were made to locate and notify the absent person. The court may permit the hearing

1 to be held in the person's absence.

2 **F. The court shall solicit and consider information regarding the care**  
3 **and treatment of the child from any foster parent, pre-adoptive parent, or**  
4 **relative providing care for the child who appears for the hearing.**

5 Comments - 2012

6 (a) See Comment (a) to Article 623 for Paragraph C's compliance with  
7 Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

8  
9 (b) Additionally, Article 680 requires the court to consider any and all  
10 evidence presented by the child during the disposition hearing, implying the child's  
11 presence. It also reflects the growing national trend for states to grant children the  
12 right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth*  
13 *Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model  
14 Act Governing the Representation of Children in Abuse Neglect, and Dependency  
15 Proceedings adopted in August, 2011.

16  
17 (c) See Comment (b) to Article 623 for Paragraph D's compliance with the  
18 Safe and Timely Interstate Placement of Foster Children Act of 2006, 42 U.S.C. 601  
19 et seq., P.L. 105-89.

20  
21 (d) See Comment (b) to Article 623 for Paragraph F's compliance with the  
22 Safe and Timely Interstate Placement of Foster Children Act of 2006, that requires  
23 that "the foster parents (if any) of a child and any preadoptive parent or relative  
24 providing care for the child are provided with notice of, *and a right to be heard in,*  
25 any proceeding to be held with respect to the child." 42 U.S.C. 675(5)(G) (emphasis  
26 added). In particular, it clarifies the foster parent or caretaker's right to be heard. It  
27 also emphasizes the role of the child's daily caretaker and the insight that the care  
28 taken can provide. See Article 695.

29 \* \* \*

30 Art. 695. Notice; **foster parents, pre-adoptive parents, relatives providing care;**

31 right to be heard

32 A. The department shall give notice of the right to appear at each case review  
33 hearing to any foster parent, pre-adoptive parent, ~~adoptive parent~~, or relative  
34 providing care for the child.

35 B. The notice shall state the ~~day~~ **date**, time, and place of the case review  
36 hearing and the recipient's right to attend and be heard.

37 C. If a foster parent, pre-adoptive parent, ~~adoptive parent~~, or relative  
38 providing care for the child fails to appear at a case review hearing, the department  
39 shall report to the court whether notice was given or, if not, what diligent efforts  
40 were made to locate and notify the absent person. The court may permit the hearing

1 to be held in the person's absence.

2 **D. The court shall solicit and consider information regarding the care**  
3 **and treatment of the child from any foster parent, pre-adoptive parent, or**  
4 **relative providing care for the child who appears for the hearing.**

5 Comment - 2012

6 See Comment (b) to Article 623 for Paragraph D's compliance with the Safe  
7 and Timely Interstate Placement of Foster Children Act of 2006. It also emphasizes  
8 the role of the child's daily caretaker and the insight he can provide.

9 Art. 696. Rights of parties

10 \* \* \*

11 **B. A child twelve years of age or older shall be present in court unless**  
12 **his presence is waived by the court upon motion of the child's counsel. A child**  
13 **below the age of twelve years shall be present in court upon the request of**  
14 **counsel for the child or the court. If the child is present in court, he may choose**  
15 **to testify as to his wishes, and the court shall consider his testimony in the**  
16 **matter. Any testimony given by a child may be taken by a videotaped interview**  
17 **or by closed-circuit television, as authorized by Title 3, Chapter 8 of this Code,**  
18 **or by an in-chambers conference attended only by the judge and court reporter**  
19 **and by counsel for the child, for the petitioner, and for the parents.**

20 ~~B. C.~~ Any party who has received notice of the case review hearing and does  
21 not appear shall be deemed to have waived his right to be present.

22 Comments - 2012

23 (a) See Comment (a) to Article 623 for Paragraph B's compliance with  
24 Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

25  
26 (b) Additionally, the rights provided to a party in Paragraph A of this Article  
27 require a presumption that the child be present during the hearing. It also reflects the  
28 growing national trend for states to grant children the right to be present in court.  
29 *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These  
30 changes are consistent with the A.B.A. Model Act Governing the Representation of  
31 Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.

32 \* \* \*

33 Art. 702. Permanency hearing

34 \* \* \*





1 below the age of twelve years shall be present in court upon the request of  
 2 counsel for the child or the court. If the child is present in court, he may choose  
 3 to testify as to his wishes, and the court shall consider his testimony in the  
 4 matter. Any testimony given by a child may be taken by a videotaped interview  
 5 or by closed-circuit television, as authorized by Title 3, Chapter 8 of this Code,  
 6 or by an in-chambers conference attended only by the judge and court reporter  
 7 and by counsel for the child, for the petitioner, and for the parents.

8 ~~B. C.~~ Any party who has received notice of the dispositional review hearing  
 9 and does not appear shall be deemed to have waived his right to be present.

10 Comments - 2012

11 (a) See Comment (a) to Article 623 for Paragraph B's compliance with  
 12 Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

13  
 14 (b) Additionally, the rights provided to a party in Paragraph A of this Article  
 15 require a presumption that the child be present during the hearing. It also reflects the  
 16 growing national trend for states to grant children the right to be present in court.  
 17 *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These  
 18 changes are consistent with the A.B.A. Model Act Governing the Representation of  
 19 Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.

20 \* \* \*

21 Art. 776. Permanency planning reports

22 \* \* \*

23 B. When the ~~department~~ **Department** of Public Safety and Corrections is the  
 24 custodian, the provisions of Chapter 15 of Title VI shall be applicable only as  
 25 provided in Article 907 **and Article 908(C)**.

26 Comments - 2012

27 (a) The development of a transitional plan in collaboration with a child fifteen  
 28 years of age or older transitioning from foster care to independent living was  
 29 mandated by the Fostering Connections to Success and Increasing Adoptions Act of  
 30 2008 (P.L. 110-351). Inclusion of specific health care options in the plan is  
 31 mandated by the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148).

32  
 33 (b) The transitional plan form developed and used by the Department of  
 34 Children and Family Services and by Youth Services, Office of Juvenile Justice is  
 35 available on the agencies' websites.

36 \* \* \*

37 Art. 853. Effect of nonappearance by a parent



1 now mandated for all youth in the custody of the Office of Juvenile Justice.

2  
3 (b) The transitional plan form developed and used by the Department of  
4 Children and Family Services and by Youth Services, Office of Juvenile Justice, is  
5 available on the agencies' websites.

6 \* \* \*

7 Art. 1015. Grounds

8 The grounds for termination of parental rights are:

9 \* \* \*

10 (3) Misconduct of the parent toward this child or any other child of the  
11 parent or any other child in his household which constitutes extreme abuse, cruel and  
12 inhuman treatment, or grossly negligent behavior below a reasonable standard of  
13 human decency, including but not limited to the conviction, commission, aiding or  
14 abetting, attempting, conspiring, or soliciting to commit any of the following:

15 \* \* \*

16 (k) The parent's parental rights to one or more of the child's siblings have  
17 been terminated due to neglect or abuse, ~~and~~ prior attempts to rehabilitate the parent  
18 have been unsuccessful, **and the court has determined pursuant to Article 672.1,**  
19 **that current attempts to reunite the family are not required.**

20 \* \* \*

21 Art. 1030. Suspension of right of voluntary surrender of parental rights by initiation  
22 of termination proceeding-

23 Once a petition to terminate parental rights has been filed, the parent is  
24 thereafter without authority to execute an act of surrender or otherwise to affect the  
25 custody of the child except:

26 \* \* \*

27 (2) The parent may consent to a judgment terminating his parental rights as  
28 provided in Article ~~1033~~ **1025.2.**

29 \* \* \*

30 Art. 1211. Final decree at first hearing

31 Notwithstanding Article 1216, upon the consideration of the factors

1 enumerated in Article 1208(B), the court may render a final decree of ~~private~~ **agency**  
2 adoption at the first hearing without the necessity of first entering an interlocutory  
3 decree, if either.

4 \* \* \*

5 Section 2. Children's Code Article 730(10) is hereby repealed in its entirety.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Julie J. Baxter.

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DIGEST

Present law (Ch.C. Art. 623) in the Children's Code provides for who shall receive notice and who has a right to be heard at Child in Need of Care (CINC) hearings.

Proposed law retains present law and also provides for when the child shall be present and authorizes the child to testify and specifies how he may testify. Also provides that the court shall solicit and consider information provided by certain individuals who appear at the hearing.

Present law (Ch.C. Art.661) provides for who shall and shall not be present at an adjudication hearing.

Proposed law retains present law and also provides for when the child shall be present and authorizes the child to testify and specifies how he may testify.

Present law (Ch.C. Art. 675) provides for the purpose and content of the case plan for transitioning to placement.

Proposed law retains present law and also provides specificity for the plan of a child 15 years or older and specifies who shall help develop the plan. Further provides for the content of the plan to include services and facilities to be used in transitioning to placement, the child's specific needs, and the transmission of records to the service provider.

Present law (Ch.C. Art.679) provides for who shall receive notice and who shall be present at a disposition hearing.

Proposed law retains present law and also provides for when the child shall be present, authorizes the child to testify and specifies how he may testify. Also provides that the court shall solicit and consider information provided by certain individuals who appear at the hearing.

Present law (Ch.C. Art.695) provides for who shall receive notice and who has a right to be heard at a case review hearing.

Proposed law retains present law and also provides that the court shall solicit and consider information provided by certain individuals who appear at the hearing.

Present law (Ch.C. Art.696) provides that at a case review hearing all parties have a right to counsel, be heard and present evidence, and confront witnesses.

Proposed law retains present law and also provides for when the child shall be present, and authorizes the child to testify and specifies how he may testify.

Present law (Ch.C. Art. 702) provides for the court to conduct a permanency hearing on the child's placement options. Also provides for the court to determine the best placement plan for the child and for those items the court shall consider in reaching that decision.

Proposed law retains present law and also provides that, for a child aged fifteen and older, the hearing shall also include a review of the transitional plan developed with the child and the agency.

Present law (Ch.C. Art. 705) provides for who shall receive notice of the right to appear and be present at permanency hearings.

Proposed law retains present law and also provides that the court shall solicit and consider information from certain individuals who appear at the hearing.

Present law (Ch.C. Art. 706) provides that all parties have a right to counsel, be heard and present evidence, and confront witnesses, at permanency hearings.

Proposed law retains present law and also provides for when the child shall be present and authorizes the child to testify and specifies how he may testify.

Present law (Ch.C. Art. 776) provides for applicable codal provisions in certain situations in Family in Need of Services (FINS) proceedings.

Proposed law retains present law and also adds that, when Department of Public Safety and Corrections (DPSC) is the child's custodian, Ch.C. Art.908(C) also applies.

Present law (Ch.C. Art. 853) provides that the court may proceed with a delinquency hearing upon a parent's nonappearance if the parent has been served and summoned. In that instance the court shall appoint CASA for the child according to Ch.C. Art. 424.

Proposed law retains present law but deletes the CASA provisions as subsequent revisions (Ch.C. Art. 424.1) now specify proceedings in which CASA may be appointed.

Present law (Ch.C. Art. 908) provides for the care and treatment for a child committed to the department.

Proposed law retains present law and also adds that, at least six months prior to the child's release, the department shall develop, in collaboration with the child, an individualized thorough transitional plan which identifies the programs, services and facilities used to assist the child's successful release. The plan shall address the child's various needs. A copy of the plan shall go to the court, the child's counsel and the district attorney.

Present law (Ch.C. Art. 1015(3)(k)) provides for the grounds for termination of parental rights in the case of parental misconduct toward the child. Also provides as grounds for termination situations where the parent's parental rights to one or more of the child's siblings have been terminated due to neglect and abuse and prior attempts to rehabilitate the parent have failed.

Proposed law retains present law and adds that in those 1015 (3)(k) cases – where the child's parent's parental rights to one or more of the child's siblings have been terminated due to neglect or abuse, and prior attempts to rehabilitate that parent have been unsuccessful – then the court must also determine that, pursuant to Article 672.1, current attempts to reunite the family are also not required.

Present law (Ch.C. Art. 1030(2)) provides that once a petition to terminate parental rights is filed, a parent is without authority to affect the custody of the child, except through a consent judgment as per Ch.C. Art. 1033.

Proposed law retains present law and corrects the incorrect citation to Art. 1033 to read Art. 1025.2.

Present law (Ch.C. Art. 1211) provides for when the court may order a final decree of private adoption at the first hearing.

Proposed law retains present law but changes "private adoption" to "agency adoption."

Present law (Ch.C. Art. 730(10)) provides for the child's possession of a handgun or semiautomatic handgun under circumstances reasonably tending to exclude any lawful purpose as one of the allegations which may be made supporting a family's being in need of care in FINS cases.

Proposed law repeals present law (Ch.C. Art. 730(10)) as firearms offenses are now part of delinquency offenses in Ch.C. Art. 804(3).

Effective August 1, 2012.

(Amends Ch.C. Art. 623(B) and (C), 661(B), (C) and (D), 675(B)(3),(4),and (5), 679(C) and (D), 695(Heading) and (A), (B), and (C), 696(B), 702(J), 705, 706(B), 776(B), 853, 908(Heading) and (C), 1015(3)(k), 1030(2), 1211 (intro para); adds Ch.C. Art. 623(D) and (E), 661(E), 675(B)(6), 679(E) and (F), 695(D), 696(C), 706(C), and 908(D); repeals Ch.C. Art. 730(10))