

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)

1 AN ACT
2 To amend and reenact Children's Code Articles 606(A)(5), 623(B) and (C), 661(B),(C) and
3 (D), 672.1(C)(2) and (3), 675(B)(2), (3), (4), and (5), 679(C) and (D), 695(Heading)
4 and (A), (B), and (C), 696(B), 702(J), 705, 706(B), 776(B), 853, 908(Heading) and
5 (C), 1015(3)(k), 1030(2), the introductory paragraph of 1211 and to enact Children's
6 Code Articles 623(D) and (E), 661(E), 675(B)(6), 679(E) and (F), 695(D), 696(C),
7 706(C), and 908(D), and to repeal Children's Code Article 730(10), relative to
8 continuous revision of the Children's Code; to provide for the grounds which must
9 be alleged in a child in need of care proceeding; to provide relative to notice and who
10 has the right to be heard at a continued custody Child in Need of Care ("CINC")
11 hearing; to provide for who shall be present at an adjudication hearing; to provide for
12 a reunification efforts determination; to provide for the purpose and contents of the
13 case plan; to provide for who receives notice of and who may be present at the
14 disposition hearing; to provide for who shall receive notice of the right to appear and
15 be heard at a case review hearing; to provide for the rights of the parties at a case
16 review hearing; to provide for permanency hearings; to provide for notice of, the
17 right to be heard, and the rights of the parties at permanency hearings; to provide for

1 permanency planning reports; to provide for the effect of a parent's non-appearance
 2 at a delinquency hearing; to provide for the juvenile's care and treatment by the
 3 department; to provide for the grounds for termination of parental rights; to provide
 4 for suspension of the right of voluntary surrender of parental rights by initiation of
 5 a termination proceeding; to provide for the final decree at an adoption hearing; to
 6 provide for the grounds upon which an allegation that a family is a Family in Need
 7 of Services (or "FINS") must be based; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Children's Code Articles 606(A)(5), 623(B) and (C), 661(B), (C) and (D),
 10 672.1(C)(2) and (3), 675(B)(2), (3), (4), and (5), 679(C) and (D), 695(Heading) and (A), (B),
 11 and (C), 696(B), 702(J), 705, 706(B), 776(B), 853, 908(Heading) and (C), 1015(3)(k),
 12 1030(2), the introductory paragraph of 1211 and to enact Children's Code Articles 623(D)
 13 and (E), 661(E), 675(B)(6), 679(E) and (F), 695(D), 696(C), 706(C), and 908(D) are hereby
 14 amended and reenacted to read as follows:

15 Art. 606. Grounds; child in need of care

16 A. Allegations that a child is in need of care must assert one or more of the
 17 following grounds:

18 * * *

19 (5) The conduct of the parent, either as principal or accessory, constitutes a
 20 crime against the child or against any other child ~~of that parent~~.

21 * * *

22 Art. 623. Notice; right to be heard

23 * * *

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

26 C. **A child twelve years of age or older shall be present in court unless**
 27 **his presence is waived by the court upon motion of the child's counsel. A child**
 28 **below the age of twelve years shall be present in court upon the request of**
 29 **counsel for the child or the court. If the child is present in court, he may choose**

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

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

10 E. The court shall solicit and consider information regarding the care
 11 and treatment of the child from any foster parent, pre-adoptive parent, or
 12 relative providing care for the child who appears for the hearing.

Comments - 2012

14 (a) Paragraph C complies with Louisiana Supreme Court Rule 33, Part III,
 15 Subpart II, Section 1, Standard 12, which states that, in child abuse and neglect
 16 cases, "[t]he child should be present at significant hearings, regardless of whether the
 17 child will testify, except when counsel affirmatively waives the child's presence . .
 18 . [and] [c]ounsel for a child should decide whether to call the child as a witness
 19 considering the child's need or desire to testify." Article 624(E) allows the child and
 20 the parents to "be heard on their own behalf," implying their presence. It also reflects
 21 the growing national trend for states to grant children the right to be present in court.
 22 *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These
 23 changes are consistent with the A.B.A. Model Act Governing the Representation of
 24 Children in Abuse Neglect, and Dependency Proceedings adopted in August, 2011.

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

* * *

Art. 661. Presence at adjudication hearing; exclusion of witnesses

* * *

36 B. A child twelve years of age or older shall be present in court unless
 37 his presence is waived by the court upon motion of the child's counsel. A child
 38 below the age of twelve years shall be present in court upon the request of

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

7 ~~B. C.~~ The court shall not admit any other person into the courtroom unless
 8 the court has determined that the person has a proper interest in or is necessary to the
 9 proceedings.

10 ~~C. D.~~ On its own motion the court may, and on the request of a party the
 11 court shall, order that the witnesses, other than parties, be excluded from the
 12 courtroom or from a place where they can see or hear the proceedings, and refrain
 13 from discussing the facts of the case with anyone other than counsel in the case. In
 14 the interest of justice, the court may exempt any witness from its order.

15 ~~D. E.~~ Prior to the commencement of the hearing, the court shall determine
 16 whether it is in the child's best interest for the child to remain in the courtroom
 17 during the testimony of the witnesses.

Comments - 2012

18
 19
 20 (a) See Comment (a) to Article 623 for Paragraph B's compliance with
 21 Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

22
 23 (b) Paragraph A of this Article already allows the child to be present at the
 24 adjudication hearing, and Paragraph E (formerly Paragraph D) provides the
 25 appropriate safeguards for restricting the child from the courtroom if the court
 26 believes the child's presence will have an adverse effect on him. This addition serves
 27 to accommodate and clarify the rights of the child. It also reflects the growing
 28 national trend for states to grant children the right to be present in court. *A.B.A. Ctr*
 29 *on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are
 30 consistent with the A.B.A. Model Act Governing the Representation of Children in
 31 Abuse Neglect, and Dependency Proceedings adopted in August, 2011.

* * *

Art. 672.1. Reunification efforts determination

* * *

32
 33
 34
 35 C. Efforts to reunify the parent and child are not required if a court of
 36 competent jurisdiction has determined that:

* * *

(2) The parent has committed murder or manslaughter of another child of the parent **or any other child** or has aided or abetted, attempted, conspired, or solicited to commit such a murder or manslaughter.

(3) The parent has committed a felony that results in serious bodily injury to the child or another child of the parent **or any other child**.

* * *

Art. 675. Case plan purpose; contents

* * *

B. The case plan shall at least include all of the following:

* * *

(2) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate the safe return of the child to his own home or other permanent placement of the child, or both, and address the needs of the child while in foster care, including a plan for visitation and a discussion of the appropriateness of the services that have been provided to the child under the plan. If the child has been committed to the custody of a person other than the parents, the plan shall recommend an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685. When appropriate for a child ~~age sixteen~~ **fifteen years of age** or older, the plan shall include a written description of the programs and services which will help the child prepare for the transition from foster care to independent living.

(3) For a child fifteen years of age or older the plan shall include a written, individualized, and thorough transitional plan, developed in collaboration with the child and any agency, department, or individual assuming his custody, care, or responsibility.

(a) The transitional plan shall identify the programs, services, and facilities that will be used to assist the child in achieving a successful transition.

1 **The transitional plan shall address the needs of the child, including but not**
 2 **limited to education, health, permanent connections, living arrangements, and,**
 3 **if appropriate, independent living skills and employment.**

4 **(b) The department shall ensure that all records in its files relevant to**
 5 **securing needed services in the community in which the child will live shall be**
 6 **immediately transmitted to the appropriate service provider.**

7 ~~(3)~~ **(4)** Documentation of the efforts the agency is making to safely return the
 8 child home or to finalize the child's placement in an alternative safe and permanent
 9 home in accordance with the child's permanent plan. For children whose permanent
 10 plan is adoption or placement in another permanent home, this documentation shall
 11 include child-specific recruitment efforts such as the use of state, regional, and
 12 national adoption exchanges, including electronic exchange systems, to facilitate
 13 orderly and timely in-state and interstate placements. For children whose permanent
 14 plan is guardianship, the documentation shall include the facts and circumstances
 15 supporting guardianship, including the reasons that the plan is in the best interest of
 16 the child and that reunification with a parent and adoption are not appropriate
 17 permanent plans. The documentation shall also address the suitability and
 18 commitment of the proposed guardian to offer a wholesome, stable home for the
 19 child throughout minority.

20 ~~(4)~~ **(5)** Assessment of the child's relationships with his parents, grandparents,
 21 and siblings, including a plan for assuring that continuing contact with any relative
 22 by blood, adoption, or affinity with whom the child has an established and significant
 23 relationship is preserved while the child is in foster care. The preservation of such
 24 relationships shall be considered when the child's permanent plan is adopted.

25 ~~(5)~~ **(6)** Documentation of the compelling reasons for determining that filing
 26 a petition for termination of parental rights would not be in the best interest of the
 27 child, when appropriate.

28 * * *

29 Comments - 2012

1 (a) The Fostering Connections to Success and Increasing Adoptions Act of
 2 2008 (P.L. 110-351) requires states during the 90-day period immediately prior to
 3 the date a child in custody attains eighteen years of age to "provide the child with
 4 assistance and support in developing a transition plan that is personalized at the
 5 direction of the child [and] includes specific options on housing, health insurance,
 6 education, local opportunities for mentors and continuing support services, and work
 7 force supports and employment services." In accordance with best practices, the
 8 State of Louisiana has by policy adopted the lower age of fifteen years. The Patient
 9 Protection and Affordable Care Act of 2010 (P.L. 111-148) further mandates the
 10 provision of information about health care treatment decision-making and specific
 11 health care options, including the option to execute a health care power of attorney,
 12 health care proxy, or other similar document recognized under state law.
 13

14 (b) The child's caseworker and other representatives are expected to assist
 15 and support the child in developing the personal transitional plan. The child's
 16 caregivers should also assist and support the child in developing the plan. Other
 17 community and state agencies involved with the child currently or prospectively
 18 should also contribute to plan development. Such agencies may include local
 19 educational authorities, the Office of Juvenile Justice, the Department of Health and
 20 Hospitals, and other child-serving organizations at the community or state level.
 21

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

25 * * *

26 Art. 679. Notice; presence at disposition

27 * * *

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

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

41 ~~D.~~ **E.** If a foster parent, pre-adoptive parent, ~~adoptive parent,~~ or relative

1 providing care for the child fails to appear at the disposition hearing, the department
 2 shall report to the court whether notice was given, or, if not, what diligent efforts
 3 were made to locate and notify the absent person. The court may permit the hearing
 4 to be held in the person's absence.

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

8 Comments - 2012

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

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

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

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

1 providing care for the child fails to appear at a case review hearing, the department
 2 shall report to the court whether notice was given or, if not, what diligent efforts
 3 were made to locate and notify the absent person. The court may permit the hearing
 4 to be held in the person's absence.

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

8 Comment - 2012

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

12 Art. 696. Rights of parties

13 * * *

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

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

25 Comments - 2012

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

28 (b) Additionally, the rights provided to a party in Paragraph A of this Article
 29 require a presumption that the child be present during the hearing. It also reflects the
 30 growing national trend for states to grant children the right to be present in court.
 31 *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These
 32 changes are consistent with the A.B.A. Model Act Governing the Representation of
 33 Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.
 34

1 * * *

2 Art. 702. Permanency hearing

3 * * *

4 J. In the case of a child ~~who has attained age sixteen~~ **fifteen years of age or**
5 **older**, the hearing shall ~~determine the services needed to assist the child to make the~~
6 ~~transition from foster care to independent living~~ **include a review of the transitional**
7 **plan developed with the child and the agency in accordance with Subparagraph**
8 **(B)(3) of Article 675.**

9 Comment - 2012

10 See Comment to Children's Code Article 675.

11 * * *

12 Art. 705. Notice; right to be heard

13 A. The department shall give notice of the right to appear at each
14 permanency hearing to any foster parent, pre-adoptive parent, ~~adoptive parent~~, or
15 relative providing care for the child.

16 B. The notice shall state the ~~day~~ **date**, time, and place of the permanency
17 hearing and the recipient's right to attend and be heard.

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

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

26 Comment - 2012

27 See Comment (b) to Article 623 for Paragraph D's compliance with the Safe
28 and Timely Interstate Placement of Foster Children Act of 2006. In particular, it
29 clarifies the foster parent or caretaker's right to be heard. It also emphasizes the role
30 of the child's daily caretaker and the insight that he can provide. See Article 695.

31 Art. 706. Rights of parties

* * *

1

2 B. A child twelve years of age or older shall be present in court unless

3 his presence is waived by the court upon motion of the child's counsel. A child

4 below the age of twelve years shall be present in court upon the request of

5 counsel for the child or the court. If the child is present in court, he may choose

6 to testify as to his wishes, and the court shall consider his testimony in the

7 matter. Any testimony given by a child may be taken by a videotaped interview

8 or by closed-circuit television, as authorized by Title 3, Chapter 8 of this Code,

9 or by an in-chambers conference attended only by the judge and court reporter

10 and by counsel for the child, for the petitioner, and for the parents.

11 ~~B:~~ C. Any party who has received notice of the dispositional review hearing

12 and does not appear shall be deemed to have waived his right to be present.

Comments - 2012

14 (a) See Comment (a) to Article 623 for Paragraph B's compliance with

15 Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

16

17 (b) Additionally, the rights provided to a party in Paragraph A of this Article

18 require a presumption that the child be present during the hearing. It also reflects the

19 growing national trend for states to grant children the right to be present in court.

20 *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009).* These

21 changes are consistent with the A.B.A. Model Act Governing the Representation of

22 Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.

* * *

24 Art. 776. Permanency planning reports

* * *

26 B. When the ~~department~~ Department of Public Safety and Corrections is the

27 custodian, the provisions of Chapter 15 of Title VI shall be applicable only as

28 provided in Article 907 and Article 908(C).

Comments - 2012

30 (a) The development of a transitional plan in collaboration with a child fifteen

31 years of age or older transitioning from foster care to independent living was

32 mandated by the Fostering Connections to Success and Increasing Adoptions Act of

33 2008 (P.L. 110-351). Inclusion of specific health care options in the plan is

34 mandated by the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148).

35

36 (b) The transitional plan form developed and used by the Department of

37 Children and Family Services and by Youth Services, Office of Juvenile Justice is

1 available on the agencies' websites.

2 * * *

3 Art. 853. Effect of nonappearance by a parent

4 If it appears from the record that the parent has been served in accordance
5 with Article 849 or 852 and summoned to any hearing, or cannot be found, and the
6 parent fails to appear, the hearing may be held in the parent's absence. ~~Should the~~
7 ~~court decide to proceed, it may appoint a Court Appointed Special Advocate in~~
8 ~~accordance with Article 424 for the child.~~ The court shall appoint counsel for the
9 child if neither parent appears.

10 * * *

11 Art. 908. Care and treatment by Department

12 * * *

13 **C. At least six months prior to the release of the child, the department**
14 **shall prepare a written, individualized, and thorough transitional plan**
15 **developed in collaboration with the child and any agency or department**
16 **assuming his custody, care, or responsibility.**

17 **(1) The plan shall identify the programs, services, and facilities that will**
18 **be used to assist the child in achieving a successful release from the**
19 **department's custody.**

20 **(2) A copy of the transitional plan shall be provided to the court, counsel**
21 **for the child, and the district attorney.**

22 **(3) The transitional plan shall address the needs of the child, including**
23 **but not limited to education, health, permanent connections, living**
24 **arrangements, independent living skills, and employment.**

25 **(4) The department shall ensure that all records in its files relevant to**
26 **securing needed services in the community in which the child will live shall be**
27 **immediately transmitted to the appropriate service provider.**

28 **D.** The court shall not divide legal and physical custody of a child when
29 assigning custody to the department in accordance with this Article or in accordance

1 with any other statute or provision of law.

2 Comments - 2012

3 (a) Transition plans were originally required only for youth who had been
4 adjudicated delinquent for an offense listed in Article 897.1. Transitional plans are
5 now mandated for all youth in the custody of the Office of Juvenile Justice.
6

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

10 * * *

11 Art. 1015. Grounds

12 The grounds for termination of parental rights are:

13 * * *

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

19 * * *

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

24 * * *

25 Art. 1030. Suspension of right of voluntary surrender of parental rights by initiation
26 of termination proceeding:

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

30 * * *

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

1 * * *

2 Art. 1211. Final decree at first hearing

3 Notwithstanding Article 1216, upon the consideration of the factors
4 enumerated in Article 1208(B), the court may render a final decree of ~~private~~ **agency**
5 adoption at the first hearing without the necessity of first entering an interlocutory
6 decree, if either:

7 * * *

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

The original instrument was prepared by Julie J. Baxter. The following digest, which does not constitute a part of the legislative instrument, was prepared by Danielle Doiron.

DIGEST

Broome (SB 152)

Present law (Ch.C. Art. 606(A)) provides the grounds that must be alleged for the assertion that a child is in need of care including conduct of the parent that constitutes a crime against the child or any other child of that parent.

Proposed law removes the limitation in present law that the crime committed by the parent is against their own child.

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. 672.1) provides that efforts to reunify the parent and child are not required if a court of competent jurisdiction has determined that the parent has committed murder or manslaughter of another child of the parent or has committed a felony that results in serious bodily injury to the child or another child of the parent.

Proposed law removes the limitation in present law that the crime committed by the parent is against their own child.

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 or against any other 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. 606(A)(5), 623(B) and (C), 661(B), (C) and (D), 672.1(C)(2) and (3), 675(B)(2), (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))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill.

1. Expands the list of children that the law will apply with respect to crimes committed by parents against children.