

2021 Regular Session

SENATE BILL NO. 9

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

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN'S CODE. Provides relative to continuous revision of the Children's Code.
(8/1/21)

1 AN ACT

2 To amend and reenact Children's Code Arts. 603(2)(e), 680, 1022, and 1226, R.S. 13:1139

3 and 1587.1(C), R.S. 15:1082, 1098.1(A), and 1099.1, R.S. 24:175(B) and 176(B),

4 R.S. 44:3(A)(6), and R.S. 46:1251(B), 1901(B), 2411, and 2417(C), and to repeal

5 Children's Code Art. 606(A)(6), (7), and (8), relative to the continuous revision of

6 the Children's Code; to provide for definitions; to provide for the grounds for a child

7 in need of care; to provide for the rights of the parties in a disposition hearing; to

8 provide for service of nonresident parents; to provide for references to the Children's

9 Code; to provide for Comments; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Arts. 603(2)(e), 680, 1022, and 1226 are hereby amended
12 and reenacted to read as follows:

13 Art. 603. Definitions

14 As used in this Title:

15 * * *

16 (2) "Abuse" means any one of the following acts which seriously endanger
17 the physical, mental, or emotional health and safety of the child:

* * *

(e) Female genital mutilation as defined by R.S. 14:43.4 **of the child or a sister of the child.**

* * *

Comments - 2021

This revision incorporates the substance of Subparagraphs (A)(6), (7), and (8) of Article 606 within the definition of "abuse" in this Article. "Commercial sexual exploitation" as referenced in Subparagraph (2)(b) is defined in Paragraph (9.1) and already incorporates human trafficking (R.S. 14:46) and trafficking of children for sexual purposes (R.S. 14:46.3), which had previously been duplicated in Article 606(A)(6) and (7). Subparagraph (2)(e) is revised to include language from Article 606(A)(8) with regard to female genital mutilation of a sister of the child.

* * *

Art. 680. Disposition hearing; rights of parties; evidence

A. All parties have the right to testify, the right to confront and cross-examine adverse witnesses, the right to present evidence and witnesses, and the right to counsel.

B. The court shall consider the report of the predisposition investigation, the case plan, any reports of mental evaluation, and all other evidence offered by the ~~child or the state~~ **parties** relating to the proper disposition. The court may consider evidence which would not be admissible at the adjudication hearing.

* * *

Art. 1022. Service; nonresident parent

If a parent against whom a proceeding is instituted does not reside within this state, service of citation shall be made by registered **or certified** mail to the address indicated in the petition, return receipt required, not less than five days prior to commencement of the hearing on the matter.

* * *

Art. 1226. Service; nonresident parent

If a parent upon whom service is required under Article 1224 does not reside within this state, service shall be made by registered **or certified** mail to the address indicated in the petition, return receipt required, not less than thirty days prior to commencement of the hearing on the petition.

1 Section 2. R.S. 13:1139 and 1587.1(C) are hereby amended and reenacted to read as
2 follows:

3 §1139. Transfer of cases

4 ~~A. Repealed by Acts 2011, No. 340, §3, eff. June 29, 2011.~~

5 B. It is the express intent of this Section that the jurisdiction conferred by
6 law, particularly the ~~Louisiana Code of Juvenile Procedure~~ **Children's Code**, upon;
7 Orleans Parish Juvenile Court shall be the same as it was prior to the enactment of
8 Act 620 of 1976 and shall remain unchanged, except as otherwise provided in the
9 ~~Louisiana Code of Juvenile Procedure~~ **Children's Code**. ~~Said~~ **The** court shall
10 continue to be known as Orleans Parish Juvenile Court, notwithstanding its change
11 of name effected by Act 620 of the Regular Session of the Legislature of 1976 and
12 the subsequent repeal of the provisions of ~~said~~ **that** Act shall not be construed or
13 interpreted to change its jurisdiction, its powers, its duties, its various departments
14 or its personnel, except as herein set forth and provided.

15 * * *

16 §1587.1. Juvenile Court of the parish of Orleans; clerk of court; bailiffs; minute
17 clerks; stenographers and other personnel; probation officers

18 * * *

19 C. All employees of the probation department and probation services for the
20 Juvenile Court for the Parish of Orleans on and after the effective date of this Act
21 shall be transferred to and provided by the Department of Health and Human
22 Resources in accordance with existing statutes, subject to the rules and regulations
23 of the Louisiana civil service system or its successor. The duties of probation
24 officers shall be fixed in accordance with the provisions of the **Children's Code** ~~of~~
25 ~~Juvenile Procedure~~ and of R.S. 46:1251 through ~~R.S. 46:1256~~. The salaries, related
26 benefits, and operational expenses incurred in the provision of probation services
27 shall be at the expense of the state and sufficient funds therefor shall be budgeted by
28 the legislature.

29 * * *

1 Section 3. R.S. 15:1082, 1098.1(A), and 1099.1 are hereby amended and reenacted
2 to read as follows:

3 §1082. Definitions

4 The definitions provided in ~~R.S. 13:1569 and in Article 13 of the code of~~
5 ~~juvenile procedure~~ **the Children's Code** shall be applicable to this Part, unless the
6 context clearly indicates otherwise.

7 * * *

8 §1098.1. Construction of Subpart; controlling law

9 A. To the extent that the provisions of this Subpart are inconsistent with any
10 other statutory law, the provisions of this Subpart shall be deemed controlling, except
11 that all provisions of the **Children's Code of Juvenile Procedure** relative to the
12 placement of juveniles in shelter care facilities and detention centers shall be deemed
13 controlling.

14 * * *

15 §1099.1. Construction of Subpart; controlling law

16 To the extent that the provisions of this Subpart are inconsistent with any
17 other statutory law, the provisions of this Subpart shall be deemed controlling, except
18 that all provisions of the **Children's Code of Juvenile Procedure** relative to the
19 placement of juveniles in shelter care facilities and detention centers shall be deemed
20 controlling.

21 Section 4. R.S. 24:175(B) and 176(B) are hereby amended and reenacted to read as
22 follows:

23 §175. Severability

24 * * *

25 B. This Section shall apply to acts of the legislature affecting general, and
26 local and special laws, and statutes of the state, including the Louisiana Revised
27 Statutes of 1950, the Civil Code ~~of the state of Louisiana~~, the Louisiana Code of
28 Civil Procedure, the Louisiana Code of Criminal Procedure, the Louisiana Code of
29 Evidence, and the Louisiana **Children's Code of Juvenile Procedure**.

1 §176. Repeal

2 * * *

3 B. This Section shall apply to acts of the legislature affecting general, and
4 local and special laws, and statutes of the state, including the Louisiana Revised
5 Statutes of 1950, the Civil Code ~~of the state of Louisiana~~, the ~~Louisiana~~ Code of
6 Civil Procedure, the ~~Louisiana~~ Code of Criminal Procedure, the ~~Louisiana~~ Code of
7 Evidence, and the ~~Louisiana~~ **Children's** Code ~~of Juvenile Procedure~~.

8 Section 5. R.S. 44:3(A)(6) is hereby amended and reenacted to read as follows:

9 §3. Records of prosecutive, investigative, and law enforcement agencies and
10 communications districts

11 A. Nothing in this Chapter shall be construed to require disclosures of
12 records, or the information contained therein, held by the offices of the attorney
13 general, district attorneys, sheriffs, police departments, Department of Public Safety
14 and Corrections, marshals, investigators, public health investigators, correctional
15 agencies, communications districts, intelligence agencies, Council on Peace Officer
16 Standards and Training, Louisiana Commission on Law Enforcement and
17 Administration of Criminal Justice, or publicly owned water districts of the state,
18 which records are:

19 * * *

20 (6) Records concerning status offenders as defined in the **Children's** Code
21 ~~of Juvenile Procedure~~.

22 * * *

23 Section 6. R.S. 46:1251(B), 1901(B), 2411, and 2417(C) are hereby amended and
24 reenacted to read as follows:

25 §1251. Juvenile probation; parole and intake services

26 * * *

27 B. The intake service provided hereunder shall be limited to examining and
28 evaluating complaints that a child is a delinquent or is a child in need of supervision
29 and advising the district attorney whether the best interests of the child would be

1 served by the initiation of proceedings under the Children's Code of Juvenile
 2 ~~Procedure~~, the signing of an informal adjustment agreement, referral to the
 3 Department of Children and Family Services, referral to a public or private agency
 4 for assistance, or any other legally permissible course of action. The personnel
 5 assigned to perform these duties shall not assume any prosecutorial functions except
 6 for the filing of a petition as authorized by the Children's Code of Juvenile
 7 ~~Procedure Art. 45.~~

8 * * *

9 §1901. Definitions

10 * * *

11 B. When used in this Chapter, unless the context otherwise requires, the
 12 terms used herein shall have the meaning ascribed to them by ~~R.S. 13:1569~~ or the
 13 Children's Code of Juvenile Procedure Article 13.

14 * * *

15 §2411. Definitions

16 Except where the context clearly indicates otherwise in this Chapter:

17 (1) ~~"Case permanency plan" means the plan specified by R.S. 46:2418.~~

18 (2) ~~"Case progress report" means the report specified by R.S. 46:2419.~~

19 (3) "Court" means any court which is exercising juvenile jurisdiction
 20 pursuant to the ~~Louisiana constitution and Code of Juvenile Procedure~~ Constitution
 21 of Louisiana and the Children's Code. If any court is comprised of separate
 22 divisions or sections, each such division or section shall be deemed a court for the
 23 purposes of this Chapter. Where applicable, "court" shall refer to the particular court
 24 which exercises juvenile jurisdiction over the child whose case is to be reviewed.

25 (4)(2) "Department" means the Department of Children and Family Services.

26 (5)(3) "Foster care" means the provision of temporary twenty-four hour care
 27 for a child for a planned period of time, when the child is placed away from his
 28 parents or other person acting as his parent, and when the child is placed in a foster
 29 family home, group home, or other child caring facility, but remains under the

1 supervision of the department.

2 ~~(6)~~(4) "Mature child" means a child who is able to understand the
3 circumstances and implications of the situation in which he is involved and is able
4 to participate in the decision-making process without excessive anxiety or fear. A
5 child who is fourteen years **of age** or older is presumed to be a mature child.

6 ~~(7)~~(5) "Parent" means the biological or adoptive parent whose parental rights
7 toward the child have not been terminated.

8 ~~(8)~~(6) "Records" means any information in written form, pictures,
9 photographs, charts, graphs, recordings, or documents pertaining to the case being
10 reviewed.

11 * * *

12 §2417. Notification to local citizen review board of new cases

13 * * *

14 C. Whenever a child has been placed in the custody of the department,
15 voluntarily and not through a court proceeding, for reasons other than delinquency
16 or need of supervision, as defined in ~~Article 13 of the~~ **Children's Code of Juvenile**
17 **Procedure**, the department shall, within ten days, forward a copy of the placement
18 agreement to the clerk of court in the judicial district where the child is located. The
19 clerk of the court shall forward the placement agreement to a local citizen review
20 board appointed by the court. If a judicial proceeding is subsequently commenced
21 in another court, the citizen review board shall forward to the court where
22 proceedings are pending all documents, records, and written information in its
23 possession relative to the case. The receiving court shall make and retain additional
24 copies of the case permanency plan, case progress reports, and observations and
25 recommendations of the local citizen review board and shall assign the case and
26 forward all documents, records, and written information to a new local board.

27 Section 7. Children's Code Art. 606(A)(6), (7), and (8) are hereby repealed in their
28 entirety.

29 Section 8. The Louisiana State Law Institute is hereby directed to print the following

1 Comment to Children's Code Art. 606:

2 Comments - 2021

3 This revision removes Subparagraphs (A)(6), (7), and (8) as separate grounds that
4 a child is in need of care and incorporates the substance of those provisions within the
5 definition of "abuse" in Article 603.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

SB 9 Engrossed

2021 Regular Session

Price

Present law (Ch.C. Art. 603) provides definitions of "abuse".

Proposed law revises present law to incorporate into the definition of "abuse" allegations of grounds that a child is in need of care.

Present law (Ch.C. Art. 680) provides for the evidence a court shall consider at a child in need of care disposition hearing.

Proposed law retains present law and additionally provides for the due process rights of the parties at a child in need of care disposition hearing.

Present law (Ch.C. Arts. 1022 and 1226) requires service on nonresident parents to be made by registered mail.

Proposed law retains present law and also authorizes service on nonresident parents to be made by certified mail.

Present law (R.S. 13:1139 and 1587.1(C), R.S. 15:1082, 1098.1(A), and 1099.1, R.S. 24:175(B) and 176(B), R.S. 44:3(A)(6), and R.S. 46:1251(B), 1901(B), 2411, and 2417(C)) refers to the Code of Juvenile Procedure.

Proposed law updates outdated references to the Code of Juvenile Procedure with correct references to the Children's Code and makes other technical corrections.

Present law (Ch.C. Art. 606) sets forth the grounds for a child to be determined to be in need of care.

Proposed law repeals certain grounds under present law as duplicative of the definition of "abuse" and directs the Law Institute to print an explanatory Comment.

Effective August 1, 2021.

(Amends Ch.C. Arts. 603(2)(e), 680, 1022, and 1226, R.S. 13:1139 and 1587.1(C), R.S. 15:1082, 1098.1(A), and 1099.1, R.S. 24:175(B) and 176(B), R.S. 44:3(A)(6), and R.S. 46:1251(B), 1901(B), 2411, and 2417(C); repeals Ch.C. Art. 606(A)(6)-(8))