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February 7, 2013

Senator John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

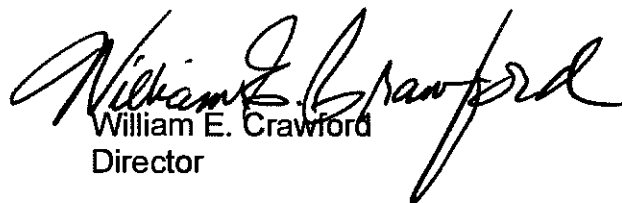
Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

RE: SR NO. 121 of 2011

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2011 Senate Resolution No. 121, relative to procedures and requirements in Child in Need of Care proceedings.

Sincerely,


William E. Crawford
Director

WEC/hal

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LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE:
PROCEDURES AND REQUIREMENTS IN
CHILD IN NEED OF CARE PROCEEDINGS**

RESPONSE TO SENATE RESOLUTION NO. 121 OF 2011

February 7, 2013

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REPORT TO THE LEGISLATURE IN RESPONSE TO SR 121 OF 2011

Senate Resolution No. 121 of 2011, attached, requested that the Louisiana State Law Institute study the procedures and requirements to determine whether the present law relative to Child in Need of Care (CINC) proceedings should be revised to grant certain persons standing as proper and interested persons. The resolution further requested that the study include a review of the procedures and requirements to determine if the multidisciplinary teams (MDT) of custody evaluators or medical or mental health professionals should exclude any professional who had made a report of abuse in the case under review.

The Children's Code Committee has reviewed both the Children's Code and the relevant jurisprudence and makes the following report to the Legislature.

Issue No. 1 Standing as a Proper and Interested Person

Neither the Children's Code nor the Code of Civil Procedure defines a proper and interested person or party in a CINC case. Children's Code Article 636 requires that the court issue a summons to answer a CINC petition to "the child, his resident parents, and such other persons as the court deems proper to appear before the court". Frequently the issue is whether to serve an individual nonparent caretaker of the child or a non-resident parent.

However, the Children's Code does allow for intervention by individuals other than caretakers or parents. An intervener must show that he or she is a party in interest in order to intervene, meaning that he or she has an interest in the child and that his/her participation in the case will help clarify and determine what is in the child's best interest.

After adjudication if the child is removed from his parents' care and placed in foster care, Children's Code Article 697 states that "[F]or good cause shown, the court . . . may allow *any interested person*, agency, or organization to intervene in the case review proceedings . . . ". (Emphasis added.) This Article is intended to clarify the issue in *State In re Jennifer W*, 485 So. 2d 504 (1986), which held that any interested party may intervene when the court determines that such intervention will protect the best interests of the child. *Id.* at 506. See Comment – 1991 to Article 697. This would appear to mean that an intervener is any party in interest who can show that his presence in the case will further the best interest of the child.

The articles and jurisprudence on adoption follow this same reasoning. Children's Code Articles 1209, 1231, and 1254 state that "intervention is limited to . . . any other person that the court finds to be a party in interest." and that the purpose of such intervention "shall be for the limited purpose of presenting evidence as to the best interests of the child." Earlier cases permitted intervention by biological relatives simply because they are biological relatives. See *In re Clarence Simon*, 406 So. 2d 266, 267 (1981) "We find that appellant is a party in interest as he is a maternal uncle of the child sought to be adopted"; *Hargrave v. Gaspard*, 419 So. 2d 918, 922 (1982) "Since Mr. Perry is a maternal uncle of the child sought to be adopted, he is a party in interest." However, more recent cases have denied such intervention where the biological relatives have failed to show either good cause for intervention or that they have an established relationship with the child. See *In re E.D.B.*, 719 So. 2d 666, 669 (1998), denying maternal

grandmother's motion to intervene or to be designated as a party in interest because she failed to show "good cause".

In *State ex rel. D.E.*, 47 So.3d 1109 (La. App. 2 Cir. 2010), writ denied, 51 So.3d 6 (La. 2010) the case cited in the resolution, the grandparents did not attempt to intervene prior to appeal. They consented to being dismissed from the CINC petition. If at the time of the dismissal the grandparents had formally filed to intervene at the time of disposition, they may have been found to be parties in interest and allowed to intervene. It was their failure to intervene that resulted in dismissal of their appeal.

Conclusion: Although there is no definition of parties, the Children's Code specifically provides that in CINC cases, the state, the child and the parents have rights of parties. For all others, a court order of intervention is required, based on a particularized finding that he or she has an interest in the child and that his/her participation in the case will help clarify and determine what is in the child's best interest. In order to protect the confidentiality of abuse and neglect proceedings and ensure that a proper and efficient decision will be made, the Committee believes that the current law strikes the proper balance. Children's Code Article 697 currently provides a procedure for interested persons, such as grandparents, to intervene in a proceeding. That being the case it is unnecessary to amend the Children's Code in order to address this concern expressed in SR 121.

Issue No. 2 Constitution of Multidisciplinary Teams

An MDT is convened "for the investigation of all child sexual abuse cases, abuse and neglect cases involving allegations of a felony-grade crime against a child, and any other case involving trauma to a child..." Children's Code Article 508. The MDT is composed of a physician, psychologist or psychiatrist, a law enforcement representative, Child Advocacy Center staff, the district attorney, and Department of Children and Family Services staff. The MDT is not used in all cases. The MDT, along with custody evaluators and other health professionals, are used in high profile cases where the Department of Children and Family Services is struggling with the decision to go forward with a case because of medical or legal issues. These teams assist in determining the safety risks if the child remains in the home. They are also used to determine the validity of allegations of mental or emotional abuse.

The proposed change could eliminate professionals who have the greatest expertise. It would be particularly burdensome in rural areas where there are very few experts in the field of child abuse. If the professional believes that he or she is biased and cannot contribute to the fair investigation of the allegations, the professional should and could have recused himself/herself, as appropriate. If a party is dissatisfied with the professional's decision, the party may make an objection at the time of trial to the testimony of a reporter or a custody evaluator who was part of the MDT. Potential bias is more appropriately addressed as an issue on cross examination rather than through absolute disqualification.

Conclusion: Changing the makeup of the MDT or banning a custody evaluator, a medical or mental health professional from testifying because he has reported abuse in the case under review would eliminate a much needed pool of resources in serious child abuse cases. These professionals should and have recused themselves when there is a conflict of interest. If the professional fails to recuse himself when appropriate, the Code of Evidence and the rules of

discovery allow attorneys for any party to object as appropriate, pretrial and at trial, to the testimony of these professionals. Therefore the Children's Code Committee recommends that revision of current legislation is unnecessary to address this concern expressed in SR 121.

Respectfully Submitted,
Karen Hallstrom
Co-Reporter, Children's Code Committee
Isabel Wingerter
Co-Reporter, Children's Code Committee

Regular Session, 2011

SENATE RESOLUTION NO. 121

BY SENATOR SHAW

A RESOLUTION

To urge and request the Louisiana State Law Institute to study procedures relative to children in need of care proceedings.

WHEREAS, state law provides certain procedures and requirements relating to adjudication by a court that children are in need of care, including procedures for reporting of alleged abuse, multidisciplinary investigations concerning allegations of child abuse and neglect, disposition proceedings by the court, intervention by interested parties, and appellate review of such proceedings; and

WHEREAS, the Louisiana State Law Institute should review such procedures and requirements to determine if present law should be revised to grant persons such as grandparents standing as proper and interested parties to such proceedings, although they are neither technically "guardians" nor "parents", legislatively superseding cases such as *State ex rel. D.E.*, 47 So.3d 1109 (La. App. 2 Cir. 2010), writ denied, 51 So.3d 6 (La. 2010); and

WHEREAS, such study should include review of procedures and requirements to determine whether state law should specify that the composition of the multidisciplinary investigation team should consist of professionals who have not, prior to the report of alleged abuse, made a report to the department as a mandatory reporter of the children named in the investigation; and

WHEREAS, such study should include review of procedures and requirements to determine

whether state law should specify that custody evaluators and medical or mental health professionals making reports consist of professionals who have not, prior to the report of allegations, acted in the capacity as a mandatory reporter of suspicions of abuse with the children involved; and

WHEREAS, the report and conclusions of such study by the Louisiana State Law Institute should be submitted to the Legislature of Louisiana, together with any recommendations in the form of proposed legislation, not later than February 1, 2012.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study procedures relative to children in need of care proceedings.