

Regular Session, 2010

# ACT No. 593

HOUSE BILL NO. 663

BY REPRESENTATIVES LEGER, BALDONE, AND HOWARD

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Children's Code Articles 320, 321, and 809 and to enact Children's Code Article 881.1, relative to juvenile delinquency; to provide for indigency determination; to provide for reimbursement of legal fees in certain cases; to provide for right to counsel; to provide for the admissibility and voluntariness of a child's confession; to provide for the determination of admissibility of a confession; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 320, 321, and 809 are hereby amended and reenacted and Children's Code Article 881.1 is hereby enacted to read as follows:

Art. 320. Indigency determination

A. For purposes of the appointment of counsel, children are presumed to be indigent.

~~A. B.~~ The determination of the indigency of any person entitled to counsel under this Code may be made by the court at any stage of the proceedings. If necessary, ~~the person~~ he shall be allowed to summon witnesses to testify before the court concerning his financial ability to employ counsel.

~~B.(1) C.~~ In determining whether ~~or not~~ a person is indigent and entitled to the appointment of counsel, the court shall consider whether ~~the person~~ he is a needy person and the extent of his ability to pay.

(1) The court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents.

(2) Release on bail ~~alone~~ shall not alone disqualify ~~a person~~ either an adult or child for appointment of counsel.

1                    ~~€. D.~~ In each case, subject to the penalty of perjury, the person ~~subject to the~~  
 2                    ~~penalty of perjury~~, shall certify in writing such material factors relating to his ability  
 3                    to pay as the court prescribes.

4                    Comments - 2010

5                    (a) Paragraph A is new. Its adoption should result in expediting the  
 6                    appointment of counsel for accused delinquents and often, an earlier disposition of  
 7                    the case. Timely case processing in the juvenile justice system is important for  
 8                    disrupting the potential development of habitual delinquent behavior. For a study  
 9                    of various models and recommendations for reducing key case processing time  
 10                    frames (including arrest/referral, intake screening, informal processing, formal  
 11                    processing, and disposition), see Siegel and Halemba, *Importance of Timely Case*  
 12                    *Processing in Non-Detained Juvenile Delinquency Cases*, National Criminal Justice  
 13                    Reference Service, Department of Justice (2006). A presumption of indigence is a  
 14                    key component of expediting representation from diversion to appeals. Nothing in  
 15                    this amendment removes a parent's obligation to pay if able. See Art. 809(D) and  
 16                    Art. 320, *infra*.

17                    (b) The remainder of this Article applies to adults who are entitled to counsel  
 18                    and are eligible for appointed counsel. The crime of perjury requires that the  
 19                    accused be under oath when he or she misrepresented facts to the court. See 14:123.

20                    Art. 321. Partial reimbursement by ~~indigents~~ indigent adults

21                    A. To the extent that a person is financially able to provide for an attorney,  
 22                    other necessary services and facilities of representation, and court costs, the court  
 23                    shall order him to pay for these items. The court may order payment in installments  
 24                    or in any manner which it believes reasonable and compatible with the ~~defendant's~~  
 25                    person's financial ability.

26                    B. ~~Payments so made~~ Any payments shall be transmitted to and become a  
 27                    part of the ~~indigent~~ public defender fund of the district in which the proceeding is  
 28                    pending.

29                    C. When ~~an individual is a person, who was~~ initially determined to be  
 30                    indigent and ~~is~~ was appointed counsel, ~~but~~ subsequently hires private counsel, the  
 31                    court shall conduct a contradictory hearing to ~~first~~ determine if:

32                    (1) Whether he was in fact indigent when counsel was previously appointed.  
 33                    ~~the person was in fact initially indigent and, if not, then secondly to determine the~~

34                    (2) What charges were incurred in retaining counsel ~~which, if not disclosed,~~  
 35                    ~~will constitute grounds for contempt of court, then lastly to determine the.~~



1 proceeding relating to admission, change of status, or discharge from the mental  
 2 hospital or psychiatric unit. Upon modification of the disposition to placement other  
 3 than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's  
 4 attorney shall be relieved of representation of the child upon request of the Mental  
 5 Health Advocacy Service or the child.

6 ~~C. If the court finds that the parents of the child are financially unable to~~  
 7 ~~afford counsel for the child, the court shall appoint counsel, or refer the child for~~  
 8 ~~representation by the district public defender.~~

9 ~~D. If the court finds that the parents of the child are financially able, it may~~  
 10 ~~order the parents to pay some or all of the costs of the child's representation.~~

11 E.D. If the court finds that the interests of the child and his parent or  
 12 caretaker conflict, or if required in the interests of justice, the court shall  
 13 appoint an attorney to represent the child or refer him for representation by  
 14 the district public defender.

15 F.E. The clerk of court shall promptly send notice of appointment to  
 16 any attorney appointed in accordance with this Article.

17 Comments - 2010

18 The purpose of the additions to Paragraph A is to ensure that the child has  
 19 access to appointed pro bono or public counsel as soon as possible after a taking into  
 20 custody or the filing of a complaint. If thereafter the court finds pursuant to Articles  
 21 320 and 321 that the parent can pay for some or all of the expenses of public defense,  
 22 then an appropriate order of reimbursement can be entered. If, instead, the parent  
 23 wishes to retain and pay for private counsel, he may choose to do so; however, in  
 24 order to avoid any gap in representation, under Paragraph B appointed or public  
 25 counsel remains counsel of record until such time as retained counsel has enrolled  
 26 as counsel of record. As the Supreme Court has observed from *Powell v. Alabama*,  
 27 287 U.S. 45 (1932), forward, the right to court appointed counsel means the effective  
 28 assistance of counsel, and effective counsel requires appointment sufficiently in  
 29 advance of formal hearings for the accused to build a defense. While *Powell* dealt  
 30 with appointment before trial, the detention hearing is a critical stage in delinquency  
 31 proceedings.

32 \* \* \*

33 Art. 881.1. Admissibility of a child's confession in juvenile court

34 A. A confession made by an accused child without a knowing and voluntary  
 35 waiver shall not be admissible unless the state proves beyond a reasonable doubt that

1 it was freely and voluntarily given and was not made under the influence of fear,  
2 duress, intimidation, menaces, threats, inducements, or promises.

3 B. In making this determination, the court shall consider all of the following:

4 (1) The age of the child.

5 (2) The education of the child.

6 (3) The knowledge of the child as to both the substance of the charge, if any  
7 has been filed, and the nature of his rights to consult with an attorney and to remain  
8 silent.

9 (4) Whether the child is held incommunicado or allowed to consult with  
10 relatives, friends, or an attorney.

11 (5) Whether the child was interrogated before or after formal charges had  
12 been filed.

13 (6) The methods used in the interrogation.

14 (7) The length of the interrogation.

15 (8) Whether or not the child refused to voluntarily give statements on prior  
16 occasions.

17 (9) Whether the child has repudiated an extra-judicial statement at a later  
18 date.

19 Comment - 2010

20 This is the same showing and allocation of the burden of proof required for  
21 the admissibility of a confession made by an adult. Sections 13 and 16 of Art. I,  
22 Declaration of Rights, LA CONST. 1974; *State v. Glover*, 343 So.2d 118 (LA.  
23 1977); R.S. 15:451.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_