HLS 17RS-1126 ENGROSSED

2017 Regular Session

HOUSE BILL NO. 343

1

BY REPRESENTATIVE FRANKLIN

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

CHILDREN/PARENTAL RIGHTS: Provides relative to termination of parental rights

AN ACT

2 To amend and reenact Children's Code Articles 1004(B), (D), (F), and (I), 1035(B), 3 1036(C)(introductory paragraph), (D)(introductory paragraph), and (E), and 4 1036.2(E), relative to termination of parental rights; to provide relative to grounds 5 for termination; to provide for technical corrections; and to provide for related 6 matters. 7 Be it enacted by the Legislature of Louisiana: 8 Children's Code Articles 1004(B), (D), (F), and (I), 1035(B), Section 1. 9 1036(C)(introductory paragraph), (D)(introductory paragraph), and (E), and 1036.2(E) are 10 hereby amended and reenacted to read as follows: 11 Art. 1004. Petition for termination of parental rights; authorization to file 12 13 B. Counsel appointed for the child pursuant to Article 607 may petition for 14 the termination of parental rights of the parent of the child if the petition alleges a 15 ground authorized by Article 1015(4),(5), or (6), or (7) and, although eighteen 16 months have elapsed since the date of the child's adjudication as a child in need of 17 care, no petition has been filed by the district attorney or the department. 18 19 D. The department may petition for the termination of parental rights of the 20 parent of the child when any of the following apply:

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(1) The child has been subjected to abuse or neglect after the child is
2	returned to the parent's care and custody while under department supervision, and
3	termination is authorized by Article 1015(3)(j)(4)(j).
4	(2) The parent's parental rights to one or more of the child's siblings have
5	been terminated due to neglect or abuse and prior attempts to rehabilitate the parent
6	have been unsuccessful, and termination is authorized by Article $1015\frac{(3)(k)}{(4)(k)}$ .
7	(3) The child has been abandoned and termination is authorized by Article
8	1015 <del>(4)</del> (5).
9	(4) The child has been placed in the custody of the state and termination is
10	authorized by Article 1015 <del>(5)</del> (6).
11	(5) The child is in foster care because the parent is incarcerated and
12	termination is authorized by Article $1015\frac{(6)}{(7)}$ .
13	* * *
14	F. By special appointment for a particular case, the court or the district
15	attorney may designate private counsel authorized to petition for the termination of
16	parental rights of the parent of the child on the ground of abandonment authorized
17	by Article 1015 <del>(4)</del> (5).
18	* * *
19	I. When a child is conceived as the result of a sex offense as defined in R.S.
20	15:541, the victim of the sex offense who is the custodial parent may petition to
21	terminate the rights of the perpetrator of the sex offense. Termination shall result in
22	the loss of custody, visitation, contact, and other parental rights of the perpetrator
23	regarding the child, but shall not affect the inheritance rights of the child. The
24	perpetrator shall be cast in judgment for court costs.
25	* * *
26	Art. 1035. Burden of proof
27	* * *

1	B. The parent asserting a mental or physical disability as an affirmative
2	defense to abandonment under Article 1015(4)(5) bears the burden of proof by a
3	preponderance of the evidence.
4	Art. 1036. Proof of parental misconduct
5	* * *
6	C. Under Article 1015(5)(6), lack of parental compliance with a case plan
7	may be evidenced by one or more of the following:
8	* * *
9	D. Under Article 1015(5)(6), lack of any reasonable expectation of
0	significant improvement in the parent's conduct in the near future may be evidenced
1	by one or more of the following:
12	* * *
13	E. Under Article 1015(6)(7), a sentence of at least five years of
4	imprisonment raises a presumption of the parent's inability to care for the child for
15	an extended period of time, although the incarceration of a parent shall not in and of
16	itself be sufficient to deprive a parent of his parental rights.
17	* * *
18	Art. 1036.2. Incarcerated parent; duties; assessment
9	* * *
20	E. The notification form given to the incarcerated parent shall be
21	substantially as follows:
22	NOTICE OF DUTY TO PROVIDE A REASONABLE PLAN FOR THE
23	APPROPRIATE CARE OF YOUR CHILD AND TERMINATION OF
24	PARENTAL RIGHTS LAW
25	NOTICE TO PARENT: YOUR CHILD(REN),
26	HAS/HAVE BEEN PLACED IN THE CUSTODY OF THE LOUISIANA DEPARTMENT
27	OF CHILDREN AND FAMILY SERVICES BY ORDER OF THE
28	Parish juvenile court on
9	

1	PLEASE BE ADVISED OF THE FOLLOWING:
2	Louisiana law provides that you may name a person who is willing and able to serve
3	as the custodian of your child(ren) and to offer a wholesome and stable environment for your
4	child(ren). Failure to furnish a reasonable plan for the appropriate care of your child(ren)
5	may result in the termination of your parental rights.
6	Please refer to Louisiana Children's Code, Title X, Articles 1001 to 1043, especially
7	Articles 1015(6)(7) and 1036(E), for the details of Louisiana law regarding the termination
8	of parental rights. A copy of the law is attached to this notice.
9	You are hereby notified that Louisiana law requires that you provide a reasonable
10	plan for the appropriate care of your child(ren), other than continued foster care, within sixty
11	(60) days of your receipt of this notice, which date is Your
12	plan shall include the names, addresses, cellular numbers, telephone numbers, and other
13	contact information of every suitable alternative caregiver. You may provide additional
14	information by filling out this form and mailing it in the stamped, self-addressed envelope
15	given to you by the department before If you fail or refuse to
16	do so, you may lose all rights to your child(ren). Your plan will be examined to determine
17	if it is reasonable and appropriate. Please provide your plan in detail no later than
18	to the following person:
19	NAME:
20	ADDRESS:
21	CITY/STATE/ZIP:
22	TELEPHONE:
23	NOTE: IF YOU HAVE ANY QUESTIONS OR NEED ANY ASSISTANCE, CONTACT
24	THE ABOVE PERSON OR YOUR ATTORNEY IMMEDIATELY.
25	Copy of the law, La. Ch.C. Arts. 1001 - 1043, Attached. PLEASE READ.
26	I,, hereby certify that a copy of this notice with
27	La. Ch.C. Arts. 1001-1043 attached, was delivered to on
28	by personal delivery at the following location
29	·

1	DATE:
2	
3	Signature of caseworker
4	I,, have received a copy of this notice, together
5	with the attached laws (La. Ch.C. Arts. 1001-1043), and acknowledge that I understand fully
6	that my rights may be terminated and my child(ren) adopted by others if I do not provide a
7	reasonable plan of appropriate care while I am incarcerated, other than continued foster care,
8	within sixty (60) days of my receipt of this notice on
9	
10	Signature of parent
11	Witness: Date:
12	Section 2. This Act shall become effective upon signature by the governor or, if not
13	signed by the governor, upon expiration of the time for bills to become law without signature
14	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15	vetoed by the governor and subsequently approved by the legislature, this Act shall become
16	effective on the day following such approval.
	DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 343 Engrossed

2017 Regular Session

Franklin

**Abstract:** Amends Children's Code Articles regarding termination of parental rights to make technical corrections, and provides relative to grounds for termination when the child is conceived as a result of a sex offense.

<u>Present law</u> includes numerous articles of the Children's Code which reference Article 1015 of the Children's Code.

<u>Proposed law</u> makes technical corrections to these articles to reflect the changes made to Children's Code Article 1015 from the 2016 Regular Session.

<u>Present law</u>, regarding termination of parental rights, authorizes the victim of a sex offense who is the custodial parent to petition to terminate the rights of a perpetrator of a sex offense.

<u>Proposed law</u> removes the requirement that the victim of the sex offense be the custodial parent in order to petition to terminate the rights of the perpetrator of the sex offense.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends Ch.C. Arts. 1004(B), (D), (F), and (I), 1035(B), 1036(C)(intro. para.), (D)(intro. para.), and (E), and 1036.2(E))

## Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Civil Law and Procedure</u> to the <u>original</u> bill:

1. Eliminates the requirement that the victim of the sex offense be the custodial parent in order to petition to terminate the parental rights of the perpetrator of the sex offense.