

Regular Session, 1999

HOUSE BILL NO. 883

BY REPRESENTATIVES MCMAINS, ANSARDI, AND MCCAIN

(On Recommendation of the Louisiana State Law Institute)

CHILDREN: Provides with respect to sale of minor children, surrender of parental rights, and adoption proceedings

1 AN ACT

2 To amend and reenact R.S. 14:286 and Children's Code Articles 1040,
3 1041(A), 1042, 1113(A) and (D), 1120(C), 1127(A), (B), and (C),
4 1131(C), (D), and (E), 1132, 1142(A), 1144, 1146, 1174, 1180(A)(4),
5 1186, 1200, 1201(C) and (E), 1207(B), 1208(A) and (B)(4), 1211
6 (introductory paragraph), 1213, 1214, 1223, 1229(B), 1230(A) and
7 (B)(4), 1233, 1235, 1236, 1243, 1244(A), 1245, 1253(A) and (B)(4),
8 1263, and 1270(C), to enact Children's Code Articles 1127.1, 1131(F),
9 1169(2.1), 1180(A)(5), 1207(C), 1208(B)(5), 1223.1, 1229(C),
10 1230(B)(5), 1243.1, 1243.2, and 1253(B)(5), and to repeal Children's
11 Code Articles 1194 and 1244(D), relative to children; to prohibit the
12 sale of minor children; to provide relative to the surrender of parental
13 rights and the adoption of children; to specify and prohibit practices
14 constituting the sale of a child; to provide for reports, placement by the
15 department, and review hearings in certification for adoption
16 proceedings; to provide for minor parents, mental health counseling,
17 requests for and maintenance of medical reports, filing and notice of

1 filing of surrender, records checks, and requirements of approval of the
2 surrender of a child for adoption; to provide a definition of "broker"; to
3 provide for preplacement certification for adoption, venue, and records;
4 to provide for disclosure of records, confidentiality, fees, affidavits,
5 duties of the department, hearings, petitions, final decrees, continuing
6 duties of the department, home study reports, and permanency review,
7 all with respect to agency adoptions; to provide for fee disclosure,
8 permissible expenses, affidavits of fees, duties of the department,
9 hearings, petitions, final decrees at first hearings, continuing duties of
10 the department, home study reports, and review hearings, all with
11 respect to private adoptions; to provide for eligible petitioners,
12 precedence of intrafamily adoption provisions over other adoption
13 provisions; to provide for records checks, parental consent, and
14 hearings, all with respect to intrafamily adoptions; to provide for time
15 limitations and finality in adoptions; to provide for the purpose of
16 voluntary registration in adoptions; to repeal provision for adoption
17 over the objection of an incarcerated parent; and to provide for related
18 matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. R.S. 14:286 is hereby amended and reenacted to read as
21 follows:

22 §286. Sale of minor children; penalties

23 A. Except as provided by ~~law~~ Subsection C, it shall be unlawful
24 for any person to sell or surrender a minor child to another person for
25 money or anything of value, or to receive a minor child for such
26 payment of money or anything of value.

1 ~~B.(1) Nothing in this Section shall be construed to prohibit any~~
2 ~~person contemplating adopting a minor child, not yet born, from paying~~
3 ~~necessary, actual prenatal care and living expenses of the mother of the~~
4 ~~minor child adopted, nor of paying necessary, actual living and medical~~
5 ~~expenses of such mother or child for a reasonable period of time, not~~
6 ~~to exceed thirty days, after the child is born, nor of paying legal fees of~~
7 ~~the surrendering parent or parents in connection with a voluntary~~
8 ~~surrender.~~

9 ~~(2) "Legal fees" as used herein shall include anything of value~~
10 ~~paid or received for rendering of legal services in connection with an~~
11 ~~act of voluntary surrender of a child for adoption and shall not include~~
12 ~~a broker's fee paid in connection with an act of voluntary surrender.~~

13 ~~(3) "Broker's fees" as used herein shall include anything of~~
14 ~~value paid or received for the procurement, attempted procurement, or~~
15 ~~assistance in the procurement of a party to an act of voluntary surrender~~
16 ~~of a child for adoption.~~

17 ~~B(3) B.~~ "Broker's fees" as used herein shall include Except as
18 provided in Subsection C, the payment or receipt of anything of value
19 ~~paid or received~~ for the procurement, attempted procurement, or
20 assistance in the procurement of a party to an act of voluntary surrender
21 of a child for adoption is strictly prohibited.

22 C. Unless approved by the juvenile court pursuant to Children's
23 Code Article 1200, no petitioner, person acting on a petitioner's behalf,
24 agency or attorney or other intermediary shall make or agree to make
25 any disbursements in connection with the adoptive placement,
26 surrender, or adoption of a child other than for the following:

1 (1) Reasonable medical expenses, including hospital, testing,
2 nursing, pharmaceutical, travel, or other similar expenses, incurred by
3 the biological mother for prenatal care, and those medical and hospital
4 expenses incurred on behalf of the biological mother and child incident
5 to birth.

6 (2) Reasonable medical expenses, including hospital, testing,
7 nursing, pharmaceutical, travel, or other similar expenses, and foster
8 care expenses incurred on behalf of the child prior to the decree of
9 adoption.

10 (3) Reasonable expenses incurred by the department or the
11 agency for adjustment counseling and training services provided to the
12 adoptive parents and for home studies or investigations.

13 (4) Reasonable administrative expenses incurred by the
14 department or the agency, including overhead, court costs, travel costs,
15 and attorney fees connected with an adoption.

16 (5) Reasonable expenses incurred for counseling services
17 provided to a biological parent or a child for a reasonable time before
18 and after the child's placement for adoption.

19 (6) Reasonable expenses incurred in ascertaining the
20 information required by Children's Code Articles 1124 and 1125.

21 (7) Reasonable living expenses incurred by a mother for a
22 reasonable time before the birth of her child and for no more than forty-
23 five days after the birth.

24 (8) Reasonable attorney fees, court costs, travel, or other
25 expenses incurred on behalf of a parent who surrenders a child for
26 adoption or otherwise consents to the child's adoption. ~~None of the~~

1 ~~provisions of this Section shall apply to the fees charged by nonprofit~~
2 ~~adoption agencies licensed by the State of Louisiana.~~

3 D. A person convicted of violating any of the provisions of this
4 Section shall be punished by a fine not to exceed ~~five~~ fifty thousand
5 dollars or imprisonment with or without hard labor for not more than
6 ~~five~~ ten years, or both.

7 Section 2. Children's Code Articles 1040, 1041(A), and 1042 are
8 hereby amended and reenacted to read as follows:

9 Art. 1040. Report

10 A. Following a judgment terminating all parental rights pursuant
11 to this Title, when the department is the legal custodian of the child, the
12 department shall report to the court in detail ~~upon~~ concerning the
13 ~~effecting of a child's permanent placement. for the child.~~

14 B. When the department is not the legal custodian of the child,
15 the petitioner shall report to the court concerning the child's adoptive
16 placement.

17 Art. 1041. Registration; department

18 A. If no permanent placement has been made by the department
19 within ninety days of such a judgment, the child shall be registered by
20 the appropriate child placement agency involved or the state child
21 placement agency with the Louisiana Adoption Resource Exchange
22 within the department. Any such registration shall not include the
23 surname of the child or otherwise reveal the identities of the blood
24 parents of the child.

25 * * *

1 Art. 1042. Review; counsel for child

2 A. When the department is the legal custodian of the child, if
3 if no permanent placement has been made within ninety days of such
4 judgment, review hearings shall be held in accordance with the
5 provisions of Chapters 15 and 16 of Title VI of this Code.

6 B. When the department is not the legal custodian of the child,
7 review hearings shall be held every ninety days until a final decree of
8 adoption is rendered.

9 ~~B.~~ C. Any attorney appointed to represent the child in the
10 termination action shall continue to represent the child in all subsequent
11 review hearings until the child is permanently placed.

12 Section 3. Children's Code Articles 1113(A) and (D), 1120(C),
13 1127(A), (B), and (C), 1131(C), (D), and (E), 1132, 1142(A), 1144, and 1146
14 are hereby amended and reenacted and Children's Code Articles 1127.1 and
15 1131(F) are hereby enacted to read as follows:

16 Art. 1113. Minor parents

17 A. Except as otherwise provided herein, if a parent executing
18 a surrender in a private adoption is a minor, the parents or tutor of the
19 minor must join in the surrender unless the minor parent has been
20 judicially emancipated under Civil Code Article 385 or emancipated by
21 marriage under Civil Code Articles 379 through 384.

22 * * *

23 ~~D. When the minor's parents are the parties to whom the child~~
24 ~~is being surrendered, the court shall authorize the minor to surrender~~
25 ~~without the required consent if it~~ In an intrafamily adoption, the parents
26 or tutor of the minor parent must join in the minor's consent to his

1 child's adoption unless the court finds that the minor is sufficiently
2 mature and well-informed to surrender his child for adoption or that the
3 surrender is otherwise in the child's best interest.

4 * * *

5 Comments —1999

6 (a) Consistent with other provisions of the Children's Code, a
7 young person emancipated by marriage should also have capacity to
8 decide about her child's care, custody and control. Similarly, if a court
9 has entered a judgment of emancipation pursuant to Article 385, that
10 finding of maturity should suffice to empower the minor to make
11 judgments about the potential adoption of any child. See *Adoption of*
12 *Vest*, 427 So.2d 135 (3d Cir. 1983, dissenting opinion).

13 (b) Paragraph D expands the minor's right to consent to an
14 intrafamily adoption by any of the relatives now authorized by Article
15 1243. For the procedure contemplated for the mature minor
16 determination of this paragraph, see R.S. 40:1299.35.5.

17 * * *

18 Art. 1120. Mental health counseling; affidavit

19 * * *

20 C. If he is a major, any surrendering father of a child may waive
21 the counseling otherwise mandated by Paragraph A of this Article. In
22 this case, the attorney or counselor shall execute an affidavit attesting
23 to his waiver.

24 * * *

25 Comments —1999

26 Mental health counseling is required for both private and agency
27 adoptions. This amendment withdraws any apparent authority of a
28 minor father to waive this counseling and serves the overriding purpose
29 of this Code to protect children from immature choice, and also avoids
30 a gender-based equal protection challenge. See *In the Matter of*
31 *Adoption of M.L.*, 688 So.2d 1352 (4th Cir. 1997). In an agency
32 adoption, the consent of the parent of neither a minor father nor minor
33 mother is required. Art. 1113(E); *Golz v. Children's Bureau of New*
34 *Orleans, Inc.*, 326 So.2d 865, appeal dismissed, 426 U.S. 901 (1976).
35 In a private adoption, the consent of the parent of an unmarried and

1 otherwise unemancipated minor surrendering parent is generally
2 required. Art.1113(A).

3 * * *

4 Art. 1127. Request for disclosure of nonidentifying medical records;
5 ~~adoptions prior to September 11, 1981~~

6 A. Any child ~~who was~~ surrendered to an agency ~~prior to~~
7 ~~September 11, 1981, or, if still a minor, his legal representative on his~~
8 ~~behalf, or a surrendering biological parent~~ may, upon written request
9 to an agency, obtain nonidentifying medical ~~history~~ or genetic
10 information from the agency without the necessity of filing a petition
11 for disclosure from the agency as required by the provisions of Chapter
12 5 of Title XII of this Code.

13 B. Upon such a written request, the agency shall make a good
14 faith effort to review ~~its records~~ and abstract nonidentifying genetic or
15 ~~medical history~~ information, similar in content to the Statement of
16 Family History.

17 C. Such nonidentifying medical history shall be made available
18 ~~to the adopted child, or his legal representative,~~ for a reasonable charge.

19 * * *

20 Comments —1999

21 These revisions reflect what is now a duty to maintain updated
22 files when an agency receives or discovers relevant medical or genetic
23 information after an adoption is finalized. See Art. 1126. Upon
24 request by either the adopted child or the biological parent who may
25 need accurate nonidentifying medical information concerning a
26 surrendered child, the agency is authorized to provide updated
27 information without violating the generally applicable confidentiality
28 provisions. See Art. 1186.

Art. 1127.1. Maintenance of medical report

A. After adoptive placement of the child, the agency or person to whom a surrender is made shall have a continuing duty to maintain these records and supplement them if additional nonidentifying medical or genetic information is received about the adopted child or a surrendering biological parent.

B. Upon a request in accordance with Article 1127, the agency shall disclose such information.

Comments — 1999

This article imposes three distinct responsibilities upon adoption agencies: To gather relevant medical and genetic information; to provide the information upon the child's adoptive placement and majority; and to maintain and update these medical records so that requested information is as complete as possible.

* * *

Art. 1131. Filing; institution of records check

* * *

C. Upon filing, the court shall promptly review the surrender and any accompanying documents to ensure their sufficiency in accordance with Article 1104. If any document fails to comply with the requirements of this Title, the court shall immediately notify all counsel of record and may refuse to accept the surrender until such time as the defects are remedied. If the surrender and documents are found to comply with the requirements of this Title, the court shall enter an order approving the surrender and immediately notify all counsel of record.

¶ D. Upon the filing of any court order approving the adoptive placement pursuant to Article 1178, the court shall immediately issue both of the following orders:

(1) That the local sheriff conduct a records check for all federal arrests and convictions and all state arrests and convictions in this and any other states in which either of the prospective adoptive parents has been domiciled.

(2) That the department conduct a records check for validated complaints of child abuse or neglect in this or any other state in which either of the prospective adoptive parents has been domiciled since becoming a major, involving either prospective adoptive parent.

~~D.~~ E. Each order shall state the full name, date of birth, social security number, and former and current state(s) of domicile since becoming a major of each prospective adoptive parent.

~~E.~~ F. The sheriff and the department shall accord priority to these orders and shall provide a certificate indicating all information discovered or that no information has been found.

Comments —1999

Historically, adoptions often failed because of defects in the surrender documents urged by counsel in contested hearings that occurred long after the child's preliminary placement in the adoptive home. Previous law did not require court review of the sufficiency of the surrender and the Preplacement Certification for Adoption, although by local rule, several juvenile courts have undertaken that obligation. This change seeks to standardize that good practice and to ensure that counsel for both the surrendering parent and the adopting parents, if then known, are given notice of any deficiency.

Art. 1132. Notice of filing of surrender; form

A. If a mother of an illegitimate child has executed a surrender and identifies the child's alleged or adjudicated father, the agency or

1 individual to whom the child was surrendered shall exercise due
2 diligence in attempting to locate him and to offer mental health
3 counseling in accordance with Article 1120.

4 B. Upon approval of the mother's surrender by the court, notice
5 of the filing of ~~her~~ the mother's surrender shall be served upon the
6 alleged or adjudicated father unless any of the following apply:

7 (1) His potential parental rights have been terminated by a
8 judgment in accordance with Title X of this Code.

9 (2) He has executed a surrender in accordance with this Title.

10 (3) He has given his consent in open court in accordance with
11 Article 1195.

12 (4) He has executed a release of claims in accordance with
13 Article 1196.

14 C. If the alleged or adjudicated father is a minor, his parents or
15 tutor shall be served if required by Article 1113.

16 ~~B. D.~~ The notice of ~~filing of a~~ the surrender shall be issued by
17 the clerk and shall contain the following information in substantially
18 the following form:

19 "NOTICE OF FILING OF SURRENDER

20 Be advised that on the ____ day of ____, ~~19~~__, an authentic Act
21 of Surrender executed by _____ was filed wherein she surrendered for
22 adoption her minor child, namely _____, born on the ____ day of
23 _____, ~~19~~__, in the Parish of _____, State of _____.

24 The Act of Surrender alleges that you are the father of this child.
25 You may attempt to oppose the adoption of this child only by filing a

1 written objection with this court within fifteen days after you receive
2 this notice.

3 If you file a written objection timely, the court will then hold a
4 hearing within twenty days of the filing of the opposition, to determine
5 whether you have established or forfeited your parental rights.

6 To establish your parental rights to oppose the adoption, you
7 must ~~demonstrate to the court the affirmative efforts you have made to~~
8 ~~establish or maintain a parental relationship with the child. This may~~
9 ~~include attempted legitimization of the child, formal acknowledgment of~~
10 ~~the child with the clerk of court in the parish in which the child was~~
11 ~~born, declaration of paternity filed in the Louisiana putative father~~
12 ~~registry (after July 1, 1992), or provision of substantial parental care~~
13 ~~and support to the child.~~ acknowledge that you are the father of the
14 child or be found to be the father by court order as a result of blood
15 tests. Thereafter, you must also demonstrate to the court that you are
16 a fit parent who is willing and able to assume the legal and physical
17 care of your child. You must also demonstrate that you have made a
18 substantial commitment to your parental responsibilities by providing
19 or attempting to provide substantial and consistent support for the
20 mother during pregnancy or after the child's birth and by frequently and
21 consistently visiting or attempting to visit the child after birth.

22 If you fail to file a written motion of opposition, or if, after a
23 hearing on a motion timely filed, the court finds that you have failed to
24 establish your parental right to oppose the adoption, the court will order
25 the termination of any and all parental rights you may have and the
26 child may be subject to adoption."

Comments —1999

(a) The revisions to Paragraph A result from concern that, in some adoptions, due diligence has not been exercised in attempting to identify and/or locate an alleged or adjudicated father. See, e.g., *In the Matter of Adoption of M.L.*, 688 So.2d 1352 (4th Cir. 1997).

(b) As a general rule, Article 1113 requires the consent of the minor's parent when she or he desires to surrender a child for private adoption. The addition of Paragraph C ensures that parents will have notice when the petitioner seeks to terminate the minor father's rights involuntarily.

(c) The revision of the notice is necessary in order to give more accurate information to an alleged or adjudicated father of a child who has been surrendered for adoption. Article 1137 was amended in 1997 to provide explicitly for blood tests on motion of the father. The father's burden of proof at an opposition hearing is governed by Article 1138, and the substance of its requirements are set out here.

* * *

Art. 1142. Order declaring parental rights terminated; motion; certificates

A. If no opposition is timely received by the court, the court shall, upon motion, render an order ~~approving the surrender, if any, and~~ declaring the rights of the parents terminated.

* * *

Comments —1999

In view of the now comprehensive requirement of court review of all surrenders due to the revision of Article 1131, this more limited requirement has been deleted.

* * *

Art. 1144. Placement report

A. After filing of a surrender in accordance with the provisions of Article 1131, when the department ~~has effected a permanent placement of the child, the department shall report such placement in detail to the court.~~ is the legal custodian of the child, the department

1 shall report to the court in detail concerning the child's permanent
2 placement.

3 B. When the department is not the legal custodian of the child,
4 the legal custodian shall report to the court concerning the child's
5 adoptive placement.

6 * * *

7 Art. 1146. Permanency planning review; counsel for child

8 A. If no permanent placement has been made by the department
9 within ninety days after a voluntary surrender to a child care agency,
10 review hearings shall be held in accordance with the provisions of
11 Chapters 15 and 16 of Title VI of this Code.

12 B. When the department is not the legal custodian of the child,
13 review hearings shall be held every ninety days until a final decree of
14 adoption is rendered.

15 ~~B. C.~~ Any attorney previously appointed to represent the child
16 shall continue to represent the child in all subsequent review hearings
17 until the child is permanently placed. If no attorney was previously
18 appointed, the court shall appoint an attorney to represent the child for
19 the purpose of facilitating permanent placement.

20 Section 4. Children's Code Articles 1174, 1180(A)(4), 1186, 1200,
21 1201(C) and (E), 1207(B), 1208(A) and (B)(4), 1211(introductory paragraph),
22 1213, 1214, 1223, 1229(B), 1230(A) and (B)(4), 1233, 1235, 1236, 1243,
23 1244(A), 1245, 1253(A) and (B)(4), 1263, and 1270(C) are hereby amended
24 and reenacted and Children's Code Articles 1169(2.1), 1180(A)(5), 1207(C),
25 1208(B)(5), 1223.1, 1229(C), 1230(B)(5), 1243.1, 1243.2, and 1253(B)(5) are
26 hereby enacted to read as follows:

Art. 1169. Definitions

As used in this Title:

* * *

(2.1) "Broker" means any person who, for compensation or the expectation of compensation, obtains or offers to obtain a child for adoption from a third party.

* * *

Comments —1999

This definition is new. The source is R.S. 9:3572.1.

* * *

Art. 1174. Issuance of preplacement certification for adoption

A. If the preplacement home study is favorable, the professional who conducted it shall issue a preplacement certification for adoption to the prospective adoptive parents.

B. The preplacement certification for adoption shall be valid for a minimum of two years.

Comments —1999

The qualifier "preplacement" has been reiterated here to avoid any possible confusion with Judicial Certification for Adoption Proceedings pursuant to Title X of this Code.

* * *

Art. 1180. Venue in adoption

A. A proceeding for the adoption of a child may be commenced in either:

* * *

1 (4) The juvenile court in which the child has been adjudicated
2 a child in need of care or in which the child in need of care proceeding
3 is pending.

4 ~~(4)~~(5) The juvenile court which previously terminated parental
5 rights of a parent with respect to the child to be adopted.

6 * * *

7 Art. 1186. ~~Records of adoption agencies~~ Confidential adoption
8 records; disclosure

9 A. All adoption records ~~of agencies~~ shall be retained in
10 confidential files and it shall be unlawful ~~except for purposes directly~~
11 ~~connected with the agencies responsibilities in relation to adoption~~
12 ~~work, and then subject to the agencies' rules and regulations, or to a~~
13 ~~duly appointed curator ad hoc, as provided for in Article 1191, to~~
14 ~~disclose any information concerning any individual adoption case. for~~
15 anyone except the biological or adopting parent to disclose any
16 information concerning any individual adoption case, except upon
17 order of the court or as otherwise authorized by this Code, or for
18 purposes directly connected with an adoption agency's responsibilities
19 in relation to adoption work as permitted by its rules and regulations.

20 B. If the agency, firm, or lawyer ceases to do business in this
21 state, it shall transfer its adoption records to the Department of Social
22 Services or another transferee approved by the department. Thereafter,
23 the transferee shall ensure the preservation and confidentiality of
24 records required by Paragraph A.

~~B.~~ C. Any person who violates this requirement of confidentiality shall be fined not more than five hundred dollars or imprisoned for not more than ninety days, or both.

Comments —1999

The revisions to Paragraph A reflect other types of permitted disclosure under this Code. Article 1127 authorizes an agency to release nonidentifying medical history to an adopted child or his legal representative. Chapter 15 of this Title authorizes the release of identifying information pursuant to the requirements of voluntary registration.

* * *

Art. 1200. ~~Permissible~~ Fee disclosure; permissible reimbursement of
expenses; court review; report

A. The petitioner shall file with the petition a preliminary estimate and accounting of fees and charges in accordance with Article 1201. The petitioner also shall file a final Adoption Disclosure Affidavit with the court not later than ten days prior to the date scheduled for the final hearing on the adoption.

A. B. Payments made by or on behalf of the adoptive parents or their representative to the department of Social Services, or to a child-placing agency or its agent or any broker for reimbursement of the following expenses are permissible and not a violation of R.S. 14:286:

(1) Reasonable Medical medical and hospital expenses, including hospital, testing, nursing, pharmaceutical, travel, or other similar expenses, incurred by the "~~natural~~" biological mother for prenatal care and those medical ~~and hospital~~ expenses incurred by the ~~natural~~ biological mother and child incident to birth.

(2) Reasonable Medical medical expenses, including hospital, testing, nursing, pharmaceutical, travel, or other similar expenses, and

1 foster care expenses incurred on behalf of the child prior to the decree
2 of adoption.

3 (3) Reasonable expenses incurred by the department or the
4 agency for adjustment counseling and training services provided to the
5 adoptive parents and for home studies or investigations.

6 (4) Reasonable administrative expenses incurred by the
7 department or the agency, including overhead, court costs, travel costs,
8 and attorney fees connected with an adoption.

9 (5) Reasonable expenses incurred for mental health counseling
10 services provided to a biological parent or a child for a reasonable time
11 before and after the child's placement for adoption.

12 (6) Reasonable expenses incurred in ascertaining the
13 information required by Articles 1124 and 1125.

14 (7) Reasonable living expenses incurred by a mother for a
15 reasonable time before the birth of her child and for no more than forty-
16 five days after the birth.

17 (8) Reasonable attorney fees, court costs, travel, or other
18 expenses incurred on behalf of a parent who surrenders a child for
19 adoption or otherwise consents to the child's adoption.

20 (9) Any other specific service or fee the court finds is
21 reasonable and necessary.

22 C. The payment of expenses permitted by Paragraph B may not
23 be made contingent on the placement of a child for adoption,
24 relinquishment of the child, or consent to the adoption.

25 ~~B. D.~~ Adoptive parents shall pay to the ~~Department of Social~~
26 ~~Services~~ department any of the expenses listed in Paragraph A ~~B~~ of this

Article which may be imposed by the department. Such payments shall be imposed solely at the discretion of the department. The department shall not include payment of the expenses listed in Paragraph ~~A~~ B of this Article as a requirement for adoption.

E. If a court determines from an accounting that an amount that is going to be or has been disbursed for expenses permitted by Paragraph B is unreasonable, it may order a reduction in the amount to be disbursed and order the person who received the disbursement to refund that portion.

F. If a court determines from an accounting that an amount is going to be or has been disbursed for expenses not permitted by Paragraph B, it may:

(1) Issue an injunction prohibiting the disbursement or order the person who received the disbursement to refund it.

(2) Refer the case to the district attorney for the consideration of criminal charges pursuant to R.S. 14:286.

(3) Refuse to approve the adoption, if in the best interest of the child.

G. The court shall not issue a final decree of adoption until it has reviewed and approved the final accounting.

H. A copy of the Adoption Disclosure Affidavit and all orders of the court pursuant to this Article shall be mailed to the office of community services, Louisiana Department of Social Services.

Comments —1999

(a) The revisions to this Article are all intended to discourage entrepreneurs who might be tempted to take advantage of what is an undeniable buyer's market for adoptable children. As originally drafted, this Article and Article 1201 required a reporting of expenses

1 as a hoped for deterrent to price gouging and other forms of
2 unscrupulous practice; however, these articles lacked any sanction, nor
3 could patterns of unreasonable fees be discerned because there has
4 been no central data bank for Adoption Disclosure Affidavits that might
5 help to establish service and fee norms.

6 (b) Paragraph A is modeled on an Ohio statute, §3107.10(C).
7 Its purpose is to ensure that actual costs, rather than under reported
8 estimates, are disclosed to the court.

9 (c) Most of the revisions to Paragraph B are to detail with
10 greater specificity the type of expenses that may be charged in an
11 adoption, and thus do not constitute the crime of baby selling.
12 Subparagraph B(7) expressly confirms that the reasonable living
13 expenses of the mother during pregnancy and for thirty days thereafter
14 could be charged. This is not a change in substance, but was implied
15 by Article 1201(C). Reimbursement for such living expenses is
16 permitted by the majority of other states and by the Uniform Adoption
17 Act, §1-103(5). Subparagraph B(9) is new and authorizes the court to
18 approve other expenses similar to the listed categories if it finds them
19 reasonable and necessary in the particular case or, for example, if there
20 are birth recovery complications warranting extension of the payment
21 of the mother's living expenses beyond the thirty-day period.

22 (d) The source of Paragraph C is §7-103(b) of the Uniform
23 Adoption Act. Its purpose is to treat surrenders for adoption and
24 expense reimbursement as independent promises. Obviously, if
25 payments were made contingent upon the parent's surrendering his
26 child for adoption, that would be tantamount to a sale of the child.

27 (e) Paragraphs E and F are modeled on Ohio Rev. Code Ann.
28 §3107.10(D) (Baldwin 1998). They enumerate a range of alternatives
29 when claimed expenses are found to be either excessive or
30 unauthorized.

31 (f) Paragraph G underscores the seriousness of fee disclosure
32 by requiring review and approval prior to the entry of any decree of
33 adoption.

34 (g) Paragraph H ensures that expense disclosure affidavits and
35 related orders in every adoption proceeding are reported to the state
36 department for data collection and administrative review. Among other
37 sanctions, a pattern of excessive or unwarranted charges will jeopardize
38 continued licensure of any child placing agency.

39 Art. 1201. Adoption disclosure affidavit of fees and charges

40 * * *

41 C. The form for the affidavit shall be as follows:

1 "ADOPTION DISCLOSURE AFFIDAVIT

2 BEFORE ME, the undersigned authority, personally came and
3 appeared _____ (petitioner) and _____ (attorney for
4 petitioner), who being first duly sworn, did depose and state:

5 In the matter of the adoption by _____ (petitioner's name):

6 1. We report the following fees and charges or other things of
7 value given in connection with this adoption:

8		Actual	Estimated	Due or paid to
9		\$	\$	

10 A. ~~Attorney fees:~~ Agency administrative expenses:

- 11 1. Attorney fees
12 2. Court costs
13 3. Travel costs
14 4. Overhead
15 5. Other (Specify)

16 B. ~~Adoption agency fees:~~ Agency Mental Health Counseling expenses:

- 17 1. Counseling for adopting parents
18 2. Home study evaluations
19 3. Counseling for biological parents
20 4. Counseling for the child
21 5. Statement of Family History information
22 6. Other (Specify)

23 C. ~~Medical costs:~~ expenses for biological mother:

- 24 1. Child Medical
25 2. Birth mother Travel
26 3. Other (Specify)

D. ~~Birth mother's expenses:~~ Medical/foster care expenses for child:

- 1. ~~Room and board~~ Medical
- 2. Travel
- 3. ~~Mental health counseling~~ Other (Specify)

E. Living expenses of the biological mother:

- 1. Room and board
- 2. Other (Specify)

E. F. ~~Other: fees, charges, or other things of value (specify):~~ Other expenses (specify):

Actual	Estimated
total	total
\$	\$

2. We certify that no other fees, charges, or things of value other than court costs have been given or shall be given by ~~any party~~ anyone in connection with this adoption ~~proceeding~~.

3. We declare that this disclosure statement has been examined by each of us and that its contents are true to the best of our information, knowledge, and belief.

4. We understand that each of us has a continuing obligation to supplement and amend this affidavit as necessary.

5. We understand that this information will be transmitted to the office of community services, Louisiana Department of Social Services.

We further understand that it may be released by written authorization of the court for purposes of a grand jury investigation pursuant to R.S. 14:286 or for an ethical investigation by the Committee on Professional Responsibility of the Louisiana Bar Association.

Signature of Attorney

Address

____ DAY OF _____, 19____.

* * *

* * *

* * *

CODING: Words in ~~struck-through~~ type are deletions from existing law; words underscored are additions.

1 regulations as are necessary and appropriate to implement this
2 authorization in accordance with the Administrative Procedure Act,
3 R.S. 49:951 et seq., as amended.

4 ~~B.~~ C. The department shall make every effort to locate any
5 living parent whose consent is required under Article 1193 to determine
6 the parent's attitude toward the proposed adoption. If a curator ad hoc
7 has been appointed by the court pursuant to Article 1205, the
8 department shall supply him with all information pertinent to the
9 location of an absentee parent within fifteen days of its receipt of a
10 copy of the order appointing the curator ad hoc.

11 Comments —1999

12 This revision reflects current practice of the department.

13 Art. 1208. Hearing; petition for agency adoption

14 A. The court shall ~~set a~~ sign the order setting the time and place
15 for the hearing of the petition for agency adoption not less than thirty
16 nor more than sixty days after the filing of the adoption petition. The
17 court may extend this time for up to sixty additional days for good
18 cause, which may include a showing by the department that it has been
19 impossible to gather the necessary data within the time prescribed. The
20 court may reduce the time to a minimum of fifteen days with written
21 approval of the department and the petitioner. If an extension of time
22 is granted, the court shall set a new hearing date and shall require the
23 petitioner to report to the court, either at that hearing, or before, in
24 detail concerning the progress of the child's adoptive placement.

25 B. At this hearing the court shall consider:

26 * * *

1 (4) The report of any criminal records or validated complaints
2 of child abuse or neglect concerning the petitioner.

3 ~~(4)~~ (5) The testimony of the parties.

4 * * *

5 Comments —1999

6 This amendment includes a requirement that the court consider
7 any criminal or child abuse or neglect record of a prospective adopting
8 parent. The court has discretion to grant an adoption despite such prior
9 charges. In accordance with Art. 1217, the overriding standard is the
10 child's best interests.

11 * * *

12 Art. 1211. Final decree at first hearing

13 ~~The court~~ Notwithstanding Article 1216, upon due consideration
14 of the factors enumerated in Article 1208(B), the court may render a
15 final decree of private adoption at the first hearing, without the
16 necessity of first entering an interlocutory decree, if either:

17 * * *

18 Comments —1999

19 This addition is made simply for clarification.

20 * * *

21 Art. 1213. Continuing duties of the department; home study report

22 A. After an interlocutory decree has been entered, the
23 department shall maintain contact with the proposed adoptive home
24 directly or through another agency in accordance with Paragraph B.
25 The number of visits to the home and the time for them shall be within
26 the discretion of the department. However, no less than two visits shall
27 be made to the home, one of which shall occur within thirty days
28 before the final decree of agency adoption.

1 decree, if rendered, review hearings shall be held every ninety days
2 until a final decree of adoption is rendered.

3 * * *

4 Art. 1223. Fee disclosure; permissible reimbursement of expenses;
5 court review; report

6 A. The petitioner shall file with the petition a preliminary
7 estimate and accounting of fees and charges in accordance with Article
8 1201. The petitioner also shall file a final Adoption Disclosure
9 Affidavit with the court not later than ten days prior to the date
10 scheduled for the final hearing on the adoption.

11 B. Payments made by or on behalf of the adoptive parents or
12 their representative to a biological parent or his agent or representative
13 or to an attorney, broker, or other intermediary for reimbursement of
14 the following expenses are permissible and not a violation of R.S.
15 14:286:

16 (1) Reasonable medical expenses, including hospital, testing,
17 nursing, pharmaceutical, travel, or other similar expenses, incurred by
18 the biological mother for prenatal care and those medical expenses
19 incurred by the biological mother and child incident to birth.

20 (2) Reasonable medical expenses, including hospital, testing,
21 nursing, pharmaceutical, travel, or other similar expenses, and foster
22 care expenses incurred on behalf of the child prior to the decree of
23 adoption.

24 (3) Reasonable expenses incurred for adjustment counseling
25 and training services provided to the adoptive parents and for home
26 studies or investigations.

1 (4) Reasonable court costs, travel costs, and attorney fees
2 connected with an adoption.

3 (5) Reasonable expenses incurred for mental health counseling
4 services provided to a biological parent or a child for a reasonable time
5 before and after the child's placement for adoption.

6 (6) Reasonable expenses incurred in ascertaining the
7 information required by Articles 1124 and 1125.

8 (7) Reasonable living expenses incurred by a mother for a
9 reasonable time before the birth of her child and for no more than forty-
10 five days after the birth.

11 (8) Reasonable attorney fees, court costs, travel, or other
12 expenses incurred on behalf of a parent who surrenders a child for
13 adoption or otherwise consents to the child's adoption.

14 (9) Any other specific service or fee the court finds is
15 reasonable and necessary.

16 C. The payment of expenses permitted by Paragraph B may not
17 be made contingent on the placement of a child for adoption,
18 relinquishment of the child, or consent to the adoption.

19 D. Adoptive parents shall pay to the department any of the
20 expenses listed in Paragraph B of this Article which may be imposed
21 by the department. Such payments shall be imposed solely at the
22 discretion of the department. The department shall not include payment
23 of the expenses listed in Paragraph B of this Article as a requirement
24 for adoption.

25 E. If a court determines from an accounting that an amount that
26 is going to be or has been disbursed for expenses permitted by

1 Paragraph B is unreasonable, it may order a reduction in the amount to
2 be disbursed and order the person who received the disbursement to
3 refund that portion.

4 F. If a court determines from an accounting that an amount is
5 going to be or has been disbursed for expenses not permitted by
6 Paragraph B, it may:

7 (1) Issue an injunction prohibiting the disbursement or order the
8 person who received the disbursement to refund it.

9 (2) Refer the case to the district attorney for the consideration
10 of criminal charges pursuant to R.S. 14:286.

11 (3) Refuse to approve the adoption, if in the best interest of the
12 child.

13 G. The court shall not issue a final decree of adoption until it
14 has reviewed and approved the final accounting.

15 H. A copy of the Adoption Disclosure Affidavit and all orders
16 of the court pursuant to this Article shall be mailed to the office of
17 adoption services, Louisiana Department of Social Services.

18 Comments —1999

19 This substantive article upon which the subsequent article is
20 based was inadvertently omitted in previous texts. The text of this
21 article is based upon the parallel article in agency adoptions, Art. 1200.
22 See the Comments to that article.

23 ~~Art. 1223.~~ Art. 1223.1. Adoption disclosure affidavit of fees and
24 charges; form

25 A. Each petition for private adoption shall be accompanied by
26 an affidavit executed by petitioner and petitioner's attorney containing
27 an accounting of fees and charges paid or agreed to be paid by or on
28 behalf of the petitioner in connection with the adoption.

1 B. The affidavit shall not include any identifying information as
2 to the biological parents, their families, or the child's birth name.

3 C. The form for the affidavit shall be as follows:

4 "ADOPTION DISCLOSURE AFFIDAVIT

5 BEFORE ME, the undersigned authority, personally came and
6 appeared _____ (petitioner) and _____ (attorney for
7 petitioner), who being first duly sworn, did depose and state:

8 In the matter of the adoption by _____ (petitioner's name):

9 1. We report the following fees and charges or other things of
10 value given in connection with this adoption:

11		Actual	Estimated	Due or paid to
12		\$	\$	

13 A. ~~Attorney fees:~~ Legal expenses:

14 1. Attorney fees

15 2. Court costs

16 3. Travel costs

17 4. Overhead

18 5. Other (Specify)

19 B. ~~Adoption agency fees:~~ Mental Health Counseling expenses:

20 1. Counseling for adopting parents

21 2. Home study evaluations

22 3. Counseling for biological parents

23 4. Counseling for the child

24 5. Statement of Family History information

25 6. Other (Specify)

26 C. ~~Medical costs~~ expenses for biological mother:

1 1. ~~Child~~ Medical

2 2. ~~Birth mother~~ Travel

3 3. Other (Specify)

4 D. Medical/foster care expenses for child:

5 1. Medical

6 2. Travel

7 3. Other (Specify)

8 ~~D. E. Birth mother's expenses~~ Living expenses of the biological
9 mother:

10 1. Room and board

11 2. ~~Travel~~ Other (Specify)

12 3. ~~Mental health counseling~~

13 ~~E. E. Other: fees, charges or other things of value (specify):~~ Other
14 expenses (specify):

15 Actual Estimated Due or paid to
16 \$ \$

17 2. We certify that no other fees, charges, or things of value
18 other than court costs have been given or shall be given by ~~any party~~
19 anyone in this adoption ~~proceeding~~.

20 3. We declare that this disclosure statement has been examined
21 by both of us and that its contents are true to the best of our
22 information, knowledge, and belief.

23 4. We understand that each of us has a continuing obligation to
24 supplement and amend this affidavit as necessary.

25 5. We understand that this information will be transmitted to the
26 office of community services, Louisiana Department of Social

Services. ~~We further understand that it~~ may be released by written authorization of the court for purposes of a grand jury investigation pursuant to R.S. 14:286 or for an ethical investigation by the Committee on Professional Responsibility of the Louisiana Bar Association.

_____	_____
Signature of Petitioner	Signature of Attorney
_____	_____
Address	Address

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS
____ DAY OF _____, 19____.

(NOTARY PUBLIC)"

D. The adoption disclosure affidavit shall not be included as an exhibit for service with a copy of the petition under Article 1224.

E. Confidentiality of the information contained in the adoption disclosure affidavit shall be maintained as provided in Chapter 5 of this Title, and shall be released only in accordance with this Article or on written authorization of the court for the purposes of a grand jury investigation of a violation of R.S. 14:286 or an ethical investigation by the Committee on Professional Responsibility of the Louisiana Bar Association.

Comments —1999

This provision substantially reproduces former Article 1223, with revisions necessary to accommodate the revisions made to Art. 1200 and replicated in new Article 1223.

* * *

1 Art. 1229. Duties of the department; home study; confidential report

2 * * *

3 B. The department may delegate the performance of this
4 investigation to a licensed private adoption agency, but the department
5 remains responsible for ensuring the accuracy and thoroughness of the
6 resulting report and for the safety and welfare of the child. The
7 department shall adopt, promulgate, and enforce such rules and
8 regulations as are necessary and appropriate to implement this
9 authorization in accordance with the Administrative Procedure Act,
10 R.S. 49:951 et seq., as amended.

11 ~~B.~~ C. The department shall make every effort to locate any
12 living parent whose consent is required under Article 1193 to determine
13 the parent's attitude toward the proposed adoption. If a curator ad hoc
14 has been appointed by the court pursuant to Article 1227, the
15 department shall supply him with all information pertinent to the
16 location of an absentee parent within fifteen days of its receipt of a
17 copy of the order appointing the curator ad hoc.

18 Comments —1999

19 This revision reflects current practice of the department.

20 Art. 1230. Hearing; petition for private adoption

21 A. The court shall ~~set a~~ sign the order setting the time and place
22 for the hearing of the petition for private adoption not less than thirty
23 nor more than sixty days after the filing of the adoption petition. The
24 court may extend this time for up to sixty additional days for good
25 cause, which may include a showing by the department that it has been
26 impossible to gather the necessary data within the time prescribed. The

1 court may reduce the time to a minimum of fifteen days with written
2 approval of the department and the petitioner. If an extension of time
3 is granted, the court shall set a new hearing date and shall require the
4 petitioner to report to the court, either at that hearing, or before, in
5 detail concerning the progress of the child's adoptive placement.

6 B. At this hearing the court shall consider:

7 * * *

8 (4) The report of any criminal records or validated complaints
9 of child abuse or neglect concerning the petitioner.

10 ~~(4)~~ (5) The testimony of the parties.

11 * * *

12 Comments —1999

13 This change only requires consideration of any criminal or child
14 abuse or neglect record of a prospective adopting parent. The court has
15 discretion to grant an adoption despite such prior charges. In
16 accordance with Art. 1239, the overriding standard is the child's best
17 interests.

18 * * *

19 Art. 1233. Final decree at first hearing

20 ~~The court~~ Notwithstanding Article 1238, upon due consideration
21 of the factors enumerated in Article 1230(B), the court may render a
22 final decree of private adoption at the first hearing, without the
23 necessity of first entering an interlocutory decree, only if ~~either~~ ~~(1)~~ the
24 rights of the child's parents have been terminated pursuant to Title X or
25 XI and the child has lived in the petitioner's home for one year.

26 ~~(2) A parent petitions to adopt his child born out of wedlock.~~

27 Comments —1999

28 Article 1238 establishes the general rule that the child must have
29 lived with the petitioner for at least one year and at least six months

1 after the granting of an interlocutory degree at the first hearing. This
2 article eliminates the requirement of an interlocutory decree but
3 preserves the one-year trial period of residence in any prospective
4 adoptive home, including the situation when the adopting father claims
5 to be the child's biological father.

6 * * *

7 Art. 1235. Continuing duties of the department; home study report

8 A. After an interlocutory decree has been entered, the
9 department shall maintain contact with the proposed adoptive home
10 directly or through another agency in accordance with Paragraph B.
11 The number of visits to the home and the time for them shall be within
12 the discretion of the department. However, no less than two visits shall
13 be made to the home, one of which shall occur within thirty days
14 before the final decree of agency adoption.

15 B. The department may delegate the performance of this
16 investigation to a licensed private adoption agency, but the department
17 remains responsible for ensuring the accuracy and thoroughness of the
18 resulting report and for the safety and welfare of the child. The
19 department shall adopt, promulgate, and enforce such rules and
20 regulations as are necessary and appropriate to implement this
21 authorization in accordance with the Administrative Procedure Act,
22 R.S. 49:951 et seq., as amended.

23 ~~B. C.~~ A second confidential report must be presented to the
24 court preceding the hearing on the final decree of agency adoption.
25 The findings of this report shall be based upon the same considerations
26 as prescribed in Article 1229 and shall disclose any changed conditions
27 and all new pertinent information.

Comments —1999

This revision reflects current practice of the department.

Art. 1236. ~~Expiration of interlocutory~~ Interlocutory decree; review
hearings

~~If no petition for a final decree is filed within two years after the~~
~~granting of an interlocutory decree, the latter shall become null and~~
~~void unless good cause is shown why an extension should be granted.~~

A. If an interlocutory decree has not been rendered within six
months of the filing of the petition and review hearings are not
otherwise required under Titles IX and X, review hearings shall be held
every ninety days until an interlocutory decree is rendered.

B. If a final decree has not been rendered within six months of
the filing of the petition, or within six months of an interlocutory
decree, if rendered, review hearings shall be held every ninety days
until a final decree of adoption is rendered.

* * *

Art. 1243. Persons who may petition for intrafamily adoption

A. The following persons may petition for an intrafamily
adoption:

~~(1) A stepparent married to the parent of a child, provided that~~
~~the parent is recognized as having parental rights in accordance with~~
~~Article 1193.~~

~~(2) A single grandparent, married grandparents, or aunt or~~
~~uncle, of a child, provided all the following exist:~~

1 ~~(a) The parent through whom the grandparent, aunt, or uncle is~~
2 ~~claiming the right to petition is a parent recognized as having parental~~
3 ~~rights in accordance with Article 1193.~~

4 ~~(b) The child has been in the home of the grandparent, aunt, or~~
5 ~~uncle for six months prior to the filing of a petition for adoption.~~

6 (1) A great-grandparent, grandparent, aunt, great aunt, uncle,
7 great uncle, sibling, or first cousin who is related to the child through
8 a parent recognized as having parental rights in accordance with Article
9 1193 may petition to adopt the child if the child has been in his legal
10 or physical custody for at least six months prior to filing the petition for
11 adoption.

12 (2) A stepparent married to a parent of the child who is
13 recognized as having parental rights in accordance with Article 1193
14 may petition to adopt the child if the stepparent has been married to the
15 parent and they have resided with the child for at least six months prior
16 to filing the petition for adoption.

17 B. When the spouse of the stepparent or one joint petitioner dies
18 after the petition has been filed, the adoption proceedings may continue
19 as though the survivor was a single original petitioner.

20 ~~C. For purposes of this Chapter:~~

21 ~~(a) "Aunt" or "uncle" means a sibling of a parent of the child.~~

22 ~~(b) "Grandparent" includes a great grandparent.~~

23 Comments —1999

24 There has been a clear trend over the past ten years to broaden
25 the category of relatives who may seek an intrafamily adoption.
26 Aunts/uncles were included by the 1997 legislature, though cousins and
27 siblings were still excluded. It is difficult to justify this arbitrary line
28 of demarcation as long as the requirement is retained that the petitioner
29 relative must also have undertaken responsibility for the child's

1 caretaking in his or her home for at least six months prior to filing for
2 the adoption. In addition, the court has the authority pursuant to
3 Article 1252 to order the Department of Social Services to conduct a
4 confidential investigation. Article 622 which defines "kinship care",
5 the class of relatives who are to be given priority as custodians in a
6 child in need of care case, includes cousins as well as siblings. Cf. Art.
7 1171. Note that neither Art. 622 nor Art. 1243 defines whether the
8 relationship is limited to a relationship by blood or includes a
9 relationship by adoption or by marriage.

10 Art. 1243.1. Intrafamily adoptions

11 The provisions of this Chapter govern intrafamily adoptions and
12 take precedence when in conflict with another provision of this Title.

13 Comments —1999

14 The addition of this new article does not reflect a substantive
15 change. The substance of this provision was added for clarification by
16 the legislature in 1997 in amending Art. 1244(D), but more
17 appropriately should be set forth here.

18 Art. 1243.2. Institution of records check

19 A. Upon the filing of a petition, the court shall immediately
20 issue both of the following orders:

21 (1) That the local sheriff conduct a records check for all federal
22 arrests and convictions and all state arrests and convictions for each of
23 the prospective adoptive parents.

24 (2) That the department conduct a records check for validated
25 complaints of child abuse or neglect in this or any other state in which
26 either of the prospective adoptive parents has been domiciled since
27 becoming a major, involving either prospective adoptive parent.

28 B. Each order shall state the full name, date of birth, social
29 security number, and former and current state(s) of domicile since
30 becoming a major of each prospective adoptive parent.

1 C. The sheriff and the department shall accord priority to these
2 orders and shall provide a certificate indicating all information
3 discovered, or that no information has been found.

4 Comments —1999

5 The source of this language is Art. 1131(C) through (E). The
6 purpose of this provision is to ensure that a records check for both
7 abuse/neglect and criminal records will be required for all adopting
8 parents, regardless of the type of adoption.

9 Art. 1244. Consent of parent

10 A. ~~Notwithstanding any provision of law to the contrary~~ Except
11 as otherwise provided herein, any parent may execute an authentic act
12 consenting to the adoption of his child in an intrafamily adoption,
13 including a waiver of service for any subsequent ~~adoption~~ proceeding.

14 * * *

15 Comments —1999

16 Paragraph D is repealed because its substance is the subject of
17 new Article 1243.1. If the parent is a minor, his parent(s) may be
18 required to join in his consent to an intrafamily adoption. See Art.
19 1113(D).

20 Art. 1245. Parental consent not necessary

21 A. The consent of a the parent as required by Article 1193 may
22 be dispensed with upon proof of the required elements of either
23 Paragraph B, C, or D of this Article.

24 B. When a ~~grandparent, aunt, or uncle~~ petitioner authorized by
25 Article 1243 has been granted custody of the child by a court of
26 competent jurisdiction and any one of the following conditions exists:

27 (1) ~~A~~ The parent has refused or failed to comply with a court
28 order of support without just cause for a period of ~~one year~~ at least six
29 months.

1 ~~(2) A parent is a nonresident of this state and has failed to~~
2 ~~support the child for a period of one year after the judgment awarding~~
3 ~~custody.~~

4 ~~(3) (2) A~~ The parent has refused or failed to visit, communicate,
5 ~~or attempt to communicate with the child without just cause for a~~
6 ~~period of two years~~ at least six months.

7 ~~C. When a parent is married to a stepparent petitioner and both~~
8 ~~of the following conditions exist:~~

9 ~~(1) The parent married to the stepparent petitioner has been~~
10 ~~granted sole or joint custody of the child by a court of competent~~
11 ~~jurisdiction.~~

12 ~~(2) The noncustodial parent is a nonresident of this state and~~
13 ~~has failed to support the child for a period of one year after the~~
14 ~~judgment awarding custody.~~

15 C. When the spouse of a stepparent petitioner has been granted
16 sole or joint custody of the child by a court of competent jurisdiction
17 or is otherwise exercising lawful custody of the child and any one of
18 the following conditions exists:

19 (1) The other parent has refused or failed to comply with a court
20 order of support without just cause for a period of at least six months.

21 (2) The other parent has refused or failed to visit, communicate,
22 or attempt to communicate with the child without just cause for a
23 period of at least six months.

24 ~~D. When a parent lawfully exercising actual custody of the~~
25 ~~child is married to a stepparent petitioner and either of the following~~
26 ~~conditions exist:~~

(1) ~~The other parent has refused or failed to comply with a court order of support for a period of one year.~~

(2) ~~The other parent has refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of two years.~~

Comments —1999

This article has been simplified and made consistent with the parallel policies of the "abandonment" ground in a certification for adoption proceeding. See Art. 1015(4). The issue of whether the parent retains the right to refuse consent to the adoption or has forfeited it will be resolved at the hearing required by Article 1253. Even if the court finds that the petitioner has sufficiently proved a ground of parental forfeiture, the court may still refuse to approve the adoption if it finds that it would not be in the child's best interest (Art. 1255). Indeed, denial of an adoption decree based on the best interest of the child is most prevalent in stepparent adoptions relying upon a failure of support. Courts have repeatedly held that a showing of nonsupport is not an automatic trigger allowing an adoption; the court must consider the factors which determine the child's best interests, including the environment of the adoptive home and the relationship between the child and the noncustodial parent. (See *In re Glass Applying for Adoption*, 424 So.2d 383 (2d Cir 1982); *In re D.W.H.*, 457 So.2d 137 (2d Cir. 1984).

* * *

Art. 1253. Hearing; petition for intrafamily adoption

A. The court shall ~~set a~~ sign the order setting the time and place for the hearing of the petition for intrafamily adoption not less than thirty nor more than sixty days after the filing of the adoption petition. The court may extend this time for up to sixty days for good cause, which may include a showing by the department that it has been impossible to gather the necessary data within the time prescribed. The court may reduce the time to a minimum of fifteen days with written approval of the department and the petitioner. If an extension of time is granted, the court shall set a new hearing date and shall require the

1 petitioner to report to the court, either at that hearing, or before, in
2 detail concerning the progress of the child's adoptive placement.

3 B. At this hearing the court shall consider:

4 * * *

5 (4) The report of any criminal records or validated complaints
6 of child abuse or neglect concerning the petitioner.

7 ~~(4)~~ (5) The testimony of the parties.

8 * * *

9 Comments —1999

10 This change only requires consideration of any criminal or child
11 abuse or neglect record of a prospective adopting parent. The court has
12 discretion to grant an adoption despite such prior charges. In
13 accordance with Art. 1255, the overriding standard is the child's best
14 interests.

15 * * *

16 Art. 1263. Time limitations; finality

17 A. ~~(1)~~ No action to annul a final decree of adoption ~~of any type~~
18 based upon a claim of fraud or duress perpetrated by the adoptive
19 parent or by his agent or representative with the parent's knowledge
20 ~~may~~ shall be brought ~~for any reason~~ after a lapse of six months from
21 the date of discovery of the fraud or duress.

22 ~~(2) However, even as to actions filed within six months from~~
23 ~~the date of such discovery, in all events such actions to annul a final~~
24 ~~decree of adoption shall be filed at the latest within a period of four~~
25 ~~years from the date of the signing of the final decree or mailing of the~~
26 ~~notice of judgment when required.~~

27 B. ~~In an action to annul a final decree of adoption based on~~
28 ~~fraud or duress perpetrated by the adoptive parent or parents on the~~

1 ~~petitioning biological parent, the peremptive provisions of Paragraph~~
2 ~~A(2) of this Subsection do not apply.~~ An action to annul a final decree
3 of adoption based upon a claim of fraud or duress perpetrated by
4 anyone else must be brought within six months from discovery of the
5 fraud or duress and in no event later than four years from the date of
6 the signing of the final decree or mailing of the judgment when
7 required.

Comments —1999

Only a stylistic change for clarification of the time limits has been made.

* * *

Art. 1270. Legislative findings; purpose

* * *

C. The use of the registry shall be limited to the adopted person who is at least eighteen years of age, the biological mother, the biological father, ~~if the biological father has legitimated or formally acknowledged the child as provided by law or has executed a voluntary surrender or consent to the child's adoption regardless of whether the parent's rights were terminated in accordance with Title X or surrendered in accordance with Titles XI and XII,~~ and any biological sibling who is at least eighteen years of age.

* * *

Comments —1999

This revision deletes a statutory prohibition against the use of the voluntary registry by some fathers of illegitimate children, a prohibition that antedated the promulgation of the Children's Code. Only fathers who had legitimated, formally acknowledged, surrendered or otherwise consented to the child's adoption could register. Perversely, such a restriction punished a caring father who contested an adoption. In addition the restriction which applied only to fathers of illegitimate children may have been unconstitutional. Most important, barring registration by these fathers also bars their children from seeking information about their paternal ancestry from the voluntary registry.

* * *

Section 5. Children's Code Articles 1194 and 1244(D) are hereby repealed in their entirety.

1 Comments —1999

2 Article 1194 was repealed by implication when Article 1015(6)
3 was revised substantially by the 1997 legislature. Both articles
4 authorize the use of a parent's incarceration as a ground for terminating
5 his parental rights, though the right of action of Art. 1015(6) is limited
6 to public officials, that is, the district attorney or the Department of
7 Social Services.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

McMains, et al.

HB No. 883

Present law prohibits sale of minor children.

Proposed law distinguishes reasonable adoption expenses in baby selling provision and specifies that the payment or receipt of anything of value for the procurement of a child is strictly prohibited, except reasonable expenses authorized by proposed law. Proposed law removes exemption of private agencies and increases.

Present law provides for reports, placement, and review in certification for adoption proceedings.

Proposed law specifies the responsibilities of DSS for reports and placement, and specifies review hearings procedures when the department is, and is not, the custodian.

Present law provides the procedure for a minor's surrender of her child. (Ch.C. Art. 1113)

Proposed law expands the minor's rights in surrendering her child.

Present law allows waiver of mental health counseling by a parent surrendering her child.

Proposed law prohibits surrendering minor parent from waiving mental health counseling.

Present law allows requests for disclosure of non-identifying records in adoption. (Article 1127)

Proposed law allows agencies to release updated information.

Proposed law specifies the department's duty of the department. (Ch.C. Art. 1127.1)

Present law provides for filing of surrenders of children for adoption.

Proposed law requires the court to review the surrenders and refuse them pending corrections of defects.

Present law provides for notice of filing of the surrender. (Ch.C. Art. 1132)

Proposed law specifies required efforts to locate the child's alleged or adjudicated father, and specifies notice requirements and the form of the notice to the father.

Present law requires the court, upon motion, to approve the surrender and terminate parental rights if no opposition is filed.

Proposed law removes requirement of the court's approval of surrenders when no opposition is filed.

Present law provides for the placement reports and permanency reviews when children are surrendered for adoption.

Proposed law specifies the duties and timing of the filing of such reports when the department is, and is not, the custodian of the child.

Present law provides definitions for adoption procedure.

Proposed law adds "broken" to definitions Article for purposes of prohibition of sale of children.

Present law provides for certification for adoption after pre-placement home studies. (Ch.C. Art. 1142)

Proposed law clarifies that certification for adoption for pre-placement is not the judicial certification for adoption.

Present law provides for venue in adoptions. (Ch.C. Art. 1180)

Proposed law specifies venue when a child has been adjudicated a child in need of care (CINC).

Present law provides for adoption records. (Ch.C. Art. 1186)

Proposed law specifies the confidentiality requirements for records.

Present law provides for fee disclosure.

Proposed law specifies allowable fees and expenses, clarifies that payment may not be made contingent upon an adoption, and provides for court review and adjustment of fees and expenses.

Present law provides for adoption disclosure affidavit.

Proposed law specifies expense statement and requires copies to be forwarded to DSS.

Present law provides for duties of DSS in agency adoption. (Ch.C. Art. 1207)

Proposed law specifies DSS's ultimate responsibility for the required confidential report.

Present law provides for hearings in agency adoptions.

Proposed law specifies court review of the progress of the adoption and requires a records check of prospective adoptive parents.

Present law provides for final decrees at the first hearing in agency adoptions.

Proposed law provides for such decrees notwithstanding the requirement in Ch.C. Art. 1216 that a child shall have lived with a petitioner for a certain time.

Present law provides for duties of the department, including duty to prepare home study report in agency adoptions.

Proposed law specifies department's ultimate responsibility for such reports.

Present law provides for expiration of interlocutory decree in agency adoptions. (Ch.C. Art. 1214)

Proposed law provides for permanency review hearings until a final decree of adoption is rendered.

Present law provides for fee disclosure in private adoptions.

Proposed law specifies allowable fees and expenses, requires court review and control of such expenses, and requires a copy of the disclosure affidavit to be sent to DSS.

Present law provides for adoption disclosure affidavit in private adoptions.

Proposed law conforms affidavit to new adoption expense disclosure provisions.

Present law provides department's duties in private adoptions, including home studies and confidential reports. (Ch.C. Art. 1229)

Proposed law specifies department's ultimate responsibility for the confidential report.

Present law provides for hearing the petition for private adoption.

Proposed law specifies court's duty to set hearing dates, requires the petitioner to report on the progress of the child's adoptive placement, and provides for court review of any criminal records or complaints concerning the petitioner.

Present law provides for final decrees at first hearings in private adoptions.

Proposed law specifies such decrees may be rendered notwithstanding requirement that child has lived with the petitioner for a minimum specified time.

Present law provides for department's duty to submit home study report in private adoptions. (Ch.C. Art. 1235)

Proposed law specifies department's ultimate responsibility for such reports.

Present law specifies eligible petitioner for intrafamily adoptions.

Proposed law broadens the category of relatives who may seek an intrafamily adoption.

Present law provides for intrafamily adoptions.

Proposed law specifies that intrafamily adoption provisions take precedence over other adoption provisions when there is a conflict.

Present law does not provide specific provision for records checks in intrafamily adoptions.

Proposed law provides new provision requiring records checks for both abuse/neglect and criminal records in intrafamily adoptions, Article 1243.2.

Present law provides for consent of parent in intrafamily adoptions.

Proposed law deleted redundant provision that no surrender of parental rights is required for a valid consent in intrafamily adoptions.

Present law provides when consent is not necessary in intrafamily adoptions.

Proposed law specifies when consent is not necessary, including when grounds exist parallel to the grounds for "abandonment" in termination proceedings.

Present law provides for hearings in intrafamily adoptions. (Ch.C. Art. 1253)

Proposed law requires signed orders setting the hearing; adds specific requirements for extension of time, and court review of the progress of the child's adoptive placement; and, requires court review of criminal or child abuse/neglect complaints concerning the petitioner.

Present law provides for finality of adoption decrees. (Ch.C. Art. 1263)

Proposed law specifies preclusion of any action to annul an adoption after six months, or, if not against the adoptive parent, no more than six months from discovery of fraud, or four years after the final decree.

Present law provides for purpose of voluntary registration.

Proposed law deletes prohibition of use of voluntary registry by some fathers of illegitimate children.

(Amends R.S. 14:286 and Ch.C. Arts. 1040, 1041(A), 1042, 1113(A) and (D), 1120(C), 1127(A), (B), and (C), 1131(C), (D), and (E), 1132, 1142(A), 1144, 1146, 1174, 1180(A)(4), 1186, 1200, 1201(C) and (E), 1207(B), 1208(A) and (B)(4), 1211(intro. para.), 1213, 1214, 1223, 1229(B), 1230(A) and (B)(4), 1233, 1235, 1236, 1243, 1244(A), 1245, 1253(A) and (B)(4), 1263, and 1270(C); Adds Ch.C. Arts. 1127.1, 1131(F), 1169(2.1), 1180(A)(5), 1207(C), 1208(B)(5), 1223.1, 1229(C), 1230(B)(5), 1243.1, 1243.2, and 1253(B)(5); Repeals Ch.C. Arts. 1194 and 1244(D)