

ACT No. 151

2017 Regular Session

HOUSE BILL NO. 343

BY REPRESENTATIVE FRANKLIN

1 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 Section 1. Children's Code Articles 1004(B), (D), (F), and (I), 1035(B),
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:

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~~(3)(k)~~(4)(k).

7 (3) The child has been abandoned and termination is authorized by Article
8 1015~~(4)~~(5).

9 (4) The child has been placed in the custody of the state and termination is
10 authorized by Article 1015~~(5)~~(6).

11 (5) The child is in foster care because the parent is incarcerated and
12 termination is authorized by Article 1015~~(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~~(4)~~(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 * * *

28 B. The parent asserting a mental or physical disability as an affirmative
29 defense to abandonment under Article 1015~~(4)~~(5) bears the burden of proof by a
30 preponderance of the evidence.

1 Art. 1036. Proof of parental misconduct

2 * * *

3 C. Under Article 1015~~(5)~~(6), lack of parental compliance with a case plan
4 may be evidenced by one or more of the following:

5 * * *

6 D. Under Article 1015~~(5)~~(6), lack of any reasonable expectation of
7 significant improvement in the parent's conduct in the near future may be evidenced
8 by one or more of the following:

9 * * *

10 E. Under Article 1015~~(6)~~(7), a sentence of at least five years of
11 imprisonment raises a presumption of the parent's inability to care for the child for
12 an extended period of time, although the incarceration of a parent shall not in and of
13 itself be sufficient to deprive a parent of his parental rights.

14 * * *

15 Art. 1036.2. Incarcerated parent; duties; assessment

16 * * *

17 E. The notification form given to the incarcerated parent shall be
18 substantially as follows:

19 NOTICE OF DUTY TO PROVIDE A REASONABLE PLAN FOR THE
20 APPROPRIATE CARE OF YOUR CHILD AND TERMINATION OF
21 PARENTAL RIGHTS LAW

22 NOTICE TO PARENT: YOUR CHILD(REN), _____
23 HAS/HAVE BEEN PLACED IN THE CUSTODY OF THE LOUISIANA DEPARTMENT
24 OF CHILDREN AND FAMILY SERVICES BY ORDER OF THE
25 _____ Parish juvenile court _____ on
26 _____.

27 PLEASE BE ADVISED OF THE FOLLOWING:

28 Louisiana law provides that you may name a person who is willing and able to serve
29 as the custodian of your child(ren) and to offer a wholesome and stable environment for your

1 child(ren). Failure to furnish a reasonable plan for the appropriate care of your child(ren)
2 may result in the termination of your parental rights.

3 Please refer to Louisiana Children's Code, Title X, Articles 1001 to 1043, especially
4 Articles 1015~~(6)~~(7) and 1036(E), for the details of Louisiana law regarding the termination
5 of parental rights. A copy of the law is attached to this notice.

6 You are hereby notified that Louisiana law requires that you provide a reasonable
7 plan for the appropriate care of your child(ren), other than continued foster care, within sixty
8 (60) days of your receipt of this notice, which date is _____. Your
9 plan shall include the names, addresses, cellular numbers, telephone numbers, and other
10 contact information of every suitable alternative caregiver. You may provide additional
11 information by filling out this form and mailing it in the stamped, self-addressed envelope
12 given to you by the department before _____. If you fail or refuse to
13 do so, you may lose all rights to your child(ren). Your plan will be examined to determine
14 if it is reasonable and appropriate. Please provide your plan in detail no later than
15 _____ to the following person:

16 NAME: _____

17 ADDRESS: _____

18 CITY/STATE/ZIP: _____

19 TELEPHONE: _____

20 NOTE: IF YOU HAVE ANY QUESTIONS OR NEED ANY ASSISTANCE, CONTACT
21 THE ABOVE PERSON OR YOUR ATTORNEY IMMEDIATELY.

22 Copy of the law, La. Ch.C. Arts. 1001 - 1043, Attached. PLEASE READ.

23 I, _____, hereby certify that a copy of this notice with
24 La. Ch.C. Arts. 1001-1043 attached, was delivered to _____ on
25 _____ by personal delivery at the following location
26 _____.

27 DATE: _____

28 _____

29 Signature of caseworker

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

1 I, _____, have received a copy of this notice, together
 2 with the attached laws (La. Ch.C. Arts. 1001-1043), and acknowledge that I understand fully
 3 that my rights may be terminated and my child(ren) adopted by others if I do not provide a
 4 reasonable plan of appropriate care while I am incarcerated, other than continued foster care,
 5 within sixty (60) days of my receipt of this notice on _____.

6 _____

7 Signature of parent

8 Witness: _____ Date: _____

9 Section 2. This Act shall become effective upon signature by the governor or, if not
 10 signed by the governor, upon expiration of the time for bills to become law without signature
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 13 effective on the day following such approval.

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 PRESIDENT OF THE SENATE

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____