

2017 Regular Session

HOUSE BILL NO. 343

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

1 AN ACT

2 To amend and reenact Children's Code Articles 1004(B), (D), and (F), 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 for technical
5 corrections; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Children's Code Articles 1004(B), (D), and (F), 1035(B),
8 1036(C)(introductory paragraph), (D)(introductory paragraph), and (E), and 1036.2(E) are
9 hereby amended and reenacted to read as follows:

10 Art. 1004. Petition for termination of parental rights; authorization to file

11 * * *

12 B. Counsel appointed for the child pursuant to Article 607 may petition for
13 the termination of parental rights of the parent of the child if the petition alleges a
14 ground authorized by Article 1015(4),(5), ~~or (6), or (7)~~ and, although eighteen
15 months have elapsed since the date of the child's adjudication as a child in need of
16 care, no petition has been filed by the district attorney or the department.

17 * * *

18 D. The department may petition for the termination of parental rights of the
19 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 Art. 1035. Burden of proof

20 * * *

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

24 Art. 1036. Proof of parental misconduct

25 * * *

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

28 * * *

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

4 * * *

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

9 * * *

10 Art. 1036.2. Incarcerated parent; duties; assessment

11 * * *

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

14 NOTICE OF DUTY TO PROVIDE A REASONABLE PLAN FOR THE
15 APPROPRIATE CARE OF YOUR CHILD AND TERMINATION OF
16 PARENTAL RIGHTS LAW

17 NOTICE TO PARENT: YOUR CHILD(REN), _____

18 HAS/HAVE BEEN PLACED IN THE CUSTODY OF THE LOUISIANA DEPARTMENT
19 OF CHILDREN AND FAMILY SERVICES BY ORDER OF THE
20 _____ Parish juvenile court _____ on
21 _____.

22 PLEASE BE ADVISED OF THE FOLLOWING:

23 Louisiana law provides that you may name a person who is willing and able to serve
24 as the custodian of your child(ren) and to offer a wholesome and stable environment for your
25 child(ren). Failure to furnish a reasonable plan for the appropriate care of your child(ren)
26 may result in the termination of your parental rights.

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

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

11 NAME: _____
 12 ADDRESS: _____
 13 CITY/STATE/ZIP: _____
 14 TELEPHONE: _____

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

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

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

22 DATE: _____
 23 _____

24 Signature of caseworker

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

1 _____

2 Signature of parent

3 Witness: _____ Date: _____

4 Section 2. This Act shall become effective upon signature by the governor or, if not
5 signed by the governor, upon expiration of the time for bills to become law without signature
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
8 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 Original

2017 Regular Session

Franklin

Abstract: Amends Children's Code articles regarding termination of parental rights to make technical corrections.

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

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

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

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