

SENATE BILL NO. 81

BY SENATOR BISHOP (On Recommendation of the Louisiana State Law Institute)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

AN ACT

To amend and reenact Children's Code Articles 405(A) and (B), 1016(A), and 1025.4(A)(2), and to enact Children's Code Articles 116(4.1), 643(C), 1004(D)(6), 1015(10), and 1023(C), relative to curators; to provide for definitions; to provide for the payment of fees; to provide relative to unidentified parents; to provide relative to termination of parental rights; to provide relative to right to counsel; to provide relative to conference scheduling; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 405(A) and (B), 1016(A), and 1025.4(A)(2) are hereby amended and reenacted and Children's Code Articles 116(4.1), 643(C), 1004(D)(6), 1015(10), 1023(C) are hereby enacted to read as follows:

Art. 116. Definitions

Except where the context clearly indicates otherwise, these definitions apply for the following terms used throughout this Code.

* * *

1 (4.1) "Diligent effort to locate" means efforts made by a curator that,
 2 under the circumstances known to the curator, are reasonably calculated to
 3 locate an absentee. Such efforts may include a review of court records,
 4 department records, law enforcement records, vital records, military records,
 5 directory assistance, internet search sites, and licensing agencies. Publication
 6 shall not be required except as specifically provided in this Code.

7 * * *

8 Comments - 2017

9 The list in Article 116(4.1) is illustrative only. What constitutes a diligent
 10 effort is decided on a case-by-case basis. The capacity to conduct searches on the
 11 Internet has become readily available and is highly effective; thus, preference should
 12 be given to internet searches, particularly in lieu of or prior to publication.

13 * * *

14 Art. 405. Court or witness fees; travel expenses

15 A. Except as otherwise provided by law, no court or witness fees shall be
 16 allowed against any party to a petition, and no salaried officer of the state or of any
 17 parish or municipality therein shall be entitled to receive any fee for the service or
 18 for attendance in court in any such proceedings. ~~At~~ **Except as otherwise provided**
 19 **in R.S. 13:4521, all** other persons acting under orders of the court may be paid in the
 20 same manner as in the district court for services or service of process and attendance
 21 or serving as witnesses, the fees provided by law for like services in cases before the
 22 district court.

23 B. The court may authorize the payment of necessary travel expenses to
 24 witnesses attending in response to summons ~~and the payment of curator fees to be~~
 25 ~~fixed by the court. Such~~ **Travel** expenses, when authorized by the court, shall be
 26 paid from the general fund of the parish or other funds available to the court. **Except**
 27 **in proceedings initiated by the state, the court may authorize the payment of**
 28 **curator expenses and fees, which, if so authorized, shall be fixed by the court**
 29 **and paid by petitioners.**

30 * * *

31 Art. 643. Service; absentee **or unidentified** parent; curator ad hoc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

* * *

C. If the father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if the biological father's name is not provided on the birth certificate, there is no presumed father, and no party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.

* * *

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

* * *

D. The department may petition for the termination of parental rights of the parent of the child when any of the following apply:

* * *

(6) The child is in foster care and, despite diligent efforts by the department to identify the child's father, his identity is unknown and termination is authorized by Article 1015(10).

* * *

Art. 1015. Grounds

The grounds for termination of parental rights are:

* * *

(10) The child is in the custody of the department pursuant to a court order for at least one year, unless sooner permitted by the court, and the identity of the child's father remains unknown and all the following have occurred:

(a) In the course of investigating the case and providing services to the family the department has been unable to learn the identity of the father.

(b) No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.

(c) The department has obtained all of the following:

1 (i) A certified copy of the child's birth certificate with no one indicated
 2 thereon as the father of the child, or the father listed has been determined not
 3 to be the biological father of the child.

4 (ii) A recent certificate from the putative father registry indicating that
 5 no person is listed or registered as the child's father.

6 (iii) A recent certificate from the clerk of court in the parish in which the
 7 child was born indicating that no acknowledgment with respect to this child has
 8 been recorded.

9 * * *

10 Art. 1016. Right to counsel

11 A. The child and the **identified** parent shall each have the right to be
 12 represented by separate counsel in a termination proceeding brought under this Title.
 13 Neither the child nor anyone purporting to act on his behalf may be permitted to
 14 waive the child's right to counsel.

15 * * *

16 Art. 1023. Service; absentee parent; **unidentified father**

17 * * *

18 **C. If the father is unidentified, it is not necessary to appoint a curator ad**
 19 **hoc for that parent. The father shall be considered unidentified if the biological**
 20 **father's name is not provided on the birth certificate, there is no presumed**
 21 **father, and no party to the proceedings or the mother, if not a party, is able to**
 22 **provide a first and last name of a putative father or alias sufficient to provide**
 23 **a reasonable possibility of identification and location.**

24 * * *

25 Art. 1025.4. Prehearing and scheduling conference; order

26 A. At the appearance, on its own motion or on motion of counsel, the court
 27 shall direct counsel for the petitioner, for the parents, and for the child to appear
 28 before it for a conference to consider the following:

29 * * *

30 (2) Efforts to identify and locate an **unidentified or** absent parent and

1 relatives or other individuals willing and able to offer a wholesome and stable home
2 for the child.

3 * * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____