

2023 Regular Session

HOUSE BILL NO. 298

BY REPRESENTATIVES HUGHES, BOYD, JEFFERSON, TRAVIS JOHNSON, KNOX,
AND NELSON

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

CHILDREN/PARENTAL RIGHTS: Provides relative to parental rights in certain
circumstances

1 AN ACT

2 To amend and reenact Children's Code Articles 1004(A), 1004.1, 1015, 1015.1, 1016(A),
3 1037(B), and 1039(B) and Civil Code Article 137(A), to enact Children's Code
4 Articles 1004.2 and 1015.2, and to repeal Children's Code Article 1004(I), relative
5 to the termination of parental rights; to provide for the authorization to file a petition
6 for termination; to provide that the conviction and commission of a sex offense
7 leading to the conception of the child is grounds for termination of parental rights;
8 to provide for the petitioner's right to counsel; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Articles 1004(A), 1004.1, 1015, 1015.1, 1016(A),
11 1037(B), and 1039(B) are hereby amended and reenacted and Children's Code Articles
12 1004.2 and 1015.2 are hereby enacted to read as follows:

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

14 A. At any time, including in any hearing in a child in need of care
15 proceeding, the court on its own motion may order the filing of a petition on any
16 ground authorized by Article 1015 or 1015.1.

17 * * *

Art. 1004.1. Petition for termination of parental rights; child conceived as a result of a sex offense

At any time, including prior to or during an adoption proceeding, when a child is conceived as the result of a sex offense as defined in R.S. 15:541, the victim of the sex offense may petition to terminate the rights of the perpetrator of the sex offense. Termination shall result in the loss of all parental rights of the perpetrator regarding the child, including any rights to custody, visitation, and contact, as well as any right to intervene in such action. The termination shall not affect the inheritance rights of the child. The perpetrator shall be cast in judgment for all court costs.

~~Art. 1004.1.~~ 1004.2. Termination of rights; children in state custody

The department shall file and pursue to judgment in the trial court a petition to terminate the parental rights of the parent or parents if the child has been in state custody for seventeen of the last twenty-two months, unless the department has documented in the case plan a compelling reason why filing is not in the best interest of the child.

* * *

Art. 1015. Grounds; termination of parental rights

The grounds for termination of parental rights are:

(1) Conviction of murder of the child's other parent.

(2) Unjustified intentional killing of the child's other parent.

~~(3) Conviction of a sex offense as defined in R.S. 15:541 by the natural parent which resulted in the conception of the child.~~

~~(4)(3)~~ (3) Misconduct of the parent toward this child or any other child of the parent or any other child which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

(a) Murder.

- 1 (b) Unjustified intentional killing.
- 2 (c) Aggravated crime against nature as defined by R.S. 14:89.1(A)(2).
- 3 (d) Rape.
- 4 (e) Sodomy.
- 5 (f) Torture.
- 6 (g) Starvation.
- 7 (h) A felony that has resulted in serious bodily injury.
- 8 (i) Abuse or neglect which is chronic, life-threatening, or results in gravely
9 disabling physical or psychological injury or disfigurement.
- 10 (j) Abuse or neglect after the child is returned to the parent's care and
11 custody while under department supervision, when the child had previously been
12 removed for his safety from the parent pursuant to a disposition judgment in a child
13 in need of care proceeding.
- 14 (k) The parent's parental rights to one or more of the child's siblings have
15 been terminated due to neglect or abuse, prior attempts to rehabilitate the parent have
16 been unsuccessful, and the court has determined pursuant to Article 672.1, that
17 current attempts to reunite the family are not required.
- 18 (l) Sexual exploitation or abuse, which shall include, but is not limited to acts
19 which are prohibited by R.S. 14:43.1, 43.2, 46.3, 80, 81, 81.1, 81.2, 82.1(A)(2), 89,
20 and 89.1.
- 21 (m) Human trafficking when sentenced pursuant to the provisions of R.S.
22 14:46.2(B)(2) or (3).
- 23 ~~(5)~~(4) Abandonment of the child by placing him in the physical custody of
24 a nonparent, or the department, or by otherwise leaving him under circumstances
25 demonstrating an intention to permanently avoid parental responsibility by any of the
26 following:
- 27 (a) For a period of at least four months as of the time of the hearing, despite
28 a diligent search, the whereabouts of the child's parent continue to be unknown.

1 (b) As of the time the petition is filed, the parent has failed to provide
2 significant contributions to the child's care and support for any period of six
3 consecutive months.

4 (c) As of the time the petition is filed, the parent has failed to maintain
5 significant contact with the child by visiting him or communicating with him for any
6 period of six consecutive months.

7 ~~(6)~~(5) Unless sooner permitted by the court, at least one year has elapsed
8 since a child was removed from the parent's custody pursuant to a court order; there
9 has been no substantial parental compliance with a case plan for services which has
10 been previously filed by the department and approved by the court as necessary for
11 the safe return of the child; and despite earlier intervention, there is no reasonable
12 expectation of significant improvement in the parent's condition or conduct in the
13 near future, considering the child's age and his need for a safe, stable, and permanent
14 home.

15 ~~(7)~~(6) The child is in the custody of the department pursuant to a court order
16 or placement by the parent; the parent has been convicted and sentenced to a period
17 of incarceration of such duration that the parent will not be able to care for the child
18 for an extended period of time, considering the child's age and his need for a safe,
19 stable, and permanent home; and despite notice by the department, the parent has
20 refused or failed to provide a reasonable plan for the appropriate care of the child
21 other than foster care.

22 ~~(8)~~(7) The relinquishment of an infant pursuant to Chapter 13 of Title XI of
23 this Code.

24 ~~(9) The commission of a sex offense as defined in R.S. 15:541 by the natural~~
25 ~~parent which resulted in the conception of the child.~~

26 ~~(10)~~(8) The child is in the custody of the department pursuant to a court
27 order for at least one year, unless sooner permitted by the court, and the identity of
28 the child's father remains unknown and all the following have occurred:

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

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

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

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

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

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

15 Art. 1015.1. Grounds; termination of parental rights of perpetrator of a sex offense

16 Parental rights of a natural parent may be terminated in cases where there is
17 a conviction or commission of a sex offense as defined in R.S. 15:541 by that natural
18 parent which resulted in the conception of the child.

19 ~~Art. 1015.1.~~ 1015.2. Termination of parental rights, certain grounds; costs and fees

20 A. A petitioner shall not be required to prepay nor be cast with court costs
21 or costs of service or subpoena for the filing of the petition pursuant to Article
22 ~~1015(3) or (9)~~ 1015.1. The clerk of court shall immediately file and process the
23 petition, regardless of the ability of the petitioner to pay court costs.

24 B. All court costs, attorney fees, costs of enforcement and modification
25 proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in
26 filing, maintaining, or defending any proceeding under Article ~~1015(3) or (9)~~ 1015.1
27 shall be paid by the perpetrator of the sex offense, including all costs of medical and
28 psychological care for the sexually abused adult, or for the child conceived as a
29 result of the sex offense.

1 Art. 1016. Right to counsel

2 A.(1) The child and the identified parent shall each have the right to be
3 represented by separate counsel in a termination proceeding brought in accordance
4 with this Title. Neither the child nor anyone purporting to act on behalf of the child
5 may be permitted to waive the child's right to counsel.

6 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
7 petitioner shall have the right to waive the child's right to counsel in cases
8 established under Article 1015.1.

9 * * *

10 Art. 1037. Findings and contents of termination judgment; form

11 * * *

12 B.(1) When the court finds that the alleged grounds set out in any Paragraph
13 of Article 1015 or 1015.1 are proven by the evidentiary standards required by Article
14 1035 and that it is in the best interests of the child, it shall order the termination of
15 the parental rights of the parent against whom the allegations are proven. The court
16 shall enter written findings on both issues. The consideration of best interests of the
17 child shall include consideration of the child's attachment to his current caretakers.

18 (2) When the grounds for termination set forth in Article 1015.1 have been
19 established, it shall be considered in the best interests of the child for the parental
20 rights of the perpetrator to be terminated.

21 * * *

22 Art. 1039. Other dispositions

23 * * *

24 B.(1) If the court finds that the alleged grounds are not proven in accordance
25 with the evidentiary standards set forth in Article 1035 or if the court finds that
26 termination of parental rights is not in the best interests of the child, it shall enter
27 written findings on both issues and may:

28 ~~(1)~~(a) Dismiss the petition.

29 ~~(2)~~(b) Reinstate the parent to full care and custody of the child.

1 ~~(3)~~(c) If the child has been previously adjudicated as a child in need of care,
2 reinstate that proceeding pursuant to Title VI.

3 ~~(4)~~(d) Upon a showing of sufficient facts, adjudicate the child in need of care
4 in accordance with Title VI.

5 ~~(5)~~(e) Upon a showing of sufficient facts, adjudicate the family in need of
6 services in accordance with Title VII.

7 ~~(6)~~(f) Make any other disposition that is in the best interest of the child.

8 (2) In actions based on Article 1015.1, if the court finds the alleged grounds
9 are not proven, then any determination of custody, visitation, contact, and all other
10 parental rights of the alleged perpetrator shall be determined in a separate action
11 independent of the termination proceeding.

12 * * *

13 Section 2. Civil Code Article 137(A) is hereby amended and reenacted to read as
14 follows:

15 Art. 137. Denial of visitation; ~~felony rape~~ sex offense; death of a parent

16 A. In a proceeding in which visitation of a child is being sought by a parent,
17 if the child was conceived through the commission of a ~~felony rape~~ sex offense as
18 provided by R.S. 15:541, the parent who committed the ~~felony rape~~ sex offense shall
19 be denied visitation rights and contact with the child.

20 * * *

21 Section 3. Children's Code Article 1004(I) is hereby repealed in its entirety.

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 298 Engrossed 2023 Regular Session Hughes

Abstract: Provides relative to parental rights in cases where the child was conceived as a result of a sex offense.

Present law (Ch.C. Art. 1004(I)) provides that when a child is conceived as a result of a sex offense, the victim of the sex offense may petition to terminate the rights of the perpetrator of the sex offense.

Proposed law (Ch.C. Art. 1004.1) expands present law by providing that if termination is granted, the perpetrator of the sex offense shall lose all rights parental rights. Additionally, the perpetrator loses the right to intervene in the termination, custody, visitation, or contact action.

Present law (Ch.C. Art. 1015(3) and (9)) provides that both the conviction and commission of a sex offense by the natural parent which resulted in the conception of the child are grounds for termination of parental rights.

Proposed law (Ch.C. Art. 1015.1) retains present law but creates a separate provision exclusively covering termination of parental rights when the child is conceived as result of a sex offense.

Present law (Ch.C. Art. 1016(A)) provides that neither the child nor anyone purporting to act on behalf of the child may be permitted to waive the child's right to counsel.

Proposed law (Ch.C. Art 1016 (A)(2)) changes present law to provide that the petitioner shall have the right to waive the child's right to counsel in cases established under Article 1015.1.

Present law (Ch.C. Art. 1037(B)) provides that when the court finds that the alleged grounds in Article 1015 are proven by clear and convincing evidence and that it is in the best interests of the child, it shall order the termination of the parental rights of the parent against whom the allegations are proven.

Proposed law (Ch.C. Art. 1037(B)(2)) changes present law by adding a reference to Article 1015.1 as grounds for termination of parental rights.

Proposed law (Ch.C. Art. 1037(B)(2)) provides that when termination is granted based on the grounds set forth in Article 1015.1, it shall not be considered in the best interest of the child for the perpetrator to have any right to custody, visitation, or any other contact with the child.

Present law (Ch.C. Art. 1039(B)) provides that if the court finds the alleged grounds are not proven by clear and convincing evidence or if termination is not in the best interest of the child it shall enter written findings and may (1) dismiss the petition; (2) reinstate the parent to full care and custody of the child; (3) if the child has been previously adjudicated as a child in need of care, reinstate that proceeding pursuant to present law; (4) upon a showing of sufficient facts, adjudicate the child in need of care in accordance with present law; (5) upon a showing of sufficient facts, adjudicate the family in need of care services in accordance with present law; (6) make any other disposition that is in the best interest of the child.

Proposed law (Ch.C. Art. 1039(B)(2)) changes present law by providing that in actions based on Article 1015.1, if the alleged grounds are not proven any determination of custody, visitation, contact and all other parental rights of the alleged perpetrator shall be determined in a separate action independent of the termination proceeding.

Present law (C.C. Art. 137(A)) provides that if a child was conceived through the commission of a felony rape, the parent who committed the felony rape shall be denied visitation rights and contact with the child.

Proposed law (C.C. Art. 137(A)) provides that if a child was conceived through the commission of a sex offense as provided by R.S. 15:541, the parent who committed the sex offense shall be denied visitation rights and contact with the child.

(Amends Ch.C. Arts. 1004(A), 1004.1, 1015, 1015.1, 1016(A), 1037(B), and 1039(B), and C.C. Art. 137(A); Adds Ch.C. Arts. 1004.2 and 1015.2; Repeals Ch.C. Art. 1004(I))