

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 298

2023 Regular Session

Hughes

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

Synopsis of Senate Amendments

1. Removes the provision that for good cause shown, in cases established under 1015.1, the court may waive the child's right to counsel and provides that the court shall have the discretion to decide whether to appoint counsel for the child and any violation shall be subject to a suspensive appeal.
2. Provides that in no event shall the minor child be required to interact with the respondent as a condition to pursue termination of parental rights, and any counsel acting on behalf of the child shall not be required to make the child available for visitation or conversation with the respondent's family.
3. Provides for an effective date.

Digest of Bill as Finally Passed by Senate

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 court shall have discretion to decide whether to appoint counsel for the child.

Proposed law provides that in no event shall the minor child be required to interact with the respondent as a condition to pursue termination of parental rights, and any counsel acting on behalf of the child shall not be required to make the child available for visitation or conversation with the respondent's family.

Present law (Ch.C. Art. 1037(B)) provides that when the court finds that the alleged grounds in Art. 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 Art. 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 Art. 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; or (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 Art. 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.

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

(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))