

2023 Regular Session

HOUSE BILL NO. 298

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

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 * * *

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

20 At any time, including prior to or during an adoption proceeding, when a
21 child is conceived as the result of the conviction or commission of a sex offense as
22 defined in R.S. 15:541, the victim of the sex offense may petition to terminate the

1 rights of the perpetrator of the sex offense. Termination shall result in the loss of all
 2 parental rights of the perpetrator regarding the child, including any rights to custody,
 3 visitation, and contact, as well as any right to intervene in such action. The
 4 termination shall not affect the inheritance rights of the child. The perpetrator shall
 5 be cast in judgment for all court costs.

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

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

12 * * *

13 Art. 1015. Grounds; termination of parental rights

14 The grounds for termination of parental rights are:

- 15 (1) Conviction of murder of the child's other parent.
- 16 (2) Unjustified intentional killing of the child's other parent.
- 17 ~~(3) Conviction of a sex offense as defined in R.S. 15:541 by the natural~~
 18 ~~parent which resulted in the conception of the child.~~

19 ~~(4)~~(3) Misconduct of the parent toward this child or any other child of the
 20 parent or any other child which constitutes extreme abuse, cruel and inhuman
 21 treatment, or grossly negligent behavior below a reasonable standard of human
 22 decency, including but not limited to the conviction, commission, aiding or abetting,
 23 attempting, conspiring, or soliciting to commit any of the following:

- 24 (a) Murder.
- 25 (b) Unjustified intentional killing.
- 26 (c) Aggravated crime against nature as defined by R.S. 14:89.1(A)(2).
- 27 (d) Rape.
- 28 (e) Sodomy.
- 29 (f) Torture.
- 30 (g) Starvation.

1 (h) A felony that has resulted in serious bodily injury.

2 (i) Abuse or neglect which is chronic, life-threatening, or results in gravely
3 disabling physical or psychological injury or disfigurement.

4 (j) Abuse or neglect after the child is returned to the parent's care and
5 custody while under department supervision, when the child had previously been
6 removed for his safety from the parent pursuant to a disposition judgment in a child
7 in need of care proceeding.

8 (k) The parent's parental rights to one or more of the child's siblings have
9 been terminated due to neglect or abuse, prior attempts to rehabilitate the parent have
10 been unsuccessful, and the court has determined pursuant to Article 672.1, that
11 current attempts to reunite the family are not required.

12 (l) Sexual exploitation or abuse, which shall include, but is not limited to acts
13 which are prohibited by R.S. 14:43.1, 43.2, 46.3, 80, 81, 81.1, 81.2, 82.1(A)(2), 89,
14 and 89.1.

15 (m) Human trafficking when sentenced pursuant to the provisions of R.S.
16 14:46.2(B)(2) or (3).

17 ~~(5)~~(4) Abandonment of the child by placing him in the physical custody of
18 a nonparent, or the department, or by otherwise leaving him under circumstances
19 demonstrating an intention to permanently avoid parental responsibility by any of the
20 following:

21 (a) For a period of at least four months as of the time of the hearing, despite
22 a diligent search, the whereabouts of the child's parent continue to be unknown.

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

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

29 ~~(6)~~(5) Unless sooner permitted by the court, at least one year has elapsed
30 since a child was removed from the parent's custody pursuant to a court order; there

1 has been no substantial parental compliance with a case plan for services which has
 2 been previously filed by the department and approved by the court as necessary for
 3 the safe return of the child; and despite earlier intervention, there is no reasonable
 4 expectation of significant improvement in the parent's condition or conduct in the
 5 near future, considering the child's age and his need for a safe, stable, and permanent
 6 home.

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

14 ~~(8)~~(7) The relinquishment of an infant pursuant to Chapter 13 of Title XI of
 15 this Code.

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

18 ~~(10)~~(8) The child is in the custody of the department pursuant to a court
 19 order for at least one year, unless sooner permitted by the court, and the identity of
 20 the child's father remains unknown and all the following have occurred:

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

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

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

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

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

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

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

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

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

11 A. A petitioner shall not be required to prepay nor be cast with court costs
 12 or costs of service or subpoena for the filing of the petition pursuant to Article
 13 ~~1015(3) or (9)~~ 1015.1. The clerk of court shall immediately file and process the
 14 petition, regardless of the ability of the petitioner to pay court costs.

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

21 Art. 1016. Right to counsel

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

26 (2) For actions brought under Article 1015.1, the court shall have discretion
 27 to decide under the circumstances for each case whether to appoint counsel for the
 28 child. In no event shall the petitioner of such action or the minor child be required
 29 to interact with the respondent as a condition to pursue termination under this
 30 Article. Any counsel acting on behalf of the child shall not require a petitioner to

