2023 Regular Session

HOUSE BILL NO. 298

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

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

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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) 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.
- (b) Unjustified intentional killing.
- (c) Aggravated crime against nature as defined by R.S. 14:89.1(A)(2).
- 27 (d) Rape.

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- 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 (1) 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 since a child was removed from the parent's custody pursuant to a court order; there 30

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

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

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

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

(10)(8) 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:
- (i) A certified copy of the child's birth certificate with no one indicated thereon as the father of the child, or the father listed has been determined not to be 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 with this Title. Neither the child nor anyone purporting to act on behalf of the child 24 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

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Article. Any counsel acting on behalf of the child shall not require a petitioner to

I	make the child available for any visitation or conversation with the respondent or the
2	respondent's family and shall not require any nonoffending petitioner to take classes
3	or provide updates on the child. A petitioner shall have the right to seek an
4	expedited suspensive appeal for any violation of this Article.
5	* * *
6	Art. 1037. Findings and contents of termination judgment; form
7	* * *
8	B.(1) When the court finds that the alleged grounds set out in any Paragraph
9	of Article 1015 or 1015.1 are proven by the evidentiary standards required by Article
10	1035 and that it is in the best interests of the child, it shall order the termination of
11	the parental rights of the parent against whom the allegations are proven. The court
12	shall enter written findings on both issues. The consideration of best interests of the
13	child shall include consideration of the child's attachment to his current caretakers.
14	(2) When the grounds for termination set forth in Article 1015.1 have been
15	established, it shall be considered in the best interests of the child for the parental
16	rights of the perpetrator to be terminated.
17	* * *
18	Art. 1039. Other dispositions
19	* * *
20	B.(1) If the court finds that the alleged grounds are not proven in accordance
21	with the evidentiary standards set forth in Article 1035 or if the court finds that
22	termination of parental rights is not in the best interests of the child, it shall enter
23	written findings on both issues and may:
24	(1)(a) Dismiss the petition.
25	(2)(b) Reinstate the parent to full care and custody of the child.
26	(3)(c) If the child has been previously adjudicated as a child in need of care,
27	reinstate that proceeding pursuant to Title VI.
28	(4)(d) Upon a showing of sufficient facts, adjudicate the child in need of care
29	in accordance with Title VI.

1 (5)(e) Upon a showing of sufficient facts, adjudicate the family in need of 2 services in accordance with Title VII. 3 $\frac{(6)(f)}{(6)}$ Make any other disposition that is in the best interest of the child. 4 (2) In actions based on Article 1015.1, if the court finds the alleged grounds 5 are not proven, then any determination of custody, visitation, contact, and all other 6 parental rights of the alleged perpetrator shall be determined in a separate action 7 independent of the termination proceeding. 8 9 Section 2. Civil Code Article 137(A) is hereby amended and reenacted to read as 10 follows: 11 Art. 137. Denial of visitation; felony rape sex offense; death of a parent 12 A. In a proceeding in which visitation of a child is being sought by a parent, 13 if the child was conceived through the commission of a felony rape sex offense as 14 provided by R.S. 15:541, the parent who committed the felony rape sex offense shall 15 be denied visitation rights and contact with the child. 16 17 Section 3. Children's Code Article 1004(I) is hereby repealed in its entirety. 18 Section 4. This Act shall become effective upon signature by the governor or, if not 19 signed by the governor, upon expiration of the time for bills to become law without signature 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become 22 effective on the day following such approval. SPEAKER OF THE HOUSE OF REPRESENTATIVES PRESIDENT OF THE SENATE GOVERNOR OF THE STATE OF LOUISIANA APPROVED: ____

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