

2024 Regular Session

SENATE BILL NO. 39

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

CHILDREN'S CODE. Provides for continuous revisions to the Children's Code. (8/1/24)

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AN ACT

To amend and reenact Children's Code Arts. 412(I), 421, the introductory paragraph of 617(A) and (4), the introductory paragraph of 618(A), (2), and (3), 648, 672(A)(2), 683(E) and (F), 718(A), 720(A), (B)(1) and (6), (C), and (D), 776(A), 781(D) and (E), 895, 1004(B), (D), and (F), 1007(B), 1015.2(B), 1016(A) and (B), 1019(C), 1035(B), the introductory paragraph of 1036(C), the introductory paragraph of (D) and (E), 1036.2(E), 1037.1(A), 1107.8(A), 1124(C), 1125(B), 1132(D), the introductory paragraph of 1170(A), 1200(B)(7)(a)(iii), 1223(B)(7)(a)(iii), 1264, 1267(2), 1409(T), 1428, 1436, and the introductory paragraph of 1569(A), (4), and (7), and to enact Children's Code Art. 625.1, relative to the continuous revision of the Children's Code; to provide for cross-references; to provide for technical corrections; to provide for advising children of their rights; to provide for notice to the Louisiana Department of Health; to provide for notice to Mental Health Advocacy Services; to provide for the child's right to counsel; to provide for the disapproval of the placement of children; to provide for the purpose and motion of guardianship; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

1 Section 1. Children's Code Arts. 412(I), 421, the introductory paragraph of 617(A)
 2 and (4), the introductory paragraph of 618(A), (2), and (3), 648, 672(A)(2), 683(E) and (F),
 3 718(A), 720(A), (B)(1) and (6), (C), and (D), 776(A), 781(D) and (E), 895, 1004(B), (D),
 4 and (F), 1007(B), 1015.2(B), 1016(A) and (B), 1019(C), 1035(B), the introductory paragraph
 5 of 1036(C), the introductory paragraph of (D) and (E), 1036.2(E), 1037.1(A), 1107.8(A),
 6 1124(C), 1125(B), 1132(D), the introductory paragraph of 1170(A), 1200(B)(7)(a)(iii),
 7 1223(B)(7)(a)(iii), 1264, 1267(2), 1409(T), 1428, 1436, and the introductory paragraph of
 8 1569(A), (4), and (7) are hereby amended and reenacted, and Children's Code Art. 625.1 is
 9 hereby enacted, to read as follows:

10 Art. 412. Confidentiality of records; disclosure exceptions; sanctions

11 * * *

12 I. Any violation of the confidentiality provisions of this Article shall be
 13 punishable as a constructive contempt of court pursuant to ~~Article 1509(E)~~ Articles
 14 1507 through 1509.1.

15 * * *

16 Art. 421. Probation officers

17 A. The ~~judge of the~~ court shall have the authority to commission probation
 18 officers, one of whom may be designated as chief probation officer or director of
 19 probation.

20 B. Probation officers shall have the power and authority to make arrests; to
 21 serve notices, orders, subpoenas, and writs; and to execute all orders and perform
 22 any other duties incident to their office. Nothing ~~herein contained~~ in this Paragraph
 23 shall be construed to relieve the sheriff from the duties as set forth in R.S. 13:5539.

24 C. Employment of ~~such personnel~~ probation officers by any court for its
 25 exclusive service shall in no ~~wise~~ way be affected by or limit the court in availing
 26 itself of the services of ~~such~~ the officers or other employees as may be provided by
 27 the state.

28 * * *

29 Art. 617. Temporary restraining order

1 A. Upon good cause shown in an ex parte proceeding, the court may enter a
2 temporary restraining order, without bond, as ~~it~~ **the court** deems necessary to protect
3 from abuse or neglect the petitioner, any children, or any person alleged to be ~~an~~
4 incompetent. Immediate and present danger of abuse shall constitute good cause for
5 purposes of this Article. The order may include but is not limited to the following:

6 * * *

7 (4) Prohibiting either party from transferring, encumbering, or otherwise
8 disposing of property mutually owned or leased by the parties, except when in the
9 ordinary course of business; or for the necessary support of the party or the ~~minor~~
10 children.

11 * * *

12 Art. 618. Protective orders; content; modification; service

13 A. The court may grant any protective order or approve any consent
14 agreement to bring about a cessation of abuse or neglect of a party, any ~~minor~~
15 children, or any person alleged to be incompetent, ~~which~~ **and the** relief may include
16 but is not limited to:

17 * * *

18 (2) When there is a duty to support a party, any ~~minor~~ children, or any person
19 alleged to be incompetent living in the residence or household, ordering payment of
20 temporary support or provision of suitable housing for them.

21 (3) Awarding temporary custody of or establishing temporary visitation rights
22 and conditions with regard to any ~~minor~~ children or person alleged to be
23 incompetent.

24 * * *

25 **Art. 625.1. Advice of rights for children**

26 **A. At the first hearing at which the child appears, the judge shall advise**
27 **any child ten years of age or older, in a developmentally appropriate manner**
28 **and in terms understandable to the child, that the child is a party to the**
29 **proceedings and has all of the following rights:**

1 **(1) To be represented by an independent and qualified attorney who**
2 **shall have duties of loyalty, confidentiality, advocacy, and competent**
3 **representation.**

4 **(2) To have notice of and attend all hearings.**

5 **(3) To have regular and meaningful communication with the child's**
6 **attorney in a way that is understandable to the child.**

7 **(4) To have the child's attorney present the child's case, including**
8 **presenting the child's wishes.**

9 **(5) To testify as to the child's wishes.**

10 **(6) To be free from discrimination based on race, religion, disability,**
11 **national origin, and sex.**

12 **(7) To be provided qualified interpretation, translation, and language**
13 **assistance services.**

14 **(8) To be provided reasonable accommodations for any disability.**

15 **(9) If the child has been placed in foster care, to be provided an**
16 **individualized case plan, which shall provide all of the following:**

17 **(a) A focus on the child's health, welfare, and safety and achieving a**
18 **permanent placement that the child helps to develop and that is continuously**
19 **updated.**

20 **(b) A placement with siblings when consistent with the child's health,**
21 **welfare, and safety.**

22 **(c) A visitation plan that protects significant relationships with relatives**
23 **through continuing contact when consistent with the child's health, welfare, and**
24 **safety.**

25 **(d) If the child is fourteen years of age or older, the inclusion of a**
26 **transitional plan that is designed for the child, and with the child, to assist in**
27 **achieving a successful transition and that is continuously updated. The plan**
28 **shall include education, health, permanent connections, living arrangements,**
29 **independent living skills, and employment.**

1 (10) To have the child's attorney file a written response objecting to the
2 case plan and to have the judge approve or disapprove all or part of the case
3 plan.

4 (11) If the child is fourteen years of age or older and in foster care, to the
5 rights as provided in R.S. 46:286.16, Foster Youth Bill of Rights (FYBOR).

6 B. Written notice of the rights set forth in Paragraph A of this Article
7 shall be given to the child; the parents, foster parents, or pre-adoptive parents
8 of the child; and any relative providing care to the child.

9 Comments – 2024

10 (a) This Article is new and applies only in child in need of care proceedings.

11 (b) This Article is intended to ensure that the child is informed directly, and
12 all other parties indirectly, of the substantive and procedural rights of the child in a
13 child in need of care proceeding and to limit undue interference by parents, foster
14 parents, or others who may not otherwise know that children have rights. This
15 Article informs all parties that the child is not just the subject of the proceeding but
16 is a party and a full participant.
17

18 * * *

19 Art. 648. Advice of rights at appearance to answer petition

20 At the appearance to answer, the court shall advise the parent and the child
21 of his their rights and responsibilities pursuant to ~~Article~~ Articles 625 and 625.1,
22 unless they were so advised at a previous hearing.

23 * * *

24 Art. 672. Care and treatment by department; placement; disapproval

25 A.

26 * * *

27 ~~(2) Upon motion of the court, for good cause shown, a contradictory hearing~~
28 ~~shall be held and thereafter, the presiding judge shall have the authority to~~
29 ~~disapprove a placement chosen by the department if it is not in the best interest of~~
30 ~~the child and shall issue a written order that the department choose a more suitable~~
31 ~~placement with reasons supporting the court's decision. The court may disapprove~~
32 ~~the placement of a child on its own motion or on the motion of a party for good~~
33 ~~cause shown after a contradictory hearing. The party's motion shall be in~~

1 writing and contain particularized allegations that the placement is not in the
2 best interest of the child. The court may deny the party's motion or set a
3 contradictory hearing with notice to all parties. The hearing may be
4 consolidated with any previously scheduled hearing. If the court disapproves the
5 placement, the court shall render specific written reasons for finding that the
6 placement is not in the best interest of the child and shall order the department
7 to choose a more suitable placement.

8 * * *

9 Art. 683. Disposition; generally

10 * * *

11 E. A child shall not be committed to a public or private mental institution or
12 institution for persons with mental illness unless the court finds, based on
13 psychological or psychiatric evaluation, that the child has a mental disorder, other
14 than an intellectual disability, ~~which~~ **that** has a substantial adverse effect on ~~his~~ **the**
15 **child's** ability to function and requires care and treatment in an institution. When the
16 child is in the custody of the state of Louisiana, this finding shall not be made
17 without ~~the~~ **a contradictory hearing, notice to the Louisiana Department of**
18 **Health, bureau of legal services, and** representation of the child by an attorney
19 appointed from the Mental Health Advocacy Service, unless ~~such attorneys are~~
20 ~~unavailable as determined by the director or~~ the child retains private counsel, who
21 shall represent only the interest of the child. The Mental Health Advocacy Service's
22 attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating
23 to admission, change of status, or discharge from the mental hospital or psychiatric
24 unit. Upon modification of the disposition to a placement other than a mental
25 hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be
26 relieved of representation of the child.

27 F. A child shall not be committed to a public or private institution for persons
28 with intellectual disabilities unless the court finds, based on psychological or
29 psychiatric evaluation **pursuant to R.S. 28:451.1 et seq.**, that the child has an

1 intellectual disability and ~~such~~ **that the** condition has a substantial adverse effect on
2 ~~his~~ **the child's** ability to function and requires care and treatment in an institution.

3 * * *

4 Art. 718. Purpose of guardianship

5 A. The purpose of guardianship is to provide a permanent placement for
6 children when ~~neither reunification with a parent nor adoption has been found to be~~
7 **the court has found that adoption is not** in their **the children's** best interest **and**
8 **the children cannot be safely reunified with their parents within a reasonable**
9 **time**; to encourage stability and permanence in the lives of children who have been
10 adjudicated to be in need of care and have been removed from the custody of their
11 parent; and to increase the opportunities for the prompt permanent placement of
12 children, especially with relatives, without ongoing supervision by the department.

13 * * *

14 Art. 720. Motion for guardianship

15 A. After a child has been adjudicated to be in need of care, a motion for
16 guardianship may be filed by the department, parent, counsel for the child, or, when
17 the guardian is deceased, an individual previously named as a successor guardian ~~by~~
18 ~~the guardian~~ in a guardianship subsidy agreement with the department; or the
19 department may submit a case plan along with the case review report to the court and
20 all counsel of record recommending guardianship in accordance with ~~Children's~~
21 ~~Code~~ Articles 674, 688, and 689.

22 B. The motion, case review report, or case plan shall include all of the
23 following:

24 (1) The name and gender of the child, and the date and place of ~~his~~ **the**
25 **child's** birth.

26 * * *

27 (6) A plain and concise statement of the facts on which the motion, case
28 review report, or case plan for guardianship is sought; and why neither adoption nor
29 reunification with a parent is in the best interest of the child; **and why the child**

1 cannot be safely reunified with the parent within a reasonable time. If a parent
2 files the motion, any statement that the child cannot be safely reunified with the
3 parent within a reasonable time shall not be deemed an admission for any
4 purpose other than satisfying the motion.

5 C. If any of the information required by Paragraph B of this Article is
6 unknown, the motion, case review report, or case plan shall state that fact. In
7 addition, if the location of either parent is unknown, the motion, case review report,
8 or case plan shall disclose efforts to locate ~~him~~ the parent.

9 D. Unless not yet completed, the home study, as required by ~~Children's Code~~
10 Article 721, shall be attached to the motion, case review report, or case plan. If not
11 attached, the home study shall be submitted to the court as soon as it is completed.

12 * * *

13 Art. 776. Permanency planning reports

14 A. If at any point in family in need of services proceedings; a child enters the
15 custody of the state, the provisions of Chapters 13, 15, and 16 of Title VI of this
16 Code and Article ~~1004.1~~ 1004.2 shall be applicable.

17 * * *

18 Art. 781. Disposition; generally

19 * * *

20 D. A child shall not be committed to a public or private mental institution or
21 institution for persons with mental illness unless the court finds, based on
22 psychological or psychiatric evaluation, that the child has a mental disorder, other
23 than an intellectual disability, ~~which~~ that has a substantial adverse effect on ~~his~~ the
24 child's ability to function and requires care and treatment in an institution. When the
25 child is in the custody of the state of Louisiana, this finding shall not be made
26 without ~~the~~ a contradictory hearing, notice to the Louisiana Department of
27 Health, bureau of legal services, and representation of the child by an attorney
28 appointed from the Mental Health Advocacy Service, unless ~~such attorneys are~~
29 ~~unavailable as determined by the director~~ or the child retains private counsel, who

1 shall represent only the interest of the child. The Mental Health Advocacy Service's
2 attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating
3 to admission, change of status, or discharge from the mental hospital or psychiatric
4 unit. Upon modification of the disposition to a placement other than a mental
5 hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be
6 relieved of representation of the child.

7 E. A child shall not be committed to a public or private institution for persons
8 with intellectual disabilities unless the court finds, based on psychological or
9 psychiatric evaluation **pursuant to R.S. 28:451.1 et seq.**, that the child has an
10 intellectual disability and ~~such~~ **that the** condition has a substantial adverse effect on
11 ~~his~~ **the child's** ability to function and requires care and treatment in an institution.

12 * * *

13 Art. 895. Commitment to mental institution

14 A. In cases in which a child has been adjudicated a delinquent, the court may
15 commit ~~him~~ **the child** to a public or private mental institution or institution for
16 persons with mental illness if the court finds, based on psychological or psychiatric
17 evaluation, that the child has a mental disorder, other than an intellectual disability,
18 ~~which~~ **that** has a substantial adverse effect on ~~his~~ **the child's** ability to function and
19 requires care and treatment in an institution.

20 B. This finding shall not be made **without a contradictory hearing and**
21 **notice to the Louisiana Department of Health, bureau of legal services and**
22 unless the child is accorded ~~his right to special~~ counsel in accordance with Article
23 809~~(C)~~.

24 * * *

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

26 * * *

27 B. Counsel appointed for the child pursuant to Article 607 may petition for
28 the termination of parental rights of the parent of the child if the petition alleges a
29 ground authorized by Article ~~1015(5), (6), or (7)~~ **1015(4), (5), or (6)** and, although

1 eighteen months have elapsed since the date of the child's adjudication as a child in
2 need of care, no petition has been filed by the district attorney or the department.

3 * * *

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

6 (1) The child has been subjected to abuse or neglect after the child is returned
7 to the parent's care and custody while under department supervision, and termination
8 is authorized by Article ~~1015(4)(j)~~ **1015(3)(j)**.

9 (2) The parent's parental rights to one or more of the child's siblings have
10 been terminated due to neglect or abuse and prior attempts to rehabilitate the parent
11 have been unsuccessful, and termination is authorized by Article ~~1015(4)(k)~~
12 **1015(3)(k)**.

13 (3) The child has been abandoned and termination is authorized by Article
14 ~~1015(5)~~ **1015(4)**.

15 (4) The child has been placed in the custody of the state, and termination is
16 authorized by Article ~~1015(6)~~ **1015(5)**.

17 (5) The child is in foster care because the parent is incarcerated, and
18 termination is authorized by Article ~~1015(7)~~ **1015(6)**.

19 (6) The child is in foster care and, despite diligent efforts by the department
20 to identify the child's father, ~~his~~ **the father's** identity is unknown, and termination
21 is authorized by Article ~~1015(10)~~ **1015(8)**.

22 * * *

23 F. By special appointment for a particular case, the court or the district
24 attorney may designate private counsel authorized to petition for the termination of
25 parental rights of the parent of the child on the ground of abandonment authorized
26 by Article ~~1015(5)~~ **1015(4)**.

27 * * *

28 Art. 1007. Court records of proceedings

29 * * *

1 B. The address and parish of the petitioner and each person on whose behalf
2 the petition for termination of parental rights is filed under the provisions of Article
3 ~~1015(3) or (9)~~ **1015.1** may remain confidential with the court.

4 * * *

5 Art. 1015.2. Termination of parental rights; certain grounds; costs and fees

6 * * *

7 B. All court costs, attorney fees, costs of enforcement and modification
8 proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in
9 filing, maintaining, or defending any proceeding ~~under~~ **in accordance with** Article
10 1015.1 shall be paid by the perpetrator of the sex offense, including all costs of
11 medical and psychological care for the sexually abused ~~adult,~~ **parent** or for the child
12 conceived as a result of the sex offense.

13 * * *

14 Art. 1016. Right to counsel

15 A.(1) The child and ~~the~~ **each** identified parent shall ~~each~~ have the right to be
16 represented by separate counsel in a termination proceeding brought in accordance
17 with this Title. **The child shall be a party to the proceedings.** Neither the child nor
18 anyone purporting to act on behalf of the child ~~may~~ **shall** be permitted to waive the
19 child's right to counsel.

20 (2) ~~For actions brought under Article 1015.1, the court shall have discretion~~
21 ~~to decide under the circumstances for each case whether to appoint counsel for the~~
22 ~~child.~~ In no event shall the petitioner of ~~such an~~ **action pursuant to Article 1015.1**
23 or the ~~minor~~ child be required to interact with the respondent as a condition to pursue
24 termination ~~under~~ **in accordance with** this Article. Any counsel acting on behalf of
25 the child shall not require a petitioner to make the child available for any visitation
26 or conversation with the respondent or the respondent's family and shall not require
27 any nonoffending petitioner to take classes or provide updates on the child. A
28 petitioner shall have the right to seek an ~~expedited suspensive appeal~~ **emergency**
29 **supervisory writ** for any violation of this Article.

1 B. The court shall appoint the entity designated for the jurisdiction by the
 2 Louisiana Supreme Court to provide qualified, independent counsel for the child in
 3 ~~such a~~ the proceeding. **Counsel for the child shall have the authority to represent**
 4 **the child throughout the termination proceeding and any appellate review.**

5 * * *

6 Art. 1019. Contents of the petition

7 * * *

8 C. The petition shall allege facts ~~which~~ **that** constitute the grounds necessary
 9 for the termination of parental rights as set forth in Article 1015 **or 1015.1.**

10 * * *

11 Art. 1035. Burden of proof

12 * * *

13 B. The parent asserting a mental or physical disability as an affirmative
 14 defense to abandonment ~~under~~ **pursuant to** Article ~~1015(5)~~ **1015(4)** bears the burden
 15 of proof by a preponderance of the evidence.

16 Art. 1036. Proof of parental misconduct

17 * * *

18 C. ~~Under Article 1015(6)~~ **In accordance with Article 1015(5)**, lack of
 19 parental compliance with a case plan may be evidenced by one or more of the
 20 following:

21 * * *

22 D. ~~Under Article 1015(6)~~ **In accordance with Article 1015(5)**, lack of any
 23 reasonable expectation of significant improvement in the parent's conduct in the near
 24 future may be evidenced by one or more of the following:

25 * * *

26 E. ~~Under Article 1015(7)~~ **In accordance with Article 1015(6)**, a sentence of
 27 at least five years of imprisonment raises a presumption of the parent's inability to
 28 care for the child for an extended period of time, although the incarceration of a
 29 parent shall not in and of itself be sufficient to deprive a parent of ~~his~~ parental rights.

* * *

Art. 1036.2. Incarcerated parent; duties; assessment

* * *

E. The notification form given to the incarcerated parent shall be substantially as follows:

NOTICE OF DUTY TO PROVIDE A REASONABLE PLAN FOR THE APPROPRIATE CARE OF YOUR CHILD AND TERMINATION OF PARENTAL RIGHTS LAW

NOTICE TO PARENT: YOUR CHILD(REN), _____ HAS/HAVE BEEN PLACED IN THE CUSTODY OF THE LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES BY ORDER OF THE _____ Parish juvenile court _____ on _____.

PLEASE BE ADVISED OF THE FOLLOWING:

Louisiana law provides that you may name a person who is willing and able to serve as the custodian of your child(ren) and to offer a wholesome and stable environment for your child(ren). Failure to furnish a reasonable plan for the appropriate care of your child(ren) may result in the termination of your parental rights.

Please refer to Louisiana Children's Code, Title X, Articles 1001 to 1043, especially Articles ~~1015(7)~~ **1015(6)** and 1036(E), for the details of Louisiana law regarding the termination of parental rights. A copy of the law is attached to this notice.

You are hereby notified that Louisiana law requires that you provide a reasonable plan for the appropriate care of your child(ren), other than continued foster care, within sixty (60) days of your receipt of this notice, which date is _____. Your plan shall include the names, addresses, cellular numbers, telephone numbers, and other contact information of every suitable alternative caregiver. You may provide additional information by filling out this

1 form and mailing it in the stamped, self-addressed envelope given to you by the
2 department before _____. If you fail or refuse to do so, you may
3 lose all rights to your child(ren). Your plan will be examined to determine if it is
4 reasonable and appropriate. Please provide your plan in detail no later than
5 _____ to the following person:

6 NAME: _____

7 ADDRESS: _____

8 CITY/STATE/ZIP: _____

9 TELEPHONE: _____

10 NOTE: IF YOU HAVE ANY QUESTIONS OR NEED ANY ASSISTANCE,
11 CONTACT THE ABOVE PERSON OR YOUR ATTORNEY IMMEDIATELY.

12 Copy of the law, La. Ch.C. Arts. 1001 - 1043, Attached. PLEASE READ.

13 I, _____, hereby certify that a copy of
14 this notice with La. Ch.C. Arts. 1001-1043 attached, was delivered to
15 _____ on _____ by
16 personal delivery at the following location _____.

17 DATE: _____

18 _____

19 Signature of caseworker

20 I, _____, have received a copy of this
21 notice, together with the attached laws (La. Ch.C. Arts. 1001-1043), and
22 acknowledge that I understand fully that my rights may be terminated and my
23 child(ren) adopted by others if I do not provide a reasonable plan of appropriate care
24 while I am incarcerated, other than continued foster care, within sixty (60) days of
25 my receipt of this notice on _____.

26 _____

27 Signature of parent

28 Witness: _____

Date: _____

29 * * *

1 Art. 1037.1. Continuing contact with biological relatives

2 A. Subsequent to a termination of parental rights judgment when custody is
3 granted to the department, the court may order continuing contact between the child
4 and the parent, sibling, or other biological relative. The court may grant ~~such~~ an
5 order only after it makes ~~finding~~ **findings** of fact that continuing contact is in the best
6 interest of the child. The court may receive expert testimony on the issue of
7 continuing contact.

8 * * *

9 Art. 1107.8. Notice of filing of act of intent to surrender for adoption; form;
10 objection and form

11 A. The notice of filing of a mother's intent to surrender for adoption shall
12 contain the following information in substantially the following form:

13 "NOTICE OF FILING OF ACT OF INTENT TO SURRENDER

14 FOR ADOPTION

15 Be advised that on the _____ day of _____, 20__,
16 _____ (MOTHER'S NAME) voluntarily filed an act of intent to surrender
17 for adoption of her ~~minor~~ child, namely _____, born on the _____ day of
18 _____, 20__, in the Parish/County of _____, State of
19 _____.

20 OR

21 [Be advised that on the _____ day of _____, 20__,
22 _____ (MOTHER'S NAME) voluntarily filed an act of intent to
23 surrender for adoption of her expected child to be born on or about
24 _____, 20__.]

25 The act of intent to surrender for adoption names you as the father of this
26 child. The act of intent to surrender for adoption does not bind the mother to follow
27 through with plans to surrender her child for adoption. She may change her mind. Its
28 only purpose is to determine whether you will oppose plans for surrendering this
29 child for adoption.

1 You may attempt to oppose the proposed adoption of this child only by filing
2 a written objection with this court within fifteen days after you receive this notice.
3 In your objection, you must provide the court with an address where you can be
4 contacted about further proceedings, if any, regarding the child's adoption.

5 A form for your use is attached.

6 Note that this objection must be signed under oath before a notary public
7 after you have proved your identity. If the objection does not have the notary's
8 signature, it is not effective.

9 If you do file such a written objection:

10 (1) You will have the right to receive notice of any surrender for adoption
11 that the mother may hereafter sign giving up her parental rights to the child.

12 (2) You will also have the right to be given notice of any hearing scheduled
13 by the court to decide whether your parental rights should be terminated. At that
14 hearing, you must show that you are claiming or have acknowledged paternity of the
15 child and must prove that you have assumed parental responsibility for the child, that
16 you are a fit parent, and that you are willing and able to take custody of the child. At
17 that hearing, the court will decide whether your efforts have been sufficient to
18 preserve your parental rights regarding this child and to prevent the child's adoption.

19 These notices will be served upon you at the address you provide in your
20 written objection.

21 If you do not file a written, notarized objection within fifteen days from the
22 time you receive this notice, then you waive notice and service of future surrender
23 or adoption proceedings, you have no cause of action to challenge the child's
24 adoption, and all rights you may have as the child's alleged father may be terminated
25 by order of this court and the child may be adopted if the mother does decide to sign
26 a surrender of the child for adoption.

27 These are serious consequences. You are urged to contact a lawyer to advise
28 you further."

29 * * *

1 Art. 1124. Requirement of family information

2 * * *

3 C. The form for the affidavit shall be substantially as follows:

4 STATE OF _____

5 PARISH/COUNTY OF _____

6 AFFIDAVIT

7 BEFORE ME, the undersigned authority, personally came and appeared

8 _____

9 SURRENDERING PARENT

10 who declares that he/she has executed a true and correct Statement of Family History
11 to provide the adoptive parents of the ~~minor~~ child with nonidentifying medical
12 genetic information in accordance with the provisions of Louisiana Children's Code
13 Articles 1124 through 1127.

14 Affiant understands and agrees that the nonidentifying Statement of Family
15 History will be attached to the Act of Surrender and included in the sealed adoption
16 record. Affiant further understands that the Statement of Family History will be
17 given to the prospective adoptive parent(s) at the time of placement and made
18 available, upon request, to the adopted person at the age of eighteen years or older.

19 Affiant has been informed that this affidavit shall be included in the sealed
20 adoption record only and will not be given to the adoptive parents or the ~~minor~~ child.

21 _____

22 SIGNATURE OF SURRENDERING PARENT

23 _____

24 NAME OF SURRENDERING PARENT

25 SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF
26 _____, 20____.

27 _____

28 NOTARY PUBLIC

29 * * *

1 Art. 1125. Statement of family history; contents; form

2 * * *

3 B. The Statement of Family History form shall be substantially as follows:

4 * * *

5 Has the ~~minor~~ child had the following immunizations?

6 * * *

7 Has the ~~minor~~ child had the following illnesses?

8 * * *

9 Does the ~~minor~~ child have or has ~~he~~ **the child** had any other serious illnesses
10 or medical conditions?

11 * * *

12 Art. 1132. Notice of filing of surrender; form

13 * * *

14 D. The notice of the surrender shall be issued by the clerk and shall contain
15 the following information in substantially the following form:

16 "NOTICE OF FILING OF SURRENDER

17 Be advised that on the ___ day of ___, 20___, an authentic Act of Surrender
18 executed by _____ was filed wherein she surrendered for adoption her ~~minor~~ child,
19 namely _____, born on the ___ day of _____, ___, in the Parish of _____, State of
20 _____.

21 The Act of Surrender alleges that you are the father of this child. You may
22 attempt to oppose the adoption of this child only by filing a written objection with
23 this court within fifteen days after you receive this notice.

24 If you file a written objection timely, the court will then hold a hearing within
25 twenty days of the filing of the opposition, to determine whether you have
26 established or forfeited your parental rights.

27 To establish your parental rights to oppose the adoption, you must
28 acknowledge that you are the father of the child or be found to be the father by court
29 order as a result of blood tests. Thereafter, you must also demonstrate to the court

1 that you are a fit parent who is willing and able to assume the legal and physical care
 2 of your child. You must also demonstrate that you have made a substantial
 3 commitment to your parental responsibilities by providing or attempting to provide
 4 substantial and consistent support for the mother during pregnancy or after the child's
 5 birth and by frequently and consistently visiting or attempting to visit the child after
 6 birth.

7 If you fail to file a written motion of opposition, or if, after a hearing on a
 8 motion timely filed, the court finds that you have failed to establish your parental
 9 right to oppose the adoption, the court will order the termination of any and all
 10 parental rights you may have and the child may be subject to adoption."

11 * * *

12 Art. 1170. Types of adoption

13 A. This Title sets forth the exclusive procedures for adoption of ~~minor~~
 14 children in Louisiana. There are three types of adoption of ~~minor~~ children in
 15 Louisiana:

16 * * *

17 Art. 1200. Fee disclosure; permissible reimbursement of expenses; court review;
 18 report

19 * * *

20 B. Only the following services provided by the Department of Children and
 21 Family Services, or payments made through a licensed adoption agency; or an
 22 adoption attorney, are permissible and not a violation of R.S. 14:286:

23 * * *

24 (7)

25 * * *

26 (a) Living expenses in accordance with this Subparagraph may be paid for
 27 a reasonable time before the birth of her child and for no more than forty-five days
 28 after the birth and may include the following:

29 * * *

1 (iii) Food for the mother and any ~~minor~~ children residing in her home.

2 * * *

3 Art. 1223. Fee disclosure; permissible reimbursement of expenses; court review;
4 report

5 * * *

6 B. Only the following services provided by the Department of Children and
7 Family Services, or ~~payment~~ **payments** made through a licensed adoption agency;
8 or an adoption attorney, are permissible and not a violation of R.S. 14:286:

9 * * *

10 (7)

11 * * *

12 (a) Living expenses in accordance with this Subparagraph may be paid for
13 a reasonable time before the birth of her child and for no more than forty-five days
14 after the birth and may include the following:

15 * * *

16 (iii) Food for the mother and any ~~minor~~ children residing in her home.

17 * * *

18 Art. 1264. Post-adoption visitation rights of grandparents

19 Notwithstanding any provision of law to the contrary, the natural parents of
20 a deceased parent whose child is thereafter adopted and the parents of a party who
21 has forfeited the right to object to the adoption of ~~his~~ **the** child pursuant to Article
22 1245 may have limited visitation rights to the ~~minor~~ **adopted** child ~~so-adopted~~.

23 * * *

24 Art. 1267. Burden of proof

25 The grandparents requesting limited visitation rights shall prove both of the
26 following:

27 * * *

28 (2) That ~~such~~ limited visitation rights would be in the best ~~interests~~ **interest**
29 of the ~~minor~~ child.

* * *

Art. 1409. Rights guaranteed

* * *

T. The institution shall prohibit the mistreatment, neglect, or abuse of any ~~minor~~ child in any way.

* * *

Art. 1428. Notice of admission

A. The director of the treatment facility shall notify the ~~minor patient's~~ **minor's** nearest relative, if known, or designated responsible party, if any, in writing of the minor's admission by emergency certificate as soon as reasonably possible.

B. Within seventy-two hours after an admission of any minor to a treatment facility by emergency certificate, copies of the physician's and coroner's emergency certificates shall be delivered by the facility by personal delivery, email, or facsimile to the MHAS office located nearest to the treatment facility.

* * *

Art. 1436. Hearing; notice

A. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, ~~shall assign~~ **and** a place for a hearing upon the petition; and shall cause reasonable notice thereof to be ~~given~~ **delivered at least ten days prior to the hearing** to the minor, ~~his~~ **the minor's** attorney, and the petitioner, **and the Louisiana Department of Health, bureau of legal services.**

B. The notice shall inform the minor ~~respondent that he has a~~ **of the** right to be present at the hearing; ~~that he has a~~ **the** right to counsel; ~~that he,~~ **and,** if indigent or otherwise qualified, ~~has the right to have counsel appointed to represent him by~~ **from** the MHAS; ~~and that he has the right to~~ **call and cross-examine** ~~cross-examine~~ witnesses testifying at any hearing on ~~such application~~ **the petition.**

* * *

Art. 1569. Temporary restraining order

1 A. Upon good cause shown in an ex parte proceeding, the court may enter a
 2 temporary restraining order, without bond, as ~~it~~ the court deems necessary to protect
 3 from abuse the petitioner, any children, or any person alleged to be ~~an~~ incompetent.
 4 Immediate and present danger of abuse shall constitute good cause for purposes of
 5 this Article. The order may include but is not limited to the following:

6 * * *

7 (4) Prohibiting either party from the transferring, encumbering, or otherwise
 8 disposing of property mutually owned or leased by the parties, except when in the
 9 ordinary course of business; or for the necessary support of the party or the ~~minor~~
 10 children.

11 * * *

12 (7) Granting to the petitioner the exclusive care, possession, or control of any
 13 pets belonging to or under the care of the petitioner or ~~minor~~ children residing in the
 14 residence or household of either party, and directing the defendant to refrain from
 15 harassing, interfering with, abusing or injuring any pet, without legal justification,
 16 known to be owned, possessed, leased, kept, or held by either party or a ~~minor~~ child
 17 residing in the residence or household of either party.

18 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Hanna Gettys.

DIGEST

SB 39 Original

2024 Regular Session

Mizell

Present law (Ch.C. Art. 412) provides for the confidentiality of records.

Proposed law retains present law and corrects a cross-reference.

Present law (Ch.C. Art. 421) provides for probation officers.

Proposed law retains present law and makes technical corrections.

Present law (Ch.C. Art. 617) provides for the issuance of temporary restraining order.

Proposed law retains present law and deletes the redundant term "minor" before "children".

Present law (Ch.C. Art. 618) provides for the issuance of protective orders.

Proposed law retains present law and deletes the redundant term "minor" before "children".

Proposed law (Ch.C. Art. 625.1) requires the court to advise children ten years of age or older of their rights, including the right to an attorney, to receive notice of all hearings, to have the opportunity to testify, and to reasonable accommodations for any disability.

Present law (Ch.C. Art. 648) requires the court to advise parents of their rights and responsibilities.

Proposed law retains present law and additionally requires the court to advise children of their rights and responsibilities.

Present law (Ch.C. Art. 672) authorizes the court on its own motion, for good cause shown and if in the best interest of the child, to disapprove the placement of children as chosen by the Department of Children and Family Services.

Proposed law retains the concepts in present law and extends the right to a party to file a motion alleging that the placement is not in the best interest of the child.

Present law (Ch.C. Art. 683) provides for disposition in Child in Need of Care proceedings.

Proposed law retains present law and provides that the court shall not commit a child in state custody to a mental institution without a contradictory hearing and notice to the Louisiana Department of Health.

Proposed law further requires the performance of a psychological or psychiatric evaluation in accordance with present law before committing a child to an institution for intellectual disabilities.

Present law (Ch.C. Art. 718) sets forth the purpose of guardianship.

Proposed law clarifies that the purpose of guardianship is to provide placement for a child when the court finds both that the adoption is not in the best interest of the child and that the child cannot be safely reunified with the parent within a reasonable time.

Present law (Ch.C. Art. 720) provides for the contents of a motion for guardianship.

Proposed law clarifies that the motion shall include a statement as to why adoption is not in the best interest of the child and why the child cannot be safely reunified with the parent within a reasonable time.

Proposed law further provides that a parent's statement as to why the child cannot be safely reunified with the parent within a reasonable time shall not be deemed an admission.

Present law (Ch.C. Art. 776) provides for applicable laws when a child is in the custody of the state.

Proposed law retains present law and corrects a cross-reference.

Present law (Ch.C. Art. 781) provides for disposition in Families in Need of Services proceedings.

Proposed law retains present law and provides that the court shall not commit a child in state custody to a mental institution without a contradictory hearing and notice to the La. Department of Health.

Proposed law further requires the performance of a psychological or psychiatric evaluation in accordance with present law before committing a child to an institution for intellectual disabilities.

Present law (Ch.C. Art. 895) provides for commitment to a mental institution in a delinquency proceeding.

Proposed law retains present law and provides that the court shall not commit a child without a contradictory hearing and notice to the La. Department of Health unless the child has counsel.

Present law (Ch.C. Art. 1004) provides for a petition to terminate parental rights.

Proposed law retains present law and corrects cross-references regarding the grounds for termination.

Present law (Ch.C. Art. 1007) provides for the confidentiality of records of court proceedings.

Proposed law retains present law and corrects cross-references regarding petitions for the termination of parental rights.

Present law (Ch.C. Art. 1015.2) provides for the award of costs in a termination of parental rights proceeding.

Proposed law retains present law and corrects a language error.

Present law (Ch.C. Art. 1016) provides for the child's right to counsel in termination proceedings. Present law further provides that for termination proceedings brought as a result of a sex offense, the court has discretion in appointing counsel for the child.

Proposed law provides that the child has the right to counsel in all termination proceedings.

Present law (Ch.C. Art. 1019) provides for the contents of a petition to terminate parental rights.

Proposed law retains present law and corrects cross-references regarding the grounds for termination.

Present law (Ch.C. Arts. 1035 and 1036) provides for the burden of proof in a termination proceeding.

Proposed law retains present law and corrects cross-references regarding the grounds for termination.

Present law (Ch.C. Art. 1036.2) provides for notice of proceedings to incarcerated parents.

Proposed law retains present law and corrects a cross-reference to the grounds for termination.

Present law (Ch.C. Art. 1037.1) provides for continuing contact with relatives after a termination of parental rights.

Proposed law retains present law and makes technical corrections.

Present law (Ch.C. Art. 1107.8) provides for notice of filing an act of intent to surrender a child for adoption.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1124) provides for family information when a child is surrendered for adoption.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1125) provides for the statement of family history form when a child is surrendered for adoption.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1132) provides for notice of the filing of surrender.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1170) provides for the types of adoption.

Proposed law retains present law and deletes the redundant term "minor" before "children".

Present law (Ch.C. Arts. 1200 and 1223) requires the disclosure of fees and expenses in adoptions.

Proposed law retains present law and deletes the redundant term "minor" before "children".

Present law (Ch.C. Art. 1264) provides for post-adoption visitation rights of grandparents.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1267) provides for the burden of proof for grandparents seeking limited visitation.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1409) provides for rights granted to minor patients.

Proposed law retains present law and deletes the redundant term "minor" before "child".

Present law (Ch.C. Art. 1428) provides for notice of admission when a child enters a treatment facility by emergency certificate.

Proposed law retains present law and further requires notice of the child's admittance to be provided within 72 hours to Mental Health Advocacy Services.

Present law (Ch.C. Art. 1436) provides for a hearing upon a petition for judicial commitment.

Proposed law retains present law and further requires notice of the hearing to be delivered at least ten days prior to the hearing and additionally to the La. Department of Health.

Present law (Ch.C. Art. 1569) provides for the issuance of temporary restraining orders.

Proposed law retains present law and deletes the redundant term "minor" before "children".

Effective August 1, 2024.

(Amends Ch.C. Arts. 412(I), 421, 617(A)(intro para) and (4), 618(A)(intro para), (2), and (3), 648, 672(A)(2), 683(E) and (F), 718(A), 720(A), (B)(1) and (6), (C), and (D), 776(A), 781(D) and (E), 895, 1004(B), (D), and (F), 1007(B), 1015.2(B), 1016(A) and (B), 1019(C), 1035(B), 1036(C)(intro para), (D)(intro para), and (E), 1036.2(E), 1037.1(A), 1107.8(A), 1124(C), 1125(B), 1132(D), 1170(A)(intro para), 1200(B)(7)(a)(iii), 1223(B)(7)(a)(iii), 1264, 1267(2), 1409(T), 1428, 1436, and 1569(A)(intro para), (4), and (7); adds Ch.C. Art. 625.1)