

Regular Session, 2003

ACT No. 609

HOUSE BILL NO. 243

BY REPRESENTATIVE ANSARDI

(On Recommendation of the Louisiana State Law Institute)

AN ACT

To amend and reenact Children's Code Articles 424.1(A) and (D), 1015(7), 1101, and 1193(introductory paragraph); to enact Chapter 13 of Title XI of the Children's Code, to be comprised of Articles 1149 through 1160; and to repeal Children's Code Articles 1701 through 1706, relative to safe haven relinquishments of infants; to provide for CASA appointments; to provide that CASA volunteers shall submit to a criminal history records check; to provide for defenses to prosecution; to provide for emergency care facility responsibilities; to provide for medical evaluations of the infant; to provide for hearings for parents to reclaim parental rights; to provide procedures when a non-relinquishing parent cannot be identified; to provide procedural safeguards; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 424.1(A) and (D), 1015(7), 1101, and 1193 (introductory paragraph) are hereby amended and reenacted to read as follows:

Art. 424.1. CASA; appointment

A. The court is authorized in child in need of care proceedings, or in any certification for adoption proceedings, and adoption

proceedings arising from a child in need of care proceeding, or a safe haven relinquishment, to appoint a CASA program as defined in Article 116 to assist the court in fulfilling its duties and responsibilities to children brought into court.

* * *

D. CASA volunteers serve without compensation and at the pleasure of the court exercising juvenile jurisdiction. The judge of the court will first satisfy himself of the volunteer's qualifications, training, and ability to serve as a CASA volunteer, including his ability to represent and advocate the best interest of children assigned to him. Pursuant to ~~R.S. 15:587.1~~, no ~~No~~ volunteer shall be assigned until a comprehensive criminal background check has been conducted ~~the volunteer has submitted fingerprints to the Louisiana Bureau of Criminal Identification and Information to determine whether the volunteer has been convicted of or has pled nolo contendere to a crime listed in R.S. 15:587.1(C).~~

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Comment - 2003

The authorization of a CASA appointment in safe haven proceedings is required by 2003 revisions of the safe haven relinquishment process, now found in Chapter 13 of Title XI.

Art. 1015. Grounds

The grounds for termination of parental rights are:

* * *

(7) ~~Relinquishment~~ The relinquishment of a newborn an infant pursuant to Chapter 13 of Title ~~XVII~~ XI of this Code.

* * *

Art. 1101. Purpose

Except as otherwise provided in Articles 1195 and 1196 ~~and Title XVII~~ of this Code, this Title provides the exclusive means by which a parent can voluntarily relinquish his parental rights to a child for the ultimate purpose of adoption.

* * *

Art. 1193. Persons whose consent or relinquishment is required

Unless rights have been terminated in accordance with Title X ~~or XI, or XVII~~, consent to the adoption of a child or relinquishment of parental rights shall be required of the following:

* * *

Section 2. Chapter 13 of Title XI of the Children’s Code, comprised of Articles 1149 through 1160, is hereby enacted to read as follows:

CHAPTER 13. SAFE HAVEN RELINQUISHMENTS

Art. 1149. Purpose

The purpose of this Chapter is to provide a mechanism whereby any parent may relinquish the care of an infant to the state in safety, anonymity, and without fear of prosecution.

Comments - 2003

(a) A large majority of states have enacted "safe haven statutes" which permit a parent to take an infant to some designated facilities for safekeeping. The purpose of these statutes is to encourage a parent who might otherwise be tempted to abandon or discard a child to instead, ensure that the infant will be provided medical and shelter care and ultimately, be adopted by others.

(b) Such a statute was enacted by the legislature in the 2000 1st Extraordinary Session as Title XVII of the Children’s Code, and referred to the Louisiana Law Institute for any necessary revision at the regular session of the legislature in 2001.

Art. 1150. DefinitionsAs used in this Chapter:

(1) "Department" means the Louisiana Department of Social Services.

(2) "Designated emergency care facility" means any hospital licensed in the state of Louisiana, any public health unit, any emergency medical service provider, any medical clinic, any fire station, any police station, any pregnancy crisis center, or any child advocacy center.

(3) "Infant" means a child not previously subjected to abuse or neglect, who is not more than thirty days old as determined within a reasonable degree of medical certainty by an examining physician.

(4) "Relinquish" or "relinquishment" of an infant means to give over possession or control of him by a parent to another in compliance with this Chapter, with the settled intent to forego all parental responsibilities.

Comment - 2003

Child Advocacy Centers provide safe and comforting surroundings for children who are victims of serious child abuse. In communities that have established centers, these facilities have the professionally trained staff needed to ensure confidentiality for a relinquishing caretaker and to ensure that any infant relinquished there can be immediately taken to a hospital.

Art. 1151. Relinquishment of infants; defense to prosecution

A. If a parent wishes to relinquish his infant, he may leave the infant in the care of any employee of a designated emergency care facility. If the parent is unable to travel to such a facility, he may call "911", and a law enforcement officer or emergency medical service provider shall immediately be dispatched to meet the parent and transport the child to a hospital.

B. Relinquishment of an infant in accordance with this Chapter is not a criminal act of neglect, abandonment, cruelty, or a crime against the child.

Art. 1152. Designated emergency care facility responsibilities

A. Every designated emergency care facility shall appoint as its representative one or more employees on duty during regular business hours who is knowledgeable about the requirements of this Chapter. In addition, at other times each facility shall designate a representative who can be reached by emergency telephone service.

B. The department shall create a card that will be supplied to designated emergency care facilities, which shall be provided to the individual relinquishing an infant into the care of a designated emergency care facility. The card shall contain a toll free number to the department and a section on the card for the designated emergency care facility to provide their address and contact information.

C. In the event that the relinquishing parent makes contact with the department or the designated emergency care facility, the relinquishing parent shall be asked to voluntarily provide information about any prenatal care and the name of the other parent.

D. The representative shall provide to the parent written information about:

(1) How to contact the department should the parent later have questions about the relinquishment or the voluntary medical and genetic history information.

(2) The availability of counseling services.

(3) The right of the parent to file a claim and be heard in accordance with Articles 1156 and 1157.

(4) The right of the parent to use the services of the voluntary registry in accordance with Chapter 15 of Title XII.

E. In the event that an infant is relinquished to a designated emergency care facility other than a hospital, the staff of the facility shall immediately transfer him to a hospital.

F. The representative shall immediately notify the department of the relinquishment.

G. Absent evidence of willful or intentional misconduct or gross negligence in carrying out these responsibilities, the representative and other staff of the designated emergency facility shall be immune from civil and criminal liability in any legal action arising from the examination, testing, care, and treatment of the infant.

Art. 1153. Medical evaluation of the infant

A. The act of relinquishment constitutes parental consent for the purposes of examining and testing procedures conducted by hospital staff and for the purposes of providing medical treatment and care of the infant.

B. A physician shall promptly conduct a comprehensive medical examination and such tests to determine:

- (1) If the infant suffers from HIV or hepatitis, if suspected.
- (2) If the infant suffered fetal exposure to alcohol or drugs.
- (3) If the infant appears to have been abused or neglected.
- (4) The infant's estimated date of birth, if not previously known.

C. The hospital shall forward the infant's birth information to the Bureau of Vital Statistics, for issuance of a birth certificate, unless it is determined that one has already been issued. Unless otherwise known, the infant shall be presumed to have been born in Louisiana.

D. Absent evidence of willful or intentional misconduct or gross negligence in carrying out these responsibilities, medical personnel and hospital staff shall be immune from civil and criminal liability in any legal action arising from the hospital's examination, testing, care, and treatment of the infant.

Art. 1154. Safe haven continued custody hearing; instanter order

A. Immediately after notification that an infant has been relinquished, the department shall request an oral instanter order of custody from the court in accordance with Article 620 and shall take physical custody of the infant within twelve hours of notice that the infant is ready to be discharged from the hospital. The department shall exercise due diligence in attempting to identify and locate any non-relinquishing parent, including but not limited to performing a missing children search.

B.(1) A hearing shall be held by the court within three days after the infant's entry into the custody of the department.

(2) No notice to a parent or other caretaker shall be required.

(3) The court shall order the appointment of counsel for the child and may also appoint a CASA volunteer for the child.

(4) Hearsay evidence shall be admissible at this hearing.

C. At this hearing, the department has the burden to prove all of the following:

(1) There are reasonable grounds to believe that the infant has been relinquished to the state for adoption in accordance with this Chapter.

(2) There is no evidence that the infant was abused or neglected prior to his relinquishment.

D. If the court finds that the department has satisfied the requirements of Paragraph C and that removal of the child is necessary in order to safeguard his welfare, it shall order continued custody of the infant in the department prior to final entry of an order declaring parental rights terminated and enter a finding that the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal and that reunification efforts are not required.

E. If the court determines that the infant was abused or neglected prior to its relinquishment, the court shall direct that a child in need of care investigation be commenced by the department in accordance with Title VI.

Comments - 2003

(a) The procedure for a continued custody hearing in a safe haven relinquishment case is patterned upon the continued custody hearing in child in need of care proceedings contained in Article 624. The major distinction is that there is no requirement that a parent or caretaker be served. Typically, the child's parents are not identified and likely could not be identified within three days. Time is of the essence in these hearings and primary concern at this early stage is to obtain judicial concurrence that this is a safe haven relinquishment and if so, to confirm the department's authority and responsibility as the infant's custodian.

(b) Consistent with Article 627, the court must appoint counsel and if advisable in accordance with Article 424.1, may appoint a CASA representative for the infant.

(c) The findings of Paragraph D are required by the Adoption and Safe Families Act of 1997, 42 U.S.C. § 601 et seq., P.L. 105-89. If these findings are made, a permanency hearing may be conducted immediately. See also Article 1159.

(d) If the court determines that the infant was abused or neglected prior to its relinquishment, the parent is not immunized from culpability in any proceeding in the juvenile court or in a criminal prosecution based upon the child's condition.

Art. 1155. Non-relinquishing parent; procedures

A. If a non-relinquishing parent cannot be identified, the court, upon finding that a diligent effort has been made by the department to identify the parent, shall terminate the parental rights of the unidentified non-relinquishing parent. In proving that a diligent but unsuccessful effort was made, the department shall introduce:

(1) A certified copy of the child's birth certificate, if one has been issued.

(2) A certificate indicating the name and address of any person listed with the putative father registry or a certificate that no registration or listing has occurred concerning this child.

B. If a non-relinquishing parent of the infant is identified, notice of the relinquishment, including an explanation of the rights of the non-relinquishing parent, shall be served upon that parent prior to the entry of an order terminating parental rights. The notice shall contain the following information in substantially the following form:

"NOTICE OF SAFE HAVEN RELINQUISHMENT

Be advised that on the _____ day of _____, (NAME OF PARENT), the parent of an infant (FEMALE/MALE), born on the _____ day of _____, relinquished the infant for adoption by leaving (HIM/HER) at an emergency care facility.

You are alleged to be the other parent of the infant. You may oppose the adoption of this child only by filing a motion of opposition with this court within fifteen days after you are served with this notice.

If you file a motion of opposition timely, the court will then hold a hearing within twenty days of the filing of your objection, to

determine whether you have established or forfeited your parental rights.

To establish your parental right to oppose the adoption, you must acknowledge that you are the parent of the child or be found to be the parent by court order as a result of blood or tissue tests. Thereafter, you must also demonstrate to the court that you are a fit parent who is willing and able to assume the legal and physical care of your child. You must also demonstrate that you have made a substantial commitment to your parental responsibilities by providing or attempting to provide substantial and consistent support during pregnancy or after the infant's birth and by frequently and consistently visiting or attempting to visit the child after birth. If you fail to file a motion of opposition, or if, after a hearing on a motion timely filed, the court finds that you have failed to establish your parental right to oppose the adoption, the court will order the termination of any and all parental rights you may have and the child may be subject to adoption."

C. If a non-relinquishing parent is identified but his whereabouts are unknown or he cannot be served, the court shall appoint a curator, and notice of the relinquishment shall be served upon him. The curator shall make a diligent effort to locate the parent and notify him of the pendency and nature of the proceedings. Within thirty days after the appointment, the curator shall submit to the court a written report indicating the efforts made to locate the parent. If the non-relinquishing parent has not been located, the court, upon finding that a diligent effort has been made to locate the parent, shall terminate the parental rights of that parent.

D. If an identified non-relinquishing parent is recognized as having parental rights under Article 1193, an involuntary termination of parental rights judgment under Title X, consent to adoption, or relinquishment of parental rights shall be required prior to adoption.

E. If the identified non-relinquishing parent is an alleged or adjudicated father, then his rights shall be determined in accordance with Articles 1137 through 1143.

Comments - 2003

(a) Paragraph A acknowledges the fact that usually only one parent of an infant leaves him in a safe haven. The other parent may have no knowledge of the child's birth or relinquishment. If the relinquishing parent, typically the mother, does identify the father to the representative of the emergency care facility, then due process would require effort to notify the parent who has a constitutionally recognized opportunity interest in raising his child. In re Adoption of B.G.S., 556 So.2d 545 (La. 1990).

(b) Paragraph B models the procedure for attempted notification of the non-relinquishing parent upon the opposition process which can occur when only one parent has executed a surrender of the child for adoption. Note that unlike terminations of parental rights when at least one parent has executed an act of surrender, here the department need only show that no father is identified on the infant's birth certificate or the putative father registry; contrary to Article 1141(A)(3) it is not required to check for acts of formal acknowledgment in the parish of the child's birth (or parish of the relinquishment) since the non-relinquishing parent is unlikely to have the information necessary to file such a document.

(c) If the identity of a non-relinquishing parent is known to the court by any means, including identification by the relinquishing party or through either the birth certificate or Putative Father Registry certificate, notice to the non-relinquishing parent is required.

(d) The source of Paragraph D is Article 1142(A). If a legal parent exists and is unwilling to relinquish his rights, then the court should issue an instanter order in accordance with Article 619 and commence a child in need of care proceeding to inquire further about the custody of the child.

(e) The source of Paragraph E is Article 1037(D). Article 1037(A) requires an alleged or adjudicated father to file any notice of opposition within fifteen days after service of the notice. Thereafter, the hearing must be scheduled within twenty days of the filing of the opposition. Article 1137(C).

Art. 1156. Reclaiming parental rights; time limitations; paternity testing; home study

A. Within thirty days after the relinquishment, a parent who has relinquished an infant may seek to reclaim parental rights by filing in the court in the parish in which the infant was relinquished a motion evidencing a declaration of his intention to retain his parental rights.

B. The court shall set the parent's motion for contradictory hearing against the department to be held within twenty days of the filing of the motion. No continuances shall be granted, except in extraordinary circumstances and upon a showing of good cause.

C. The court shall issue an order for immediate blood or tissue testing, in accordance with the provisions of R.S. 9:396 et seq., and shall order an expedited report.

D. The court shall also order the department to immediately conduct a home study of any parent seeking to reclaim or establish his rights and promptly report to the court concerning its findings.

Comments - 2003

(a) The source of Paragraph A is Article 1137(A) which governs the manner in which an alleged father files notice of his opposition to his child's surrender for adoption. The time limitations here are longer than the fifteen days given a non-surrendering father and are debatable, but thirty days seemed to be a reasonable period for reflection and reconsideration of the decision to relinquish an infant for adoption.

(b) The source of Paragraph B is Article 1137(C).

(c) The source of Paragraph C is Article 1137(E).

(d) Paragraph D is new. Unlike the surrender process, when a parent relinquishes an infant, the parents, their families and home environments may be wholly unknown to the department and court. The most effective means for the court to obtain the information it needs to make a best interests determination is to obtain a home study. Article 1229 governs the contents of a home study of adopting

petitioners in a private adoption and may be used as a guide for this home study.

Art. 1157. Reclaiming of parental rights by the relinquishing parent;

hearing

A. A relinquishing parent may reclaim parental rights by proving by clear and convincing evidence that:

(1) He is the parent of the child.

(2) Setting aside the relinquishment and permitting the parent to reclaim the child is in the child's best interests.

B. If the court finds that the relinquishment should be set aside and that the parent may reclaim his parental rights, then the parent shall prove also that he has manifested a substantial commitment to his parental responsibilities and that he is a fit parent of the child.

C. The child, the other parent, and the legal custodian may offer rebuttal evidence limited to the issues enumerated in Paragraphs A and B of this Article.

D. If the court finds that the parent has established his parental rights, the court shall declare that no adoption may be granted without his consent. The court may also order the parent to reimburse the department, or whoever has assumed liability for such costs, all or part of the medical expenses incurred for the infant in connection with his birth and care.

E. If the court finds that the parent has failed to establish his parental rights, it shall declare that his rights are terminated.

Comments - 2003

(a) The best interests of the child always governs the deliberations of the juvenile court and that standard is used in Paragraph A to permit the court to take into account all relevant facts surrounding the parent's intent and actions. The burden of proof is,

however, upon the parent and it is the usual and higher civil burden, to convince the court that the child's interests clearly justify permitting the parent to reclaim parental rights.

(b) Unless this standard is met and the act of apparent relinquishment is in effect nullified, the court need not consider the parent's capability of caring for the infant as required by Paragraph B. The source of Paragraph B is Article 1138(A), the burden of proof for a father who is opposing a proposed adoption.

(c) The source of Paragraph C is Article 1138(C).

Art. 1158. Order declaring parental rights terminated; time limitations; finality

A. If a relinquishing parent has not sought timely to reclaim parental rights, and if no timely opposition to adoption has been filed by an alleged or adjudicated non-relinquishing father, the court shall, upon motion by the department filed within forty-five days after the relinquishment, render a judgment declaring the rights of the parents terminated.

B. The effects of a judgment terminating parental rights are as set forth in Article 1038. If the court has terminated the rights of both parents of the child, it also shall certify the child for adoption and continue custody in the department.

C. No action to annul a judgment terminating parental rights pursuant to this Chapter shall be brought for any reason after ninety days from its signing or after a decree of adoption has been entered, whichever is earlier.

Comment - 2003

The source of this article is Article 1148 which provides an identical preemptive time period for actions seeking to annul a surrender.

Art. 1159. Permanency planning; case plan; review hearings

A. Unless a reclaiming of parental rights is filed timely, the department shall within thirty days of the continued custody hearing develop and file with the court a permanency case plan as described in Article 673.

B. If a reclaiming of parental rights is filed timely, the department shall develop and file with the court a permanency case plan within thirty days of a judgment denying the claim and terminating parental rights.

C. The case shall thereafter be reviewed in accordance with Chapter 10 of Title X.

D. The attorney appointed to represent the infant at the safe haven continued custody hearing shall continue to represent the child in all review hearings until the child is permanently placed.

Comment - 2003

The Adoption and Safe Families Act of 1997 requires the formulation of a case plan and case review hearings for every child who is removed from the custody of his parents. For further discussion see the Comments to Chapter 10 of Title X.

Art. 1160. Additional regulations; Administrative Procedure Act

The department, in accordance with the Administrative Procedure Act, shall promulgate all rules and regulations necessary to carry out the provisions of this Chapter, including but not limited to the following:

(1) Notice to the public of the existence of designated emergency care facilities and the use of safe havens, including the establishment of a toll free number to direct individuals to designated emergency care facilities.

(2) Written information and training materials for the instruction of representatives of emergency medical care facilities who are designated to receive relinquished children and to interview relinquishing parents.

(3) Procedures and forms informing a relinquishing parent about his right to file a claim and be heard in accordance with Articles 1156 and 1157 of this Chapter and his right to use the services of the voluntary registry in accordance with Chapter 15 of Title XII.

(4) Procedures for use by a physician in conducting the medical evaluation of the child in accordance with Article 1153 of this Chapter.

(5) The department shall utilize existing funds to effectuate the provisions of Paragraphs (1) and (2) of this Article.

Section 3. Children’s Code Articles 1701 through 1706 are hereby repealed in their entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____