

Louisiana Law

CHAPTER 13. SAFE HAVEN RELINQUISHMENTS

Art. 1150. Definitions

As used in this Chapter:

- (1) "Department" means the Department of Children and Family 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 **sixty 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.

Acts 2003, No. 609, §2; Acts 2009, No. 284, §1, eff. July 1, 2009; Acts 2013, No. 186, §1.

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.

Acts 2003, No. 609, §2.

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. Every designated emergency care facility shall provide, on a periodic basis, instruction regarding safe haven relinquishment procedures to all employees who work in the facility. A designated emergency care facility or its employees or volunteers shall not be held liable for any civil penalty for failure to comply with the provisions of this Subsection.

C. Instruction by a designated emergency care facility on safe haven relinquishment procedures may:

- (1) Be provided in any manner that is deemed appropriate and sufficient by the facility.
- (2) Vary depending on the type of facility and the job duties of the employees being trained.
- (3) Utilize the downloadable instructional video and training materials provided by the Department of Children and Family Services on the department's website.

D. 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.

E. 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.

F. 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.

G. 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.

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

I. 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.

Acts 2003, No. 609, §2; Acts 2010, No. 471, §1.

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.

Acts 2003, No. 609, §2.

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 of this Article 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.

Acts 2003, No. 609, §2.

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 of this Code, 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.

Acts 2003, No. 609, §2.

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.

Acts 2003, No. 609, §2.

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.

Acts 2003, No. 609, §2.

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.

Acts 2003, No. 609, §2.

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.

Acts 2003, No. 609, §2.

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 through the following actions:

(a) The establishment of a toll-free telephone number to direct individuals to designated emergency care facilities.

(b) The provision of safe haven publicity and informational materials on the department's website for review and download by the public.

(2) Written information, training materials, and an instructional video to be made available for download on the department's website, 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.

Acts 2003, No. 609, §2; Acts 2010, No. 471, §1