

2024 Regular Session

HOUSE RESOLUTION NO. 192

BY REPRESENTATIVE BERAULT

ADOPTION: Directs the Louisiana State Law Institute to study adoption proceedings

1 A RESOLUTION

2 To authorize and direct the Louisiana State Law Institute to study adoption proceedings
3 relative to surrendering a child and to report its findings to the legislature no later
4 than January 6, 2025.

5 WHEREAS, the Children's Code refers to surrendering a child for purposes of
6 placing a child for adoption; and

7 WHEREAS, in order to have a more positive association with adoption proceedings,
8 the Children's Code, and all other provisions of law, should substitute language on
9 surrendering a child for adoption to placing a child for adoption; and

10 WHEREAS, according to Civil Code Article 1918, unemancipated minors do not
11 have the capacity to contract, and any contract with a minor may be declared null by a court;
12 and

13 WHEREAS, Children's Code Article 1113 provides that a minor may surrender the
14 minor's child to an agency without the consent of the parents or the tutor of the minor; and

15 WHEREAS, the parents of the minor should be involved in the decisionmaking
16 process for all adoptions, including agency adoptions and intra-family adoptions; and

17 WHEREAS, the Act of Surrender under Children's Code Article 1122 recites that the
18 Act of Surrender is not being executed earlier than the third day following the birth of the
19 child if it is an agency adoption or the fifth day following the birth of the child if the
20 adoption is a private adoption; and

1 WHEREAS, in the best interests of the mental and physical health of the
2 surrendering mother, the Act of Surrender should be executed at the same time regardless
3 of whether the adoption is conducted by an agency or is a private adoption; and

4 WHEREAS, the Act of Surrender under Children's Code Article 1122 should recite
5 that the surrendering parent is aware that, upon execution, the adoption is irrevocable;
6 however, under Children's Code Article 1148, the surrendering parent has ninety days to
7 revoke the surrender if the surrendering parent is a victim of fraud or duress; and

8 WHEREAS, the Act of Surrender under Children's Code Article 1122 should declare
9 if the child being placed for adoption is an "Indian Child" as defined by Children's Code
10 Article 116 and if the parent is on active duty with any branch of the military as of the date
11 of surrender; and

12 WHEREAS, the fifteen-day period that an alleged father has to oppose the adoption
13 of his alleged child under Children's Code Article 1137 does not allow for proper discovery
14 and is likely to be more effective if the time period is extended; and

15 WHEREAS, in order to protect an alleged father, there should be additional measures
16 under Children's Code Article 1135 to support the surrendering mother's allegations that the
17 father is unknown and that the mother has made a diligent effort to identify him; and

18 WHEREAS, the court should establish a standard that the mother is required to meet
19 in order to prove that the father is unknown and that the mother has made a diligent effort
20 to identify him; and

21 WHEREAS, Children's Code Article 1137 provides for the notice of opposition to
22 the adoption for an alleged or adjudicated father; and

23 WHEREAS, a presumed father is not afforded the same notice under Children's Code
24 Article 1137, because the adoption proceedings are governed by Children's Code Articles
25 1004 and 1015; and

26 WHEREAS, in the interest of judicial proceedings, both presumed and alleged
27 fathers should be afforded adequate notice; and

28 WHEREAS, under Children's Code Article 1138, if the alleged or adjudicated father
29 has established his parental rights, the court may order the alleged or adjudicated father to
30 pay the adoption agency for costs incurred while caring for the child; and

1 WHEREAS, the court should consider ordering the alleged or adjudicated father to
2 pay a sum of financial support to an independent adoptive family who keeps the child for the
3 duration of the opposition; and

4 WHEREAS, under Children's Code Article 1138, proof of the father's substantial
5 commitment to parental responsibilities should be focused on his efforts as a father as
6 opposed to efforts of his family members; and

7 WHEREAS, a child could bond with the prospective adoptive family if the child has
8 lived with the prospective adoptive family for a significant period of time; and

9 WHEREAS, the court should consider the recommendations of a child custody
10 expert when ordering reunification of a child with the parent; and

11 WHEREAS, Children's Code Article 1175 should be used only in cases where
12 completing a home study is not practicable; and

13 WHEREAS, Children's Code Article 1175 is an available avenue for prospective
14 adoptive parents to place a child in their home without completing a home study; and

15 WHEREAS, Children's Code Article 1200 provides for permissible reimbursements
16 of expenses to a surrendering parent; and

17 WHEREAS, Children's Code Article 1200 should only allow for retroactive expenses
18 to a surrendering parent if special conditions exist, which should be clearly disclosed and
19 approved by the court prior to disbursement; and

20 WHEREAS, Children's Code Article 1209 provides that intervention in agency
21 adoption proceedings shall be limited to persons having a substantial caretaking relationship
22 with the child or any other party in interest; and

23 WHEREAS, in Children's Code Article 1209, the phrase "any other person that the
24 court finds to be a party in interest" should be removed as it is overly broad, and language
25 authorizing intervention by an individual who shows substantial evidence that the adoption
26 is not in the best interest of the child should be included; and

27 WHEREAS, Children's Code Article 1223 allows for permissible reimbursement of
28 expenses to a birth mother, but also should prohibit a birth mother from accepting payment
29 from more than one potential adoption petitioner or agent; and

1 WHEREAS, while Children's Code Article 1245 provides for cases in which parental
2 consent is not necessary for an adoption, the grounds for termination of parental rights under
3 Children's Code Article 1015(1) through (4) also should be taken into consideration; and

4 WHEREAS, in the Children's Code, the authority of the Department of Children and
5 Family Services is not clearly outlined, and there should be specific rules and guidelines
6 outlining the authority of the department in adoption proceedings.

7 THEREFORE, BE IT RESOLVED that the House of Representatives of the
8 Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute
9 to study adoption proceedings relative to surrendering a child and to report its findings to the
10 legislature no later than January 6, 2025.

11 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
12 director of the Louisiana State Law Institute.

13 BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit
14 one print copy and one electronic copy of any report produced pursuant to this Resolution
15 to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Berault

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