

Regular Session, 2012

SENATE BILL NO. 261

BY SENATOR NEVERS

CHILDREN. Provides relative to children and awards of visitation to grandparents and others. (gov sig)

1 AN ACT
2 To amend and reenact Civil Code Articles 136 and 137 and R.S. 9:344(D), relative to
3 children; to provide relative to the duties of care, custody, and control of children
4 under certain circumstances; to provide relative to rights and responsibilities; to
5 provide relative to custody and visitation; to provide relative to awards of visitation
6 rights; to provide relative to visitation by grandparents and other non-parents; to
7 provide certain terms, conditions, procedures, and requirements; and to provide for
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Articles 136 and 137 are hereby amended and reenacted to
11 read as follows:

12 Art. 136. Award of visitation rights

13 A. A parent not granted custody or joint custody of a child is entitled to
14 reasonable visitation rights unless the court finds, after a hearing, that visitation
15 would not be in the best interest of the child.

16 **B. A grandparent not granted custody of a child may be granted**
17 **reasonable visitation rights if the court finds that it is in the best interest of the**

1 **child.**

2 ~~C. B.~~ Under extraordinary circumstances, **any other** a relative, by blood or
3 affinity, or a former stepparent or stepgrandparent, not granted custody of the child
4 may be granted reasonable visitation rights if the court finds that it is in the best
5 interest of the child. **Extraordinary circumstances shall include a determination**
6 **by a court that a parent is abusing a controlled dangerous substance.**

7 **D.** In determining the best interest of the child **under Paragraphs B and C**
8 **of this Article,** the court shall consider:

9 (1) The length and quality of the prior relationship between the child and the
10 relative.

11 (2) Whether the child is in need of guidance, enlightenment, or tutelage
12 which can best be provided by the relative.

13 (3) The preference of the child if he is determined to be of sufficient maturity
14 to express a preference.

15 (4) The willingness of the relative to encourage a close relationship between
16 the child and his parent or parents.

17 (5) The mental and physical health of the child and the relative.

18 ~~C. In accordance with Paragraph B of this Article, extraordinary~~
19 ~~circumstances may include when a parent is addicted to a controlled dangerous~~
20 ~~substance.~~

21 **E. D.** In the event of a conflict between this Article and R.S. 9:344 ~~or 345,~~
22 the provisions of the statute shall supersede those of this Article.

23 * * *

24 Art. 137. Denial of visitation; felony rape; death of a parent

25 A. In a proceeding in which visitation of a child is being sought by a ~~natural~~
26 parent, if the child was conceived through the commission of a felony rape, the
27 ~~natural~~ parent who committed the felony rape shall be denied visitation rights and
28 contact with the child.

29 B. In a proceeding in which visitation of a child is being sought by a **relative**
30 **by blood or affinity** ~~family member,~~ if the court determines, by a preponderance of

1 the evidence, that the intentional criminal conduct of the relative ~~family member~~
 2 resulted in the death of the parent of the child, the relative ~~family member~~ shall be
 3 denied visitation rights and contact with the child.

4 Section 2. R.S. 9:344(D) is hereby amended and reenacted to read as follows:

5 §344. Visitation rights of grandparents and siblings

6 * * *

7 D. If the parents of a minor child ~~or children~~ of the marriage have lived
 8 apart ~~are legally separated or living apart~~ for a period of six months, in
 9 extraordinary circumstances the grandparents or siblings of the child ~~or children~~
 10 may have reasonable visitation rights to the child ~~or children~~ during his ~~their~~
 11 minority, if the court in its discretion finds ~~find~~ that such visitation rights would be
 12 in the best interest of the child ~~or children~~. In determining the best interest of the
 13 child the court shall consider the same factors contained in Civil Code Article
 14 136(D). Extraordinary circumstances shall include a determination by a court
 15 that a parent is abusing a controlled dangerous substance.

16 Section 3. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

The original instrument was prepared by Jerry G. Jones. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Nancy Vicknair.

DIGEST

Nevers (SB 261)

Present law provides relative to duties of care, custody, and control of children, including visitation rights.

Present law (C.C. Art. 136) provides that a parent not granted custody or joint custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would not be in the best interest of the child.

Proposed law retains present law.

Present law provides that under extraordinary circumstances, a relative, by blood or affinity,

or a former stepparent or stepgrandparent, not granted custody of the child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. In determining the best interest of the child, the court shall consider:

1. The length and quality of the prior relationship between the child and the relative.
2. Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.
3. The preference of the child if he is determined to be of sufficient maturity to express a preference.
4. The willingness of the relative to encourage a close relationship between the child and his parent or parents.
5. The mental and physical health of the child and the relative.

Proposed law provides that a grandparent not granted custody of a child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child.

Proposed law further provides that under extraordinary circumstances, any other relative, by blood or affinity, or a former stepparent or stepgrandparent, not granted custody of the child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. In determining the best interest of the child for the purpose of visitation rights by grandparents and other relatives, the court shall consider:

1. The length and quality of the prior relationship between the child and the relative.
2. Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.
3. The preference of the child if he is determined to be of sufficient maturity to express a preference.
4. The willingness of the relative to encourage a close relationship between the child and his parent or parents.
5. The mental and physical health of the child and the relative.

Present law provides that extraordinary circumstances may include when a parent is addicted to a controlled dangerous substance. Proposed law provides that extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.

Present law additionally provides that in the event of a conflict between the present law and the provisions of R.S. 9:344 (visitation rights of grandparents and siblings), the provisions of the statute will control. Proposed law retains present law, but deletes additional reference to R.S. 9:345 (appointment of attorney in child custody or visitation proceedings).

Present law (C.C. Art. 137) relative to denial of visitation rights provides that in a proceeding in which visitation of a child is being sought by a natural parent, if the child was conceived through the commission of a felony rape, the natural parent who committed the felony rape shall be denied visitation rights and contact with the child. Further provides that in a proceeding in which visitation of a child is being sought by a family member, if the court determines, by a preponderance of the evidence, that the intentional criminal conduct of the family member resulted in the death of the parent of the child, the family member shall be denied visitation rights and contact with the child.

Proposed law changes "natural parent" to "parent". Changes "family member" to "relative

by blood or affinity". Retains remainder of present law.

Present law (R.S. 9:344) provides relative to visitation rights of grandparents and siblings.

Present law provides that if one of the parties to a marriage dies, is interdicted, or incarcerated, and there is a minor child or children of such marriage, the parents of the deceased, interdicted, or incarcerated party without custody of such minor child or children may have reasonable visitation rights to the child or children of the marriage during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children. Also provides that when the parents of a minor child or children live in concubinage and one of the parents dies, or is incarcerated, the parents of the deceased or incarcerated party may have reasonable visitation rights to the child or children during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children. Further provides that if one of the parties to a marriage dies or is incarcerated, the siblings of a minor child or children of the marriage may have reasonable visitation rights to such child or children during their minority if the court in its discretion finds that such visitation rights would be in the best interest of the child or children. Proposed law retains present law.

Present law additionally provides that if the parents of a minor child or children of the marriage are legally separated or living apart for a period of six months, the grandparents or siblings of the child or children may have reasonable visitation rights to the child or children during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children.

Proposed law provides that if the parents of a minor child of the marriage have lived apart for a period of six months, in extraordinary circumstances the grandparents or siblings of the child may have reasonable visitation rights to the child during his minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child. In determining the best interest of the child the court shall consider the same five factors listed in Civil Code Article 136.

Proposed law provides that extraordinary circumstances in R.S. 9:344(D) shall include a determination by a court that a parent is abusing a controlled dangerous substance.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.C. Arts. 136 and 137 and R.S. 9:344(D))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Relative to extraordinary circumstances, changes "addicted to a controlled dangerous substance" to "abusing a controlled dangerous substance".

Senate Floor Amendments to engrossed bill.

1. Make technical changes.