

SENATE BILL NO. 261

BY SENATOR NEVERS AND REPRESENTATIVE HUNTER

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

Art. 136. Award of visitation rights

A. 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.

B. **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. Before making this determination, the court shall hold a contradictory hearing as provided for in R.S. 9:345 in order to determine whether the court should appoint an attorney to represent the child.**

C. Under extraordinary circumstances, **any other** 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. **Extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.**

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

3                    (1) The length and quality of the prior relationship between the child and the  
4                    relative.

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

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

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

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

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

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

17                    \*           \*           \*

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

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

23                    B. In a proceeding in which visitation of a child is being sought by a **relative**  
24                    **by blood or affinity** ~~family member~~, if the court determines, by a preponderance of  
25                    the evidence, that the intentional criminal conduct of the **relative** ~~family member~~  
26                    resulted in the death of the parent of the child, the **relative** ~~family member~~ shall be  
27                    denied visitation rights and contact with the child.

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

29                    §344. Visitation rights of grandparents and siblings

30                    \*           \*           \*

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

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_