

2018 Regular Session

SENATE BILL NO. 291

BY SENATORS BARROW, DONAHUE, GATTI, LUNEAU, MARTINY AND WARD

FAMILY LAW. Provides relative to family violence and domestic abuse as factors to consider in determining visitation and custody. (gov sig)

1 AN ACT

2 To amend and reenact Civil Code Art. 132, 134, and 136(A) and R.S. 9:341 and 364,
3 relative to children; to provide relative to custody and custody awards; to provide
4 relative to factors in determining best interest of the child; to provide relative to
5 visitation; to provide certain terms, conditions, procedures, and requirements; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Art. 132, 134, and 136(A) are hereby amended and reenacted
9 to read as follows:

10 Art. 132. Award of custody to parents

11 If the parents agree who is to have custody, the court shall award custody in
12 accordance with their agreement unless **the provisions of R.S. 9:364 apply or** the
13 best interest of the child requires a different award. ~~In~~ **Subject to the provisions of**
14 **R.S. 9:364, in** the absence of agreement, or if the agreement is not in the best interest
15 of the child, the court shall award custody to the parents jointly; however, if custody
16 in one parent is shown by clear and convincing evidence to serve the best interest of
17 the child, the court shall award custody to that parent.

* * *

Art. 134. Factors in determining child's best interest

The court shall consider all relevant factors in determining the best interest of the child. ~~Such factors may include,~~ **including:**

(1) **The physical safety of the child, which shall be the primary consideration.**

~~(2)~~ (3) The love, affection, and other emotional ties between each party and the child.

~~(2)(3)~~ (3) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.

~~(3)(4)~~ (4) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.

~~(4)(5)~~ (5) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.

~~(5)(6)~~ (6) The permanence, as a family unit, of the existing or proposed custodial home or homes.

~~(6)(7)~~ (7) The moral fitness of each party, insofar as it affects the welfare of the child.

~~(7)~~ The mental and physical health of each party.

(8) The history of substance abuse, violence, or criminal activity of any party.

(9) The history of committing family violence, as defined in R.S. 9:362, or domestic abuse, as defined in R.S. 46:2132, including sexual abuse as defined in R.S. 14:403(A)(4)(b) whether or not a party has sought relief under any applicable law. In such cases, the statutory remedies provided in R.S. 9:364 and R.S. 9:341 shall be the exclusive criteria governing the award of custody or visitation by the court.

(10) The mental and physical health of each party. Evidence that an

1 abused parent suffers from the effects of past abuse shall not be grounds for
2 denying that parent custody.

3 ~~(8)~~**(11)** The home, school, and community history of the child.

4 ~~(9)~~**(12)** The reasonable preference of the child, if the court deems the child
5 to be of sufficient age to express a preference.

6 ~~(10)~~**(13)** The willingness and ability of each party to facilitate and encourage
7 a close and continuing relationship between the child and the other party, except
8 when evidence of specific abusive, reckless, or illegal conduct has caused one
9 party to have reasonable concerns for the child's safety or well-being while in
10 the care of the other party.

11 ~~(11)~~**(14)** The distance between the respective residences of the parties.

12 ~~(12)~~**(15)** The responsibility for the care and rearing of the child previously
13 exercised by each party.

14 * * *

15 Art. 136. Award of visitation rights

16 A. ~~A~~ **Subject to R.S. 9:341**, a parent not granted custody or joint custody of
17 a child is entitled to reasonable visitation rights unless the court finds, after a
18 hearing, that visitation would not be in the best interest of the child.

19 * * *

20 Section 2. R.S. 9:341 and 364 are hereby amended and reenacted to read as follows:

21 §341. Restriction on visitation

22 A. Whenever the court finds by a preponderance of the evidence that a parent
23 has subjected any of his or her child ~~to physical abuse, or sexual abuse or~~
24 ~~exploitation,~~ **children, stepchildren, or any household member, as defined in R.S.**
25 **46:2132, to family violence, as defined in R.S. 9:362, or domestic abuse, as**
26 **defined in R.S. 46:2132**, or has permitted such abuse ~~or exploitation of the child to~~
27 **any of his or her children or stepchildren**, the court shall ~~prohibit~~ only allow
28 **supervised** visitation between the abusive parent and the abused child **or children**
29 until such parent proves **by a preponderance of the evidence at a contradictory**

1 hearing that the abusive parent has successfully completed a court monitored
2 domestic abuse intervention program, as defined in R.S. 9:362(3), since the last
3 incident of violence. At such hearing, the court shall consider evidence of the
4 abusive parent's current mental health condition and shall order visitation only
5 if the abusive parent proves by a preponderance of the evidence that visitation
6 would be in the best interest of the child, considering the factors in C.C. Art.
7 134, and would not cause physical, emotional, or psychological damage to the child.
8 Should visitation be allowed, the court shall order such restrictions, conditions, and
9 safeguards necessary to minimize any risk of harm to the child, including continued
10 supervision. All costs incurred in compliance with the provisions of this Section
11 shall be borne by the abusive parent.

12 B. Whenever the court finds by clear and convincing evidence that a
13 parent has subjected any of his children, stepchildren, or any household
14 member as defined in R.S. 46:2132, to sexual abuse, as defined in R.S.
15 14:403(A)(4)(b), or has permitted such abuse on any of his or her children,
16 stepchildren, or a household member, the court shall prohibit all visitation and
17 contact between the abusive parent and the children until such parent proves
18 by a preponderance of the evidence at a contradictory hearing that he has
19 successfully completed a treatment program designed for such sexual abusers.
20 At such hearing, the court shall consider evidence of the abusive parent's
21 current mental health condition and shall order visitation only if the abusive
22 parent proves by a preponderance of the evidence that visitation would be in the
23 best interest of the child, and that visitation would not cause physical,
24 emotional, or psychological damage to the child. Should visitation be allowed,
25 the court shall order such restrictions, conditions, and safeguards necessary to
26 minimize any risk of harm to the child, including supervision of such visitation.
27 All costs incurred in compliance with the provisions of this Section shall be the
28 responsibility of the abusive parent.

29 B-C. When visitation has been restricted or prohibited by the court pursuant

1 to ~~Subsection A~~ **Subsections A or B**, and the court subsequently authorizes **further**
 2 restricted visitation, the parent whose visitation has been restricted shall not remove
 3 the child from the jurisdiction of the court except for good cause shown and with the
 4 prior approval of the court.

5 * * *

6 §364. Child custody; visitation

7 A. There is created a presumption that no parent who has a history of
 8 perpetrating family violence, **as defined in R.S. 9:362, or domestic abuse, as**
 9 **defined in R.S. 46:2132, or has subjected any of his or her children,**
 10 **stepchildren, or any household member, as defined in R.S. 46:2132, to sexual**
 11 **abuse, as defined in R.S. 14:403(A)(4)(b), or has permitted another to abuse any**
 12 **of his children or stepchildren,** shall be awarded sole or joint custody of children.
 13 The court may find a history of perpetrating family violence if the court finds that
 14 one incident of family violence has resulted in serious bodily injury or the court finds
 15 more than one incident of family violence.

16 **B.** The presumption shall be overcome only **if the court finds** by a
 17 preponderance of the evidence that the perpetrating parent has **(1)** successfully
 18 completed a court-monitored domestic abuse intervention program as defined in R.S.
 19 9:362, **or a treatment program designed for sexual abusers, after the last**
 20 **instance of abuse; (2)** is not abusing alcohol ~~and the~~ **or using** illegal ~~use of drugs~~
 21 **substances** scheduled in R.S. 40:964; and **(3)** that the best interest of the child or
 22 children, **considering the factors listed in C.C. Art. 134,** requires that parent's
 23 participation as a custodial parent because of the other parent's absence, mental
 24 illness, ~~or substance abuse, or such~~ other circumstances which ~~affect~~ **is negatively**
 25 **affecting** the ~~best interest of the~~ child or children. The fact that the abused parent
 26 suffers from the effects of the abuse shall not be grounds for denying that parent
 27 custody.

28 ~~B-C.~~ If the court finds that both parents have a history of perpetrating family
 29 violence, custody shall be awarded solely to the parent who is less likely to continue

1 to perpetrate family violence. In such a case, the court shall mandate completion of
2 a court-monitored domestic abuse intervention program by the custodial parent. If
3 necessary to protect the welfare of the child, custody may be awarded to a suitable
4 third person, provided that the person would not allow access to a violent parent
5 except as ordered by the court.

6 ~~C.D.~~ If the court finds that a parent has a history of perpetrating family
7 violence, the court shall allow only supervised child visitation with that parent;
8 ~~conditioned upon that parent's participation in and completion of a court-monitored~~
9 ~~domestic abuse intervention program. Unsupervised visitation shall be allowed only~~
10 ~~if it is shown by a preponderance of the evidence that the violent parent has~~
11 ~~completed a treatment program, is not abusing alcohol and psychoactive drugs, and~~
12 ~~poses no danger to the child, and that such visitation is in the child's best interest~~
13 **pursuant to R.S. 9:341.**

14 ~~D.E.~~ If any court finds, by clear and convincing evidence, that a parent has
15 sexually abused his or her child or children, the court shall prohibit all visitation and
16 contact between the abusive parent and the children, ~~until such time, following a~~
17 ~~contradictory hearing, that the court finds, by a preponderance of the evidence, that~~
18 ~~the abusive parent has successfully completed a treatment program designed for such~~
19 ~~sexual abusers, and that supervised visitation is in the children's best interest~~
20 **pursuant to R.S. 9:341.**

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 291 Engrossed

2018 Regular Session

Barrow

Present law provides that if parents agree to custody, a court shall award in accordance with the parties agreement or in the best interest of the child.

Proposed law retains present law and provides that R.S. 9:364 may apply in awarding custody.

Present law provides for factors in determining the best interest of a child.

Proposed law retains present law and adds the following factors in determining the best interest of a child:

- (1) The physical safety of a child which shall be the primary consideration;
- (2) The history of substance abuse, violence, and criminal activity of the parties;
- (3) The history of family violence, sexual abuse, or domestic violence of the parties; and
- (4) The mental and physical health of each party.

Present law provides relative to restriction visitations for a parent who has subjected a child to physical abuse or sexual abuse.

Proposed law retains present law and provides relative to restriction on visitations for a parent who has subjected a child, stepchild or household member to family violence or domestic abuse. Further provides that the court may allow supervised visitations by an abusive parent upon their completion of a court monitored domestic abuse intervention program, by the abusive parent.

Proposed law also provides that the court shall prohibit visitations and contact between a sexually abusive parent and a child, until parent has completed a treatment program designed for sexual abusers.

Present law provides that a presumption that no parent with a history of family violence shall be awarded sole custody or joint custody.

Proposed law retains present law and adds that no parent who has subjected a child, stepchild, or household member to sexual abuse shall have sole custody or joint custody.

Present law further provides that the presumption against custody shall be overcome by:

- (1) successfully completing a court monitored domestic abuse intervention program;
- (2) a parent not using alcohol; and
- (3) a parent's participation as custodial parent because of other parent's absence, mental illness, or substance abuse.

Proposed law retains present law and adds that the presumption shall be overcome by successfully completing a treatment program designed for sexual abusers.

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

(Amends C.C. Arts. 132, 134, 136(A) and R.S. 9:341 and 364)