

Regular Session, 2014

SENATE BILL NO. 248

BY SENATOR MORRISH

CHILDREN. Requires certain factors be considered when a court orders visitation between a minor child and an incarcerated parent. (8/1/14)

1 AN ACT

2 To amend and reenact R.S. 9:341, and to enact R.S. 9:364.1, relative to visitation; to provide
3 relative to visitation rights of an incarcerated parent; to provide for factors to be
4 considered in such cases; to provide for certain terms and conditions; and to provide
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:341 is hereby amended and reenacted and R.S. 9:364.1 is hereby
8 enacted to read as follows:

9 §341. Restriction on visitation

10 A. Whenever the court finds by a preponderance of the evidence that a
11 parent has subjected his or her child to physical abuse, or sexual abuse or
12 exploitation, or has permitted such abuse or exploitation of the child, the court shall
13 prohibit visitation between the abusive parent and the abused child until such parent
14 proves that visitation would not cause physical, emotional, or psychological damage
15 to the child. Should visitation be allowed, the court shall order such restrictions,
16 conditions, and safeguards necessary to minimize any risk of harm to the child. All
17 costs incurred in compliance with the provisions of this Section shall be borne by the

1 abusive parent.

2 B. When visitation has been prohibited by the court pursuant to Subsection
3 A, and the court subsequently authorizes restricted visitation, the parent whose
4 visitation has been restricted shall not remove the child from the jurisdiction of the
5 court except for good cause shown and with the prior approval of the court.

6 **C. When visitation between an incarcerated parent and a child has been**
7 **prohibited by the court, and the court subsequently authorizes restricted**
8 **visitation, as part of such visitation order the court shall include restrictions,**
9 **conditions and safeguards as are necessary to protect the mental and physical**
10 **health of the child and minimize risk of harm to the child.**

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12 **§364.1. Visitation with incarcerated parent**

13 **A court considering the supervised visitation of a minor child with an**
14 **incarcerated parent shall consider the best interest of the child, including but**
15 **not limited to:**

- 16 **(1) The factors set forth in Civil Code Article 136(D).**
- 17 **(2) The mental and physical health and safety of the child.**
- 18 **(3) The love, affection, and other emotional ties between the child and**
19 **the incarcerated parent.**
- 20 **(4) The length of time that the child had lived with the parent prior to**
21 **the parent's incarceration.**
- 22 **(5) The opinion of the child who is twelve years of age or older regarding**
23 **visitation at the incarceration facility.**
- 24 **(6) The desirability of maintaining the continuity of the relationship**
25 **between the child and the incarcerated parent.**
- 26 **(7) The willingness of the child's custodial parent, caretaker or legal**
27 **guardian, or other relatives of the child, to voluntarily take the child to the**
28 **incarcerated parent's place of incarceration for the supervised visitation.**
- 29 **(8) The effect upon the child of supervised visitation in the place of**

1 **incarceration and the feasibility, if any, of alternative or additional use of**
2 **technology for visitation pursuant to R.S. 9:357.**

3 **(9) Other testimony or evidence as the court may consider applicable.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Morrish (SB 248)

Present law provides for certain restrictions when the court considers allowing visitation of a minor child with a parent who has a history of perpetrating family violence or who has sexually abused his or her child or children.

Proposed law adds that, when the court is considering the supervised visitation of a minor child with an incarcerated parent, the court shall consider the best interest of the child, including but not limited to the following factors:

- (1) Factors set forth in Civil Code Article 136(D).
- (2) The mental and physical health and safety of the child.
- (3) The love, affection and other emotional ties between the child and the incarcerated parent.
- (4) The length of time that the child had lived with the parent prior to the parent's incarceration.
- (5) The opinion of the child who is 12 years of age or older regarding visitation at the incarceration facility.
- (6) The desirability of maintaining the continuity of the relationship between the child and the incarcerated parent.
- (7) The willingness of the child's custodial parent, caretaker or legal guardian, or other relatives of the child, to voluntarily take the child to the incarcerated parent's place of incarceration for the supervised visitation.
- (8) The effect upon the child of supervised visitation in the place of incarceration and the feasibility, if any, of alternative or additional use of technology for visitation pursuant to R.S. 9:357.
- (9) Other testimony or evidence as the court may consider applicable.

Present law provides for certain restrictions on visitation when a parent has subjected his or her child to physical abuse, sexual abuse or exploitation, or has permitted such abuse or exploitation of the child.

Proposed law adds that when visitation between an incarcerated parent and a child has been prohibited by the court and the court subsequently authorizes restricted visitation, then as part of such visitation, the court shall include such restrictions, conditions and safeguards as are necessary to protect the mental and physical health of the child and minimize risk of harm to the child.

Effective August 1, 2014.

(Amends R.S. 9:341; adds R.S. 9:364.1)