

SENATE BILL NO. 291

BY SENATORS BARROW, DONAHUE, GATTI, LUNEAU, MARTINY AND WARD
AND REPRESENTATIVES BILLIOT, BOUIE, CARMODY,
CARPENTER, ROBBY CARTER, CONNICK, COX, CREWS,
GISCLAIR, GLOVER, GUINN, LANCE HARRIS, HOFFMANN,
JACKSON, JEFFERSON, JENKINS, JONES, LYONS, MAGEE,
MARINO, GREGORY MILLER, NORTON, SEABAUGH AND
SMITH

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 **A. Except as provided in Paragraph B of this Article, the** court shall consider all relevant factors in determining the best interest of the child. ~~Such factors may include, including:~~

(1) **The potential for the child to be abused, as defined by Children's Code Article 603(2), 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 mental and physical health of each party. Evidence that an abused parent suffers from the effects of past abuse by the other parent shall not be grounds for denying that parent custody.

~~(8)~~~~(10)~~ **(10)** The home, school, and community history of the child.

~~(9)~~~~(11)~~ **(11)** The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

~~(10)~~~~(12)~~ **(12)** The willingness and ability of each party to facilitate and encourage

1 a close and continuing relationship between the child and the other party, **except**
2 **when objectively substantial evidence of specific abusive, reckless, or illegal**
3 **conduct has caused one party to have reasonable concerns for the child's safety**
4 **or well-being while in the care of the other party.**

5 (~~11~~)(**13**) The distance between the respective residences of the parties.

6 (~~12~~)(**14**) The responsibility for the care and rearing of the child previously
7 exercised by each party.

8 **B. In cases involving a history of committing family violence, as defined**
9 **in R.S. 9:362, or domestic abuse, as defined in R.S. 46:2132, including sexual**
10 **abuse, as defined in R.S. 14:403(A)(4)(b), whether or not a party has sought**
11 **relief under any applicable law, the court shall determine an award of custody**
12 **or visitation in accordance with R.S. 9:341 and 364. The court may only find a**
13 **history of committing family violence if the court finds that one incident of**
14 **family violence has resulted in serious bodily injury or the court finds more**
15 **than one incident of family violence.**

16 * * *

17 Art. 136. Award of visitation rights

18 A. ~~A~~ **Subject to R.S. 9:341 and 364, a** parent not granted custody or joint
19 custody of a child is entitled to reasonable visitation rights unless the court finds,
20 after a hearing, that visitation would not be in the best interest of the child.

21 * * *

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

23 §341. Restriction on visitation

24 A. Whenever the court finds by a preponderance of the evidence that a parent
25 has subjected **any of** his or her child ~~to physical abuse, or sexual abuse or~~
26 ~~exploitation,~~ **children or stepchildren to family violence, as defined in R.S. 9:362,**
27 **or domestic abuse, as defined in R.S. 46:2132,** ~~or has permitted such abuse or~~
28 ~~exploitation of the child, the court~~ **has subjected any other household member, as**
29 **defined in R.S. 46:2132, to a history of family violence as defined in R.S.**
30 **9:364(A), or has willingly permitted such abuse to any of his or her children or**

1 stepchildren despite having the ability to prevent it, shall prohibit allow only
2 supervised visitation between the abusive parent and the abused child or children
3 until such parent proves by a preponderance of the evidence at a contradictory
4 hearing that the abusive parent has successfully completed a court monitored
5 domestic abuse intervention program, as defined in R.S. 9:362(3), since the last
6 incident of domestic violence or family abuse. At the hearing, the court shall
7 consider evidence of the abusive parent's current mental health condition and
8 the possibility the abusive parent will again subject his children, stepchildren,
9 or other household member to family violence or domestic abuse, or willingly
10 permit such abuse to any of his or her children or stepchildren despite having
11 the ability to prevent it. The court shall order visitation only if the abusive
12 parent proves by a preponderance of the evidence that visitation would be in the
13 best interest of the child, considering the factors in Civil Code Article 134, and
14 would not cause physical, emotional, or psychological damage to the child. Should
15 visitation be allowed, the court shall order such restrictions, conditions, and
16 safeguards necessary to minimize any risk of harm to the child, including continued
17 supervision. All costs incurred in compliance with the provisions of this Section
18 shall be borne by the abusive parent.

19 B. Whenever the court finds by clear and convincing evidence that a
20 parent has subjected any of his children, stepchildren, or any household
21 member as defined in R.S. 46:2132, to sexual abuse, as defined in R.S.
22 14:403(A)(4)(b), or has willingly permitted such abuse to any of his or her
23 children, stepchildren, or a household member, despite having the ability to
24 prevent the abuse, the court shall prohibit all visitation and contact between the
25 abusive parent and the children until such parent proves by a preponderance
26 of the evidence at a contradictory hearing that he has successfully completed a
27 treatment program designed for such sexual abusers. At the hearing, the court
28 shall consider evidence of the abusive parent's current mental health condition
29 and the possibility the abusive parent will repeat such conduct in the future.
30 The court and shall order visitation only if the abusive parent proves by a

1 preponderance of the evidence that visitation would be in the best interest of the
 2 child, and that visitation would not cause physical, emotional, or psychological
 3 damage to the child. Should visitation be allowed, the court shall order such
 4 restrictions, conditions, and safeguards necessary to minimize any risk of harm
 5 to the child, including supervision of the visitation. All costs incurred in
 6 compliance with the provisions of this Section shall be the responsibility of the
 7 abusive parent.

8 ~~B-C.~~ When visitation has been restricted or prohibited by the court pursuant
 9 to ~~Subsection A~~ Subsections A or B of this Section, and the court subsequently
 10 authorizes further restricted visitation, the parent whose visitation has been
 11 restricted shall not remove the child from the jurisdiction of the court except for
 12 good cause shown and with the prior approval of the court.

13 * * *

14 §364. Child custody; visitation

15 A. There is created a presumption that no parent who has a history of
 16 perpetrating family violence, as defined in R.S. 9:362, or domestic abuse, as
 17 defined in R.S. 46:2132, or has subjected any of his or her children,
 18 stepchildren, or any household member, as defined in R.S. 46:2132, to sexual
 19 abuse, as defined in R.S. 14:403(A)(4)(b), or has willingly permitted another to
 20 abuse any of his children or stepchildren, despite having the ability to prevent
 21 the abuse, shall be awarded sole or joint custody of children. The court may find a
 22 history of perpetrating family violence if the court finds that one incident of family
 23 violence has resulted in serious bodily injury or the court finds more than one
 24 incident of family violence.

25 **B.** The presumption shall be overcome only if the court finds all of the
 26 following by a preponderance of the evidence;

27 (1) The ~~that the~~ perpetrating parent has successfully completed a court-
 28 monitored domestic abuse intervention program as defined in R.S. 9:362, or a
 29 treatment program designed for sexual abusers, after the last instance of abuse.

30 (2) The perpetrating parent is not abusing alcohol ~~and the~~ or using illegal

1 use of drugs substances scheduled in R.S. 40:964, and,

2 (3) ~~The that~~ the best interest of the child or children, considering the
 3 factors listed in Civil Code Article 134, requires ~~that~~ the perpetrating parent's
 4 participation as a custodial parent because of the other parent's absence, mental
 5 illness, ~~or~~ substance abuse, or ~~such other circumstances~~ circumstance which affect
 6 negatively affecting the best interest of the child or children.

7 C. The fact that the abused parent suffers from the effects of the abuse shall
 8 not be grounds for denying that parent custody

9 ~~B-D.~~ If the court finds that both parents have a history of perpetrating family
 10 violence, custody shall be awarded solely to the parent who is less likely to continue
 11 to perpetrate family violence. In such a case, the court shall mandate completion of
 12 a court-monitored domestic abuse intervention program by the custodial parent. If
 13 necessary to protect the welfare of the child, custody may be awarded to a suitable
 14 third person pursuant to Civil Code Article 133, provided that the person would not
 15 allow access to a violent parent except as ordered by the court.

16 ~~C-E.~~ If the court finds that a parent has a history of perpetrating family
 17 violence, the court shall allow only supervised child visitation with that parent;
 18 ~~conditioned upon that parent's participation in and completion of a court-monitored~~
 19 ~~domestic abuse intervention program. Unsupervised visitation shall be allowed only~~
 20 ~~if it is shown by a preponderance of the evidence that the violent parent has~~
 21 ~~completed a treatment program, is not abusing alcohol and psychoactive drugs, and~~
 22 ~~poses no danger to the child, and that such visitation is in the child's best interest~~
 23 pursuant to R.S. 9:341.

24 ~~D-F.~~ If any court finds, by clear and convincing evidence, that a parent has
 25 sexually abused his or her child or children, the court shall prohibit all visitation and
 26 contact between the abusive parent and the children, ~~until such time, following a~~
 27 ~~contradictory hearing, that the court finds, by a preponderance of the evidence, that~~
 28 ~~the abusive parent has successfully completed a treatment program designed for such~~
 29 ~~sexual abusers, and that supervised visitation is in the children's best interest~~
 30 pursuant to R.S. 9:341.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____