

Regular Session, 2008

SENATE BILL NO. 492

BY SENATOR QUINN

FAMILY LAW. Provides relative to actions for failure to exercise rights pursuant to a court-ordered visitation schedule. (8/15/08)

1 AN ACT

2 To amend and reenact R.S. 9:346, to enact Civil Code Article 136.1, and to repeal R.S.  
3 9:347, relative to custody and visitation; to provide relative to awards of visitation  
4 and custody rights; to provide relative to certain actions; to provide an action for  
5 failure to exercise rights pursuant to a court-ordered schedule; to provide terms,  
6 conditions, and procedures; to provide for judgments, awards and orders, and to  
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Civil Code Article 136.1 is hereby enacted to read as follows:

10 Art. 136.1 Award of visitation rights

11 A child has a right to time with his parents. Accordingly, when a court-  
12 ordered visitation or time schedule has been entered, (1) A non-custodial or  
13 non-domiciliary parent of a child shall exercise his visitation or time rights to  
14 the child in accordance with the court-ordered schedule unless good cause is  
15 shown; (2) the custodial or domiciliary parent of a child shall exercise his time  
16 rights to the child in accordance with the court-ordered schedule unless good  
17 cause is shown; and (3) neither parent shall interfere with the visitation or time

1 **rights of the other unless good cause is shown.**

2 Section 2. R.S. 9:346 is hereby amended and reenacted to read as follows:

3 §346. ~~Intentional violations of visitation order~~ **Action for failure to exercise**  
4 **visitation or custody rights pursuant to court-ordered schedule;**  
5 **judgment and awards**

6 A. ~~Where a parent, guardian, defacto custodian, or another person exercising~~  
7 ~~care, custody, and control over a minor child willfully and intentionally violates a~~  
8 ~~provision of the order relating to visitation, without good cause, a court having~~  
9 ~~jurisdiction to enforce the judicial order may, upon motion of the party whose time~~  
10 ~~was lost:~~

11 (1) ~~Award to the party whose time was lost additional visitation at least equal~~  
12 ~~to the amount of time lost as specified in R.S. 13:4611; and~~

13 (2) ~~Award the party whose time was lost that party's costs and a reasonable~~  
14 ~~attorney fee as specified in R.S. 9:375.~~

15 B. ~~A pattern of willful and intentional violation of this Section, without good~~  
16 ~~cause, may be grounds to allow a party to move for modification of a custody or~~  
17 ~~visitation decree.~~

18 C. ~~This Section applies to judicial orders involving either sole or joint~~  
19 ~~custody.~~

20 **A. An action for failure to exercise child visitation or custody rights**  
21 **pursuant to a court-ordered schedule may be instituted against a non-**  
22 **domiciliary or non-custodial parent, or against the parent refusing to exercise**  
23 **custody as the case may be. The action shall be in the form of a rule to show**  
24 **cause why such parent should not be held in contempt for the failure and why**  
25 **the court should not further render judgment as provided in this Section.**

26 **B. When the court renders judgment in such action:**

27 (1) **The court may award all attorney's fees and costs to the prevailing**  
28 **party incurred in connection with the proceeding. The court shall require the**  
29 **prevailing party to submit proof showing the amount of attorney's fees to be**

1           **awarded.**

2                   **(2) If the domiciliary or custodial parent is the prevailing party and filed**  
3                   **the rule to enforce the child's visitation rights against the non-custodial or non-**  
4                   **domiciliary parent, the defendant shall be held in contempt of court and**  
5                   **punished as provided by law for such contempt, and the court shall award to the**  
6                   **custodial or domiciliary parent:**

7                   **(a) All attorney's fees and costs incurred in connection with the**  
8                   **proceeding;**

9                   **(b) A reasonable sum for any actual expenses incurred by the custodial**  
10                   **or domiciliary parent by reason of the failure of the other parent to exercise**  
11                   **rights pursuant to a court-ordered visitation or time schedule;**

12                   **(c) A reasonable sum for a caretaker of the child, whether such costs**  
13                   **were incurred or not, based upon the hourly rate for caretakers in the**  
14                   **community; and**

15                   **(d) All costs for counseling for the child which may be necessitated by the**  
16                   **defendant's failure to exercise visitation or time rights with the child.**

17                   **(e) The court may require the domiciliary or custodial parent to submit**  
18                   **proof showing the amounts to be awarded under this Paragraph.**

19                   **(3) If the non-domiciliary or non-custodial parent filed the rule as**  
20                   **plaintiff to enforce his visitation or time rights with the child and is the**  
21                   **prevailing party against the custodial or domiciliary parent, the custodial or**  
22                   **domiciliary parent shall be held in contempt of court and punished as provided**  
23                   **by law for such contempt, and the court shall award to the non-custodial or**  
24                   **non-domiciliary parent:**

25                   **(a) All attorney's fees and costs incurred in connection with the**  
26                   **proceeding;**

27                   **(b) A reasonable sum for any actual expenses incurred by the non-**  
28                   **custodial or non-domiciliary parent by the loss of his visitation or time rights;**

29                   **(c) Additional visitation or time rights with the child equal to the time**

1           **lost; and**

2                   **(d) All costs for counseling for the child which may be necessitated by the**  
3                   **defendant's failure to exercise visitation or time rights with the child.**

4                   **(e) The court may require the non-domiciliary or non-custodial parent**  
5                   **to submit proof showing the amounts to be awarded under this Paragraph.**

6                   **C. It shall be an affirmative defense to an action under this Section that**  
7                   **the failure to exercise child visitation rights pursuant to a court-ordered**  
8                   **schedule was by mutual consent or was beyond the control of the defendant.**

9                   **D. A pattern of willful and intentional violation of this Section, without**  
10                   **good cause, may be grounds to allow a party to move for modification of a**  
11                   **custody or visitation decree.**

12                   **E. This Section applies to judicial orders involving either sole or joint**  
13                   **custody.**

14                   **F. The action authorized by this Section shall be in addition to any other**  
15                   **action authorized by law.**

16           Section 3. R.S. 9:347 is hereby repealed.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

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#### DIGEST

Proposed law relative to custody and visitation provides that a child has a right to time with his parents. Accordingly, when a court-ordered visitation or time schedule has been entered,

- (1) A non-custodial or non-domiciliary parent of a child shall exercise his visitation or time rights to the child in accordance with the court-ordered schedule unless good cause is shown;
- (2) The custodial or domiciliary parent of a child shall exercise his time rights to the child in accordance with the court-ordered schedule unless good cause is shown; and
- (3) Neither parent shall interfere with the visitation or time rights of the other unless good cause is shown.

Present law provides action for intentional violation of visitation order. Provides that where a parent, guardian, defacto custodian, or another person exercising care, custody, and control over a minor child willfully and intentionally violates a provision of the order relating to visitation, without good cause, a court having jurisdiction to enforce the judicial order may, upon motion of the party whose time was lost

- (1) award to the party whose time was lost additional visitation at least equal to the

amount of time lost; and

- (2) award the party whose time was lost that party's costs and a reasonable attorney fee.

Proposed law provides that an action for failure to exercise child visitation or custody rights pursuant to a court-ordered schedule may be instituted against a non-domiciliary or non-custodial parent, or against the parent refusing to exercise custody as the case may be.

Proposed law provides that the action shall be in the form of a rule to show cause why such parent should not be held in contempt for the failure and why the court should not further render judgment as provided in the proposed law.

Proposed law provides that when the court renders judgment in such action:

- (1) The court may award all attorney's fees and costs to the prevailing party incurred in connection with the proceeding. The court shall require the prevailing party to submit proof showing the amount of attorney's fees to be awarded.
- (2) If the domiciliary or custodial parent is the prevailing party and filed the rule to enforce the child's visitation rights against the non-custodial or non-domiciliary parent, the defendant shall be held in contempt of court and punished as provided by law for such contempt, and the court shall award to the custodial or domiciliary parent:
- (a) All attorney's fees and costs incurred in connection with the proceeding;
  - (b) A reasonable sum for any actual expenses incurred by the custodial or domiciliary parent by reason of the failure of the other parent to exercise rights pursuant to a court-ordered visitation or time schedule;
  - (c) A reasonable sum for a caretaker of the child, whether such costs were incurred or not, based upon the hourly rate for caretakers in the community; and
  - (d) All costs for counseling for the child which may be necessitated by the defendant's failure to exercise visitation or time rights with the child;
  - (e) The court may require the domiciliary or custodial parent to submit proof showing the amounts to be awarded under this Paragraph.
- (3) If the non-domiciliary or non-custodial parent filed the rule as plaintiff to enforce his visitation or time rights with the child and is the prevailing party against the custodial or domiciliary parent, the custodial or domiciliary parent shall be held in contempt of court and punished as provided by law for such contempt, and the court shall award to the non-custodial or non-domiciliary parent:
- (a) All attorney's fees and costs incurred in connection with the proceeding;
  - (b) A reasonable sum for any actual expenses incurred by the non-custodial or non-domiciliary parent by the loss of his visitation or time rights;
  - (c) Additional visitation or time rights with the child equal to the time lost; and
  - (d) All costs for counseling for the child which may be necessitated by the defendant's failure to exercise visitation or time rights with the child.
  - (e) The court may require the non-domiciliary or non-custodial parent to submit

proof showing the amounts to be awarded under this Paragraph.

Proposed law further provides that it shall be an affirmative defense to an action under the proposed law that the failure to exercise child visitation rights pursuant to a court-ordered schedule was by mutual consent or was beyond the control of the defendant.

Proposed law also provides that a pattern of willful and intentional violation of the proposed law, without good cause, may be grounds to allow a party to move for modification of a custody or visitation decree, and that the proposed law applies to judicial orders involving either sole or joint custody.

Proposed law further provides that the action under the proposed law shall be in addition to any other action authorized by law.

Present law provides that a person is in violation of parenting interference when the person on one or more occasions intentionally obstructs visitation time. Proposed law repeals present law.

Effective August 15, 2008.

(Amends R.S. 9:346; adds C.C. Art. 136.1; repeals R.S. 9:347)