

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB 366 Engrossed

2018 Regular Session

Ward

Present law, relative to children and awards of visitation rights, provides that 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.

Proposed law retains present law.

Present law provides for grandparent visitation rights if the court finds that it is in the best interest of the child. Also provides that the court shall hold a contradictory hearing to determine whether the court should appoint an attorney to represent the child. Further provides that under extraordinary circumstances, any other relative, by blood or affinity, or a former stepparent or stepgrandparent 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.

Proposed law retains present law, except to require a determination in both instances of whether an attorney should be appointed to represent the child and provides that visitation rights may be granted to a grandparent or other relative only if the parents are not married or living with another person or if the parents have filed for divorce.

Present law provides that in determining the best interest of the child in grandparent and other relative visitation, certain factors shall be considered by the court, including:

- (1) The length and quality of the prior relationship between the child and the relative.
- (2) Whether the child is in need of guidance, enlightenment, or tutelage, which can best be provided by the relative.
- (3) The preference of the child if he is determined to be of sufficient maturity to express a preference.
- (4) The willingness of the relative to encourage a close relationship between the child and his parent or parents.
- (5) The mental and physical health of the child and the relative.

Proposed law adds a parent's constitutional right to make decision for a child and a presumption of fitness as factors to be considered by the court. Proposed law removes the willingness of the relative to encourage a close relationship between the child and parent as a factor to be considered by the court. Further makes the itemized factors the only factors that can be considered by the court.

Present law provides that in the event of a conflict between present law and other law relative to grandparent and sibling visitation, the other law controls. Proposed law provides that if the parents of a child are married and have not filed for divorce or they are living in concubinage, the provisions of the other law relative to grandparent and sibling visitation applies.

Effective August 1, 2018.

(Amends C.C. Art. 136)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the engrossed bill:

1. Provide that visitation rights may be granted to a grandparent or other relative only if the parents are not married or living with another person or if the parents have filed for divorce.
2. Remove the requirement that the proceeding to grant visitation be initiated by the parent of a child.
3. Add a parent's constitutional right to make decision for a child and a presumption of fitness as factors to be considered by the court.
4. Remove the willingness of the relative to encourage a close relationship between the child and parent as a factor to be considered by the court.