

COMMISSION FOR SOCIAL SECURITY AND FAMILY

SUBSTITUTE TO DRAFT LAW No. 4053 OF 2008

alienation. Makes provision for parental

The National Congress enacts that:

Art. 1 - Is considered an act of parental alienation the interference with the psychological forming of the child or adolescent, encouraged or induced by one of the parents, grandparents or by whom having authority over, custody or surveillance of the child or adolescent, in order for the child to relinquish the alienated parent or which causes prejudice to the establishment or maintenance of ties with the later.

Sole paragraph. Beyond acts declared as such by the judge or recorded by an expert, the following are exemplary forms of parental alienation, directly carried out or with the assistance of third parties:

I - to make a disqualifying campaign over the alienated parent's conduct in the exercise of parenthood;

II - hinder the exercise of parental authority;

III - hinder contacts with the child or adolescent with the alienated parent;

IV - to hamper the exercise of the regulated right of access;

V - deliberately omit relevant personal information to the alienated parent about the child or adolescent, including educational or medical data and changes of address;

VI - make false accusation against the alienated parent, against his/her family members or against grandparents, in order to obstruct or make his/her interaction with the child or adolescent more difficult;

VII - change the address to a remote place, without justification, in order to hamper the coexistence of the child or adolescent with the alienated parent, with his/her family or grandparents.

Art. 2 - The performance of an act of parental alienation hurts the fundamental rights of the child or adolescent of a healthy family life, causes prejudice to the creation of affect within the relationships with the alienated parent and the family group, causes moral abuse against the child or adolescent and breach of duties inherent to parental authority, guardianship or custody.

Art. 3 - When there is evidence of an act of parental alienation and being declared as such, upon request or not, at any time during the procedure or incidentally in autonomous procedure, the lawsuit will be treated as having priority and the judge will urgently determine, after hearing the prosecutor, the interim necessary measures to preserve the psychological integrity of the child or adolescent, including to guarantee his/her interaction with the alienated parent or to make effective his/her bringing closer together, as the case may be.

Sole paragraph. In any event, it must be ensured to the child or adolescent and the alienated parent a minimum guarantee of assisted right of access, to the exception of an abusive use by the parent of his right, with imminent risk to cause prejudice to the physical or psychological integrity of the child or adolescent, confirmed by an expert eventually appointed by the judge to follow the visits.

Art. 4 - If there is evidence of the practice of an act of parental alienation, the judge, if necessary during the procedure or incidentally in autonomous procedure, will determine a psychological or psychosocial study.

§ 1 - The expert's report will be based on an extensive psychological or psychosocial evaluation, as appropriate, including personal interview with the parties, the examination of the lawsuit's documents, the history of the couple's relationship and separation, the chronology of events, the assessment of personality of those involved and the examination of how the speech of the child or adolescent is in relation to the eventual charges against the alienated parent.

§ 2 - The study will be performed by a professional or a skilled multidisciplinary team, requiring in any case the proven ability through professional or academic background to diagnose acts of parental alienation.

§ 3 - To submit the report, the expert or the multidisciplinary team appointed to assess the occurrence of parental alienation will be allowed a delay of 90 (ninety) days, only renewable by judicial order based on a thorough justification.

Art. 5 - Featured typical acts of parental alienation or any conduct that hamper the coexistence of the child or adolescent with the alienated parent, the judge may, during the procedure or incidentally in autonomous procedure, together or separately, without prejudice to the current civil or criminal liability, making extensive use of suitable legal instruments to inhibit or mitigate its effects, according to the severity of the case:

I - declare the occurrence of parental alienation and warn the alienating parent;

II - expand the system of right of access in favour of the alienated parent;

III - specify a fine to the alienating parent;

IV - order a monitored psychological intervention;

V - order the change of custody to joint custody or its reversal;

VI - declare the suspension of the parental authority.

Sole paragraph. When the change of address is concluded to be abusive, made to deter or obstruct the family coexistence, the court may also reverse the obligation to bring the child or adolescent to or take him back from the residence of the alienating parent, during the alternating periods of family coexistence.

Art. 6 - The assignment or change of custody will give preference to the parent who makes possible the effective coexistence of the child or adolescent with the other parent, in situations where joint custody is unworkable.

Sole paragraph. If joint custody is determined, each parent will be assigned, wherever possible, the obligation to take the child or adolescent to the residence of the other parent or at a defined place set on the occasion of the alternating periods of family coexistence.

Art. 7 - The change of domicile of the child or adolescent is irrelevant to the determination of competence related to actions based on the right of family coexistence, unless being the result of a parental consensus or a legal decision.

Art. 8 - Section II of Chapter I of Title VII of the Child and Adolescent Statute, approved by the Law 8069 of July 13, 1990, become effective with the following addition:

“Art.236.....
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Sole paragraph. If the fact doesn't constitute a more serious crime, the same penalty applies to whom makes a false declaration to the agent mentioned in the caption or to the police authority which content could result in a restriction to the coexistence of the child or adolescent with the alienated parent.”

Art. 9 - Section II of Chapter I of Title VII of the Child and Adolescent Statute, approved by the Law 8069 of July 13, 1990, become effective with the following addition:

“Art. 236-A. To prevent or illegally obstruct contact or coexistence of the child or adolescent with the alienated parent.

Penalty: detention from six months to two years, if the fact doesn't constitute a more serious crime.”

Art. 10 - This law shall enter into force upon its publication.