

SENATE BILL NO. 76

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To enact Civil Code Art. 138, relative to the modification of child custody; to provide with
3 respect to the evidentiary burdens required to modify child custody; and to provide
4 for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Art. 138 is hereby enacted to read as follows:

7 **Art. 138. Modification of custody award**

8 **A. When a court has awarded custody pursuant to a judgment rendered**
9 **by considered decree, the award may be modified by the court within the period**
10 **of five years after the date of the judgment, in accordance with the best interest**
11 **of the child, only upon proof of either of the following:**

12 **(1) By clear and convincing evidence that the harm likely to be caused**
13 **by a change of custody is substantially outweighed by the advantages to the**
14 **child.**

15 **(2) That the continuation of the present custody award is so harmful to**
16 **the child as to justify modification.**

17 **B. After five years have elapsed from the date of a judgment rendered**
18 **by considered decree, and in all other cases, an award of custody may be**
19 **modified by the court upon a change in circumstances that materially affects the**
20 **welfare of the child if the modification is in the best interest of the child.**

21 **C. A judgment is "rendered by considered decree" when the trial court**
22 **receives evidence of parental fitness to exercise care, custody, and control of a**
23 **child and enters a final and appealable judgment based on its evaluation of that**
24 **evidence.**

25 Revision Comments – 2026

26 (a) This revision codifies the standard set by the Louisiana Supreme Court
27 for modification of custody orders pursuant to considered decrees in *Bergeron v.*
28 *Bergeron*, 492 So. 2d 1193, 1200 (La. 1986), with modifications. It also codifies the
29 existing, and lesser, standard for modifying consent decrees. See, e.g., *McCorvey v.*

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McCorvey, 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005). This revision is not intended to abrogate the jurisprudence interpreting *Bergeron*; rather, it is intended to add clarity by codifying the *Bergeron* standard and by calling attention to the often jurisprudentially overlooked alternative weighing standard set forth in *Bergeron*.

(b) Louisiana jurisprudence explains that a consent decree subject to the best interest standard is one made through "a stipulated judgment, such as when the parties consent to a custodial arrangement, and no evidence of parental fitness is taken." Alternatively, a considered decree is one "wherein the trial court receives evidence of parental fitness to exercise care, custody, and control of a child." *McCorvey v. McCorvey*, 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005); see also *Evans v. Lungrin*, 708 So. 2d 731 (La. 1998). Some Louisiana courts have noted that judgments may be the result of "hybrid" proceedings, as when the court received some evidence of parental fitness, but the parties enter into a stipulated judgment prior to the court's ruling. Such judgments should be treated under the modification standard applicable to consent decrees. *McCorvey, supra* at 371.

(c) The use of "in all other cases" in Paragraph B of this Article contemplates application of the lesser evidentiary standard to modification of a consent decree, a considered decree once five years have elapsed from the date of that decree, and a judgment as a result of hybrid proceedings.

(d) The change in circumstances described in Paragraph B of this Article refers to a change that materially affects the child's welfare. *Burns v. Burns*, 236 So. 3d 571, 574 (La. App. 1 Cir. 2017). A parent's remarriage, engagement, and similar life changes do not necessarily rise to such a level. See *id.*

(e) The standards set forth in this Article apply to modifications of judgments of custody rendered by consent decree or considered decree and generally apply to both physical and legal custody. They do not, however, apply to minor changes, such as a change in visitation of a parent from a Tuesday night to a Wednesday night.

(f) Interim, temporary, or interlocutory custodial orders are not governed by the standards set forth in this Article.

(g) Custodial orders entered by hearing officers, whether interim or otherwise, are not "considered decrees" in accordance with this Article, as they are not custodial awards made by a "trial court."

(h) On account of the enactment of this Article, Comment (d) of the 1993 Revision Comments to Article 131 has been superseded. This Article should be consulted, as it elaborates upon and modifies jurisprudential treatment of custody modification.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____