

2022 Regular Session

SENATE RESOLUTION NO. 186

BY SENATOR PEACOCK

CHILDREN. To urge and request the Louisiana State Law Institute to review state laws, rules, regulations, policies, and procedures related to mental health evaluations used in child custody proceedings.

1 A RESOLUTION

2 To urge and request the Louisiana State Law Institute to review state laws, rules,
3 regulations, policies, and procedures related to mental health evaluations used in
4 child custody and visitation proceedings.

5 WHEREAS, mental health evaluations are in integral part of child custody and
6 visitation judicial proceedings; and

7 WHEREAS, Louisiana has at least two statutes, R.S. 9:331 and 9:355.15, that govern
8 mental health evaluations in child custody and visitation proceedings; and

9 WHEREAS, R.S. 9:331 provides that the court may order an evaluation of a party
10 or the child by a mental health professional in a child custody or visitation proceeding for
11 good cause shown; and

12 WHEREAS, R.S. 9:331 further states that the court may order a party or the child to
13 submit to and cooperate in the evaluation, testing, or interview by the mental health
14 professional and that the mental health professional shall issue a report of their evaluation
15 and serve as a witness in the court proceeding; and

16 WHEREAS, R.S. 9:355.15 provides that the court, on motion of either party or on
17 its own motion, may appoint an independent mental health expert to render a report to assist
18 the court in determining the best interest of the child; and

1 WHEREAS, R.S. 9:331 was enacted in 1993 and R.S. 9:355.15 was enacted in 1997
2 and neither law has been modified nor updated to provide any additional clarity or guidance
3 on conducting mental health evaluations in child custody and visitation proceedings,
4 including the expertise of the mental health professional conducting the evaluation; and

5 WHEREAS, according to reported decisions, mental health evaluations have
6 increased at least tenfold since the 1990s, when these statutes were enacted, and more
7 recently have doubled in the last eight years; and

8 WHEREAS, the Fourth, Fourteenth, Fifteenth, Sixteenth, Eighteenth,
9 Twenty-second, and Twenty-seventh Judicial Districts, as well as the Orleans Civil District
10 Court, have found it necessary to adopt detailed court-specific rules concerning mental
11 health evaluations in family law proceedings; and

12 WHEREAS, the rules of these judicial districts may include provisions addressing
13 the following:

14 (1) Custody evaluation serving as the de facto primary evidence gathering
15 mechanism and the Court's primary due process procedures;

16 (2) Encouraging collaborative coparenting while discouraging approaches that strip
17 parental and custodial rights from one parent, unless justified under the existing domestic
18 violence laws;

19 (3) Evaluators treatment of coercive control or other forms of emotional abuse when
20 evaluating the coparenting dynamics. The finding and rulings provided by the Child Custody
21 Evaluation significantly influence the coparenting dynamics and the final child physical
22 custody arrangement as these two areas are intertwined;

23 (4) Information included in any report to the court and the scientific methodology
24 used to create any reports and evaluations;

25 (5) Administrative rules and guidelines to ensure the following: (1) Evaluators adhere
26 to the proper rules of evidence; (2) the Court upholds its constitutional due process
27 requirements; and (3) removal of a parent's fundamental rights is only considered under the
28 Supreme Court's strict scrutiny standard;

29 (6) The amount of weight allowed to be given to an evaluation by the judge in
30 determining child custody or visitation rights;

1 (7) Mechanisms to disqualify Custody Evaluators and the proper sanctions imposed
2 if disqualified;

3 (8) Manner in which the costs of the evaluation should be advanced by the parties
4 utilizing the existing curator system to ensure a blind payment structure and avoid bias in
5 the evaluation process; and

6 (9) Procedures used by hearing officers.

7 WHEREAS, there is ambiguity as to whether R.S. 9:331 or Code of Civil Procedure
8 Articles 1464, 1465, and 1465.1, relating to experts, apply in child custody and visitation
9 proceedings; and

10 WHEREAS, there is additional ambiguity as to whether, when, and how Code of
11 Evidence Articles 702 through 706, regarding experts, and 801 through 804, regarding
12 hearsay, apply in child custody and visitation proceedings when a mental health evaluation
13 is ordered; and

14 WHEREAS, this ambiguity and uncertainty detrimentally impacts those parties
15 diligently trying to provide for the health and welfare of their children which is a matter of
16 utmost consideration relating to the best interest of Louisiana children in child custody and
17 visitation proceedings.

18 THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana
19 does hereby urge and request that the Louisiana State Law Institute study the various state
20 laws, rules, regulations, policies, and procedures relative to mental health evaluations used
21 in child custody and visitation proceedings, and report its findings and recommendations to
22 the legislature on or before March 1, 2023, in order to address the need for any revisions and
23 recommendations to improve, clarify, and standardize these procedures across the state in
24 family court proceedings.

25 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
26 director of the Louisiana State Law Institute.

