

2022 Regular Session

HOUSE RESOLUTION NO. 228

BY REPRESENTATIVES GREGORY MILLER AND JEFFERSON

A RESOLUTION

To direct the Louisiana State Law Institute to review laws, rules, regulations, policies, and procedures related to evaluations conducted by mental health professionals used in child custody and visitation proceedings.

WHEREAS, evaluations conducted by mental health professionals are in integral part of child custody and visitation judicial proceedings; and

WHEREAS, at least two statutes, R.S. 9:331 and 355.15, govern evaluations conducted by mental health professionals in child custody and visitation proceedings; and

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

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

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

WHEREAS, R.S. 9:331 was enacted in 1993, and R.S. 9:355.15 was enacted in 1997, and neither law has been significantly amended to provide additional clarity or guidance on evaluations conducted by mental health professionals in child custody and visitation proceedings, including the expertise of the mental health professional conducting the evaluation; and

WHEREAS, according to reported decisions, evaluations conducted by mental health professionals have increased at least ten-fold since the 1990s when these statutes were enacted and more recently have doubled in the last eight years; and

WHEREAS, the 4th, 14th, 15th, 16th, 18th, 22nd, and 27th judicial districts, as well as the Orleans Civil District Court, have found it necessary to adopt detailed court-specific rules concerning evaluations conducted by mental health professionals in family law proceedings; and

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

(1) Custody evaluations serving as the de facto primary evidence gathering mechanism and the court's primary due process procedures.

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

(3) The evaluator's treatment of coercive control or other forms of emotional abuse when evaluating co-parenting dynamics. The finding and rulings provided by the custody evaluation significantly influence co-parenting dynamics and the final custody arrangement as these two areas are intertwined.

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

(5) Administrative rules and guidelines to ensure that evaluators adhere to the proper rules of evidence, the court upholds its constitutional due process requirements; and the removal of a parent's fundamental rights is only considered under the United States Supreme Court's strict scrutiny standard.

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

(7) Mechanisms to disqualify custody evaluators and the proper sanctions imposed if disqualified.

(8) The manner in which the costs of the evaluation should be advanced by the parties utilizing the existing curator system to ensure a blind payment structure and avoid bias in the evaluation process.

(9) Procedures used by hearing officers.

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

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

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

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby direct the Louisiana State Law Institute to study the various laws, rules, regulations, policies, and procedures relative to evaluations conducted by mental health professionals used in child custody and visitation proceedings to address the need for any revisions and recommendations to improve, clarify, and standardize these procedures across the state in family court proceedings.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations to the legislature on or before March 1, 2023.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES