

2024 Regular Session

HOUSE BILL NO. 787

BY REPRESENTATIVES EGAN, CARVER, AND EDMONSTON

CHILDREN/CUSTODY: Provides relative to evidence in child custody cases

1 AN ACT

2 To amend and reenact R.S. 9:331 and to enact R.S. 9:330, relative to evidence in child  
3 custody cases; to provide for evidentiary restrictions during mental health  
4 evaluations; to provide for applicability of the Children's Code in child custody  
5 cases; to provide for evaluation by licensed mental health professionals in child  
6 custody cases; to provide for a child's testimony in a child custody case; and to  
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:331 is hereby amended and reenacted and R.S. 9:330 is hereby  
10 enacted to read as follows:

11 §330. Evidence in child custody cases

12 A. Notwithstanding Code of Evidence Article 1101(B)(2), Code of Evidence  
13 Article 1101(A) shall govern the admissibility of all evidence in any child custody  
14 proceeding when the court is adjudicating factual allegations that a parent engaged  
15 in specific conduct contrary to a child's best interest, or when a parent or other  
16 person is tried for indirect contempt of court.

17 B. A child's testimony in a custody case shall proceed as follows:

18 (1) The child's testimony in the form of an interview shall be conducted in  
19 the judge's chambers outside of the presence of the parents but shall be conducted  
20 in the presence of their attorneys with a record being made by the court reporter.

1           (2) The judge shall first determine the child's competency as a person of  
2           proper understanding by interrogating the child with appropriate questions. The  
3           attorney for the parent shall be allowed to participate in the competency examination  
4           by asking questions and registering appropriate, but only necessary, objections.

5           (3) If the judge determines that the child is not a competent witness, the  
6           judge shall immediately terminate the interview.

7           (4) If the judge determines that the child is competent, the judge may  
8           continue the interview in the presence of the attorney for the parent only as an  
9           observer. The attorney for the parent shall not participate by asking questions, cross-  
10          examination, or registering objections, but the attorney for the child may ask  
11          questions. The attorney for the parent may in advance of the interview submit to the  
12          court in writing the proposed questions that the attorney deems relevant to the factual  
13          allegations at issue or effect the best interest of the child. In the judge's discretion,  
14          any relevant questions submitted by the attorney for the parent may be modified into  
15          a more neutral and appropriate form, considering the child's age, maturity, and  
16          vulnerability.

17          (5) When the court is adjudicating distinct factual issues regarding  
18          allegations of detrimental parental conduct which the child may have witnessed or  
19          experienced, the court shall obtain relevant information from the child in a manner  
20          that minimizes any discomfort or fear that the child may experience.

21          C. Mental health evaluations conducted in child custody cases are subject to  
22          the following evidentiary restrictions:

23                 (1) Absent express consent of the parties, the court shall not read or consider  
24                 any report prepared by a mental health professional until the report is admitted into  
25                 evidence and all parties have been allowed the opportunity to cross-examine the  
26                 mental health professional in open court.

27                 (2) No mental health professional's opinion on the credibility of any person  
28                 shall be admissible.

1           (3) No mental health professional shall be permitted to testify to an opinion  
2           concerning the application or interpretation of substantive law.

3           (4) The court shall not engage in any ex parte communication with any  
4           mental health professional involved in any way with the litigation.

5           (5) No court shall delegate to any mental health professional the  
6           determination of any disputed factual issues or any substantive determinations  
7           concerning child custody or visitation.

8           D. The absence of an arrest or criminal prosecution or any state or local child  
9           protection agency determinations made under Children's Code Article 615 shall not  
10          be admissible or considered by the court as evidence regarding the occurrence of any  
11          alleged parental conduct. However, evidence offered by a party which is otherwise  
12          admissible shall not be excluded solely because it was previously considered in a  
13          related law enforcement or child protection investigation.

14          E. In courts not exercising juvenile jurisdiction, no employee of the  
15          Department of Children and Family Services shall be subpoenaed or be compelled  
16          to testify in any child custody case concerning his official involvement in any  
17          investigation, reserving to every such court, however, the reporting and referral  
18          remedy set forth in Children's Code Article 308.

19          F. A video recording prepared in compliance with Children's Code Article  
20          326 shall be admissible in any child custody proceeding if the provisions of  
21          Children's Code Article 327 are satisfied.

22          G. A statement made by a child for the purposes of medical treatment, or  
23          medical diagnosis in connection with treatment, otherwise admissible under Code  
24          of Evidence Article 803(4), shall not be excluded by the court solely because the  
25          health care professional to whom the statement was made failed to conduct an  
26          investigation into the accuracy of the child's statements.

1           §331. Custody or visitation proceeding; evaluation by licensed mental health  
2                           professional

3           A. The court may order ~~an~~ a mental health evaluation of a party or the child  
4           in a custody or visitation proceeding for good cause shown. The mental health  
5           evaluation shall be made by a licensed mental health professional selected by the  
6           parties or by the court. The court may render judgment for costs of the mental health  
7           evaluation, or any part thereof, against any party or parties, as ~~it~~ the court may  
8           consider equitable, taking into consideration the parties ability to pay. The court  
9           may preliminarily allocate costs at the outset and reserve the right to reallocate costs  
10          upon conclusion of the matter. The court may order a party to submit to and  
11          cooperate in the mental health evaluation, testing, or interview by the licensed  
12          mental health professional. The licensed mental health professional shall provide the  
13          parties with a written report and may be called as a witness, subject to cross-  
14          examination by a party.

15          B. ~~The~~ With the parties consent, the court may order ~~a party or the child to~~  
16          ~~submit to and cooperate in the evaluation, testing, or interview by the licensed~~  
17          ~~mental health professional:~~ that a licensed mental health professional jointly selected  
18          by the parties evaluate the family for the purpose of identifying and describing the  
19          dynamics and relationships among the family members who would be impacted by  
20          the court's custody or visitation judgment. The cost of any such evaluation shall be  
21          equally shared by the parties. The licensed mental health professional shall provide  
22          ~~the court and the parties with a written report and may be called as a witness, subject~~  
23          to cross-examination by a party. The licensed mental health professional shall serve  
24          ~~as the witness of the court, subject to cross-examination by a party.~~

25          C. "Licensed mental health professional" as used in this Chapter means a  
26          person who possesses at least a master's degree and who ~~is licensed~~ holds a current  
27          unrestricted license in counseling, social work, psychology, or marriage and family  
28          counseling, ~~or exempt from licensing requirements pursuant to R.S. 37:1113 and~~  
29          ~~1121.~~

1           D. Any licensed mental health professional appointed by the court, or  
 2           selected by the parties, to conduct a mental health evaluation in a case where  
 3           domestic abuse is an issue shall have current and demonstrable training and  
 4           experience working with perpetrators and victims of domestic abuse.

5           ~~D.~~ E. When a licensed mental health professional has been appointed by the  
 6           court, or selected by the parties, there shall be no ex parte communication by the  
 7           litigants or their attorneys with the licensed mental health professional unless  
 8           authorized by law or court order or agreed to by the parties. All oral communication  
 9           with the licensed mental health professional shall be by teleconference or meeting  
 10          in which each party to the proceeding participates either through the party's attorney  
 11          or as a self-represented litigant. All written communication or correspondence to the  
 12          licensed mental health professional, along with any attachments thereto, shall be  
 13          provided contemporaneously to all parties to the litigation or their attorneys of  
 14          record. Communications initiated by the licensed mental health professional with  
 15          a litigant for the purpose of conducting the court-ordered evaluation shall not be  
 16          considered ex parte communications prohibited by this Subsection.

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#### 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)]

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HB 787 Reengrossed

2024 Regular Session

Egan

**Abstract:** Provides for the applicability of evidence in child custody cases.

Proposed law (R.S. 9:330(A)) provides that present law (C.E. Art. 1101(A)) governs the admissibility of all evidence in child custody cases when the court is adjudicating allegations of a parent not acting in the best interest of the child.

Proposed law provides guidelines for how a child's testimony shall proceed in a custody case.

Proposed law (R.S. 9:330(C)) establishes evidentiary standards for mental health evaluations in child custody cases.

Proposed law provides that the absence of an arrest or criminal prosecution or any child protection agency determinations made under present law (Ch.C. Art. 615) shall not be admissible as evidence that any alleged parental misconduct occurred.

Proposed law provides that in courts not exercising juvenile jurisdiction, a DCFS employee shall not be subpoenaed or compelled to testify in any child custody case concerning the involvement of the employee in any investigation.

Proposed law provides that if the provisions of present law (Ch.C. Art. 327) are satisfied, a video recording made pursuant to present law (Ch.C. Art. 326) shall be admissible in any child custody proceeding.

Proposed law provides that a statement for the purpose of medical treatment shall not be excluded by the court because the health care professional failed to investigate the accuracy of the child's statements.

Present law (R.S. 9:331) references the evaluation of a party or the child in a custody or visitation proceeding.

Proposed law specifies that the evaluations are mental health evaluations.

Proposed law provides that the court may render judgment for costs taking into consideration the parties ability to pay.

Proposed law provides that the court may order a party to cooperate in the mental health evaluation, and the mental health professional shall provide the parties with a written report and may be called as a witness, subject to cross-examination.

Proposed law provides that, with the parties consent, the court may order that a licensed mental health professional evaluate the family and the cost of the evaluation shall be equally shared by the parties. The mental health professional may be called as a witness, subject to cross-examination.

Proposed law provides that any licensed mental health professional appointed by the court, or selected by the parties, to conduct a mental health evaluation in a case where domestic abuse is an issue shall have current and demonstrable training and experience working with perpetrators and victims of domestic abuse.

(Amends R.S. 9:331; Adds R.S. 9:330)

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Modify evidentiary standards for mental health evaluations conducted in child custody cases.
2. Change the guidelines for how a child's testimony shall proceed in a custody case.
3. Make technical changes.
4. Provide that in custody or visitation proceedings, the court may render judgment for costs taking into consideration the parties ability to pay.
5. Provide that in custody or visitation proceedings, the court may order a party to cooperate in the mental health evaluation, and the mental health professional shall provide the parties with a written report and may be called as a witness, subject to cross-examination.
6. Provide that in custody or visitation proceedings and with the parties consent, the court may order that a licensed mental health professional evaluate the family

and the cost of the evaluation shall be equally shared by the parties. The mental health professional may be called as a witness, subject to cross-examination.

7. Provide that in custody or visitation proceedings, a licensed mental health professional conducting a mental health evaluation in a case where domestic abuse is an issue shall have current and demonstrable training and experience working with perpetrators and victims of domestic abuse.