

2026 Regular Session

SENATE BILL NO. 76

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

CHILDREN. Provides relative to the modification of child custody. (8/1/26)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

Art. 138. Modification of custody award

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

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

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

B. After five years have elapsed from the date of a judgment rendered

1 by considered decree, and in all other cases, an award of custody may be
 2 modified by the court upon a change in circumstances that materially affects the
 3 welfare of the child if the modification is in the best interest of the child.

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

8 Revision Comments – 2026

9 (a) This revision codifies the standard set by the Louisiana Supreme Court
 10 for modification of custody orders pursuant to considered decrees in *Bergeron v.*
 11 *Bergeron*, 492 So. 2d 1193, 1200 (La. 1986), with modifications. It also codifies the
 12 existing, and lesser, standard for modifying consent decrees. See, e.g., *McCorvey v.*
 13 *McCorvey*, 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005). This revision is not
 14 intended to abrogate the jurisprudence interpreting *Bergeron*; rather, it is intended
 15 to add clarity by codifying the *Bergeron* standard and by calling attention to the often
 16 jurisprudentially overlooked alternative weighing standard set forth in *Bergeron*.

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

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

32 (d) The change in circumstances described in Paragraph B of this Article
 33 refers to a change that materially affects the child's welfare. *Burns v. Burns*, 236 So.
 34 3d 571, 574 (La. App. 1 Cir. 2017). A parent's remarriage, engagement, and similar
 35 life changes do not necessarily rise to such a level. See *id.*

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

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

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

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

