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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

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DIGEST

SB 461 Original

2016 Regular Session

Carter

Proposed law provides that present law (C.E. Art. 1101(B)(2)) shall apply as in any other civil proceeding when the court is adjudicating factual allegations of specific parental conduct relevant to a child's best interest.

Proposed law provides that when a minor child subject to a child custody proceeding is alleged to have been a witness to, or the victim of, any parental behavior or other conduct constituting domestic violence, child abuse, or any other conduct detrimental to the child's best interest, the child's testimony shall be governed by the provisions of present law applicable to any other witness in a civil case.

Proposed law provides that the court shall hear the child's testimony on the record in chambers, and may impose the safeguards set forth in present law (Ch.C. Art. 329). The child's testimony, if relevant to the factual allegations at issue, shall not be excluded on any grounds other than those set forth in present law (C.E. Arts. 601-603).

Proposed law provides that a mental health evaluations conducted pursuant to proposed law are subject to the following evidentiary restrictions:

1. The court shall not, absent express stipulation of the parties on the record perfected no sooner than five days after the report has been furnished to and reviewed by the parties and their attorneys, read or consider any report prepared by a mental health professional, until such time that the report is duly admitted into evidence pursuant to present law, and all parties have been allowed the opportunity to cross-examine the mental health professional in open court.
2. A mental health professional's opinion on the credibility of a person shall not be admissible, as such is exclusively within the purview of the trial court.
3. A mental health professional shall not be permitted to testify to an opinion concerning the application of substantive law to the parties, as such is exclusively within the purview of the trial court.
4. All opinion testimony offered by a mental health professional shall be subject to present law (C.E. Arts. 702-703).
5. A mental health professional conducting an evaluation pursuant to proposed law shall not undertake to perform any other role or function relative to the parties.
6. A mental health professional conducting an evaluation pursuant to proposed law shall

comply with all statutory and administrative licensing and ethical rules and regulations otherwise applicable to the profession.

7. The court shall not engage in any *ex parte* communication with a mental health professional.
8. All parties shall have the right to full pre-trial discovery of the entire file of the mental health professional regarding the case, including the right to depose the mental health professional.
9. An indigent parent shall not be denied the opportunity to depose, cross-examine, or otherwise challenge a court-appointed mental health professional in the same manner as a non-indigent parent.
10. Evidence concerning polygraphs, voice-stress analysis, or other such physiological measures shall not be admitted into evidence in any form. All psychological testing utilized by a mental health professional shall be limited to that which has been empirically established and generally accepted as reliable and valid for the parameters purportedly tested.
11. A mental health professional shall not be permitted to testify to, or base any opinion on, hearsay statements regarding disputed factual issues, however, any admissions or declarations against interest made to the mental health professional by a parent, and any statement made by a minor child in the course of the evaluation, shall be admissible.

Proposed law provides that neither the absence of an arrest or criminal prosecution, nor the inaction of any public child protection agency, shall *ipso facto* be considered by the court as evidence that any alleged parental conduct did not occur.

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

Proposed law provides that a statement made by a child for the purposes of medical treatment, or medical diagnosis in connection with treatment, otherwise admissible under present law (C.E. Art. 803(4)), shall not be excluded by the court solely because the health care professional to whom the statements were made failed to conduct an investigation into the accuracy of the child's statements.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:331.2)