

2024 Regular Session

HOUSE BILL NO. 236

BY REPRESENTATIVE MCMAKIN

(On Recommendation of the Louisiana State Law Institute)

CHILDREN/CUSTODY: Provides for evaluations in child custody proceedings

1 AN ACT

2 To amend and reenact R.S. 9:331 and to enact R.S. 9:331.3, relative to evaluations in child  
3 custody proceedings; to provide for mental health evaluations; to provide for child  
4 custody evaluations; to provide for costs; to provide for qualifications; to provide for  
5 the elements of a written report; to provide for the use of the findings; to provide for  
6 ex parte communication; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:331 is hereby amended and reenacted and R.S. 9:331.3 is hereby  
9 enacted to read as follows:

10 §331. Custody or visitation proceeding; court-ordered mental health evaluation by  
11 ~~licensed mental health professional~~

12 A. The court may order ~~an~~ a mental health evaluation of a party or the child  
13 in a custody or visitation proceeding for good cause shown. The mental health  
14 evaluation shall be made by a licensed mental health professional selected by the  
15 parties or by the court. The court may render judgment for the costs of the mental  
16 health evaluation, or any part thereof, against any party or parties; as it the court may  
17 consider equitable, taking into consideration the parties' ability to pay. The court  
18 may also preliminarily allocate costs at the outset and reserve the right to reallocate  
19 costs upon conclusion of the matter.

1           B. The court may order a party or the child to submit to and cooperate in the  
2           mental health evaluation, testing, or interview by the licensed mental health  
3           professional. The licensed mental health professional shall provide ~~the court and the~~  
4           parties with a written report. The licensed mental health professional shall serve as  
5           ~~the~~ a witness ~~of the court~~, subject to cross-examination by a party.

6           C. "Licensed mental health professional" as used in this Chapter means a  
7           person who possesses at least a master's degree and who ~~is licensed~~ holds a current  
8           unrestricted license in counseling, social work, psychology, or marriage and family  
9           counseling, ~~or exempt from licensing requirements pursuant to R.S. 37:1113 and~~  
10          ~~1121.~~

11          D. Any licensed mental health professional appointed by the court to conduct  
12          a mental health evaluation in a case where domestic abuse is an issue shall have  
13          current and demonstrable training and experience working with perpetrators and  
14          victims of domestic abuse.

15          ~~D.~~E. When a licensed mental health professional has been appointed by the  
16          court, there shall be no ex parte communication by the litigants or their attorneys  
17          with the licensed mental health professional unless authorized by law or court order  
18          or agreed to by the parties. All oral communication with the licensed mental health  
19          professional shall be by teleconference or meeting in which each party to the  
20          proceeding participates either through the party's attorney or as a self-represented  
21          litigant. All written communication or correspondence to the licensed mental health  
22          professional, along with any attachments thereto, shall be provided  
23          contemporaneously to all parties to the litigation or their attorneys of record.  
24          Communications initiated by the licensed mental health professional with a litigant  
25          for the purpose of conducting the court-ordered evaluation shall not be considered  
26          ex parte communications prohibited by this Subsection.

27          F. Mental health evaluations conducted pursuant to this Section are subject  
28          to the following evidentiary restrictions:

1           (1) All opinion testimony offered by a licensed mental health professional  
2           shall be subject to Code of Evidence Articles 702 and 703.

3           (2) No licensed mental health professional conducting an evaluation pursuant  
4           to this Section shall undertake or perform any other role or function relative to the  
5           parties or children.

6           (3) Every licensed mental health professional conducting an evaluation  
7           pursuant to this Section shall comply with all statutory and administrative licensing  
8           and ethical rules and regulations otherwise applicable to the profession.

9           (4) All parties shall have the right to full pretrial discovery of the entire file  
10          of the licensed mental health professional regarding the case, including the right to  
11          depose the licensed mental health professional.

12          (5) No indigent parent shall be denied the opportunity to depose,  
13          cross-examine, or otherwise challenge a court-appointed licensed mental health  
14          professional in the same manner as a non-indigent parent, and any fees and costs  
15          incurred in any such deposition shall be considered within the purview of Code of  
16          Civil Procedure Article 5185.

17          (6) No evidence concerning polygraphs, voice-stress analysis, or other such  
18          physiological measures shall be admitted into evidence in any form.

19          (7) All psychological testing, principles, diagnoses, and concepts utilized by  
20          a licensed mental health professional shall be limited to those which have been  
21          empirically established and generally accepted in the mental health profession as  
22          valid and reliable for the parameters and conditions purportedly tested or the issues  
23          evaluated.

24          (8) No licensed mental health professional shall be permitted to testify to,  
25          or base any opinion on, hearsay statements regarding disputed factual issues;  
26          however, any admissions or statements against interest made to the licensed mental  
27          health professional by a parent, and any statement made by a minor child if  
28          admissible under Code of Evidence Article 803 or 804(B)(5), in the course of the  
29          evaluation shall be considered.

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Revision Comments - 2024

Introduction and use of mental health evaluations in court are governed by the general rules of the Code of Civil Procedure and the Code of Evidence.

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§331.3. Custody or visitation proceeding; court-ordered child custody evaluation

A. The court may order a child custody evaluation in a custody or visitation proceeding for good cause shown. The child custody evaluation shall be made by a licensed mental health professional, as defined in R.S. 9:331, using the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases.

B. To serve as a court-ordered child custody evaluator in accordance with this Section, a licensed mental health professional shall have completed at least five co-evaluations under the direct supervision of another court-ordered child custody evaluator. Licensed mental health professionals who completed at least five court-ordered child custody evaluations prior to the effective date of this Act are not required to complete the co-evaluations in order to serve as a court-ordered child custody evaluator.

C. The court may order a party or the child to submit to and cooperate in the evaluation, testing, or interview by a child custody evaluator.

D. In a case where domestic abuse is an issue, the child custody evaluator shall have current and demonstrable training and experience working with perpetrators and victims of domestic abuse.

E. The court may render judgment for the costs of the child custody evaluation, or any part thereof, against any party or parties as the court may consider equitable, taking into consideration the parties' ability to pay. The court may also preliminarily allocate costs at the outset and reserve the right to reallocate costs upon conclusion of the custody matter.

F. The child custody evaluator shall provide the parties with a written report. This report shall state the basis of the evaluator's conclusions or recommendations,

1 and the extent to which the information obtained limits the reliability and validity of  
2 the opinion and the conclusions and recommendations of the evaluator.

3 G. There shall be no presumption in favor of the child custody evaluator's  
4 findings.

5 H. The child custody evaluator shall serve as a witness, subject to  
6 cross-examination by a party.

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

18 J. Child custody evaluations conducted pursuant to this Section are subject  
19 to the following evidentiary restrictions:

20 (1) All opinion testimony offered by a child custody evaluator shall be  
21 subject to Code of Evidence Articles 702 and 703.

22 (2) No child custody evaluator conducting an evaluation pursuant to this  
23 Section shall undertake or perform any other role or function relative to the parties  
24 or children.

25 (3) Every child custody evaluator conducting an evaluation pursuant to this  
26 Section shall comply with all statutory and administrative licensing and ethical rules  
27 and regulations otherwise applicable to the profession.

28 (4) All parties shall have the right to full pretrial discovery of the entire file  
29 of the child custody evaluator regarding the case, including the right to depose the  
30 child custody evaluator.

1           (5) No indigent parent shall be denied the opportunity to depose,  
 2           cross-examine, or otherwise challenge a court-appointed child custody evaluator in  
 3           the same manner as a non-indigent parent, and any fees and costs incurred in any  
 4           such deposition shall be considered within the purview of Code of Civil Procedure  
 5           Article 5185.

6           (6) No evidence concerning polygraphs, voice-stress analysis, or other such  
 7           physiological measures shall be admitted into evidence in any form.

8           (7) All psychological testing, principles, diagnoses, and concepts utilized by  
 9           a child custody evaluator shall be limited to those which have been empirically  
 10          established and generally accepted in the mental health profession as valid and  
 11          reliable for the parameters and conditions purportedly tested or the issues evaluated.

12          (8) No child custody evaluator shall be permitted to testify to, or base any  
 13          opinion on, hearsay statements regarding disputed factual issues; however, any  
 14          admissions or statements against interest made to the child custody evaluator by a  
 15          parent, and any statement made by a minor child if admissible under Code of  
 16          Evidence Article 803 or 804(B)(5), in the course of the evaluation shall be  
 17          considered.

Revision Comments - 2024

19           (a) In Subsection D of this Section, see R.S. 9:365, requiring the same  
 20           experience when the Post-Separation Family Violence Relief Act applies.

21           (b) Under this Section, the court may order a child custody evaluation that  
 22           is broad in scope or may limit the scope of the evaluation to a particular area.

23           (c) Expert child custody evaluations are also governed by the general rules  
 24           of the Code of Civil Procedure and the Code of Evidence.

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)]

**Abstract:** Provides for evaluations in child custody proceedings.

Present law (R.S. 9:331) authorizes the court to order an evaluation by a mental health professional in a child custody or visitation proceeding and prohibits ex parte communication.

Proposed law retains present law and clarifies that the evaluation is a mental health evaluation only.

Present law provides for the awarding of costs.

Proposed law retains present law and provides for the consideration of the parties' ability to pay and for the reallocation of costs upon conclusion of the matter.

Present law defines "licensed mental health professional".

Proposed law modernizes the language and removes the exemption.

Proposed law adds a requirement that the professional have experience working with perpetrators and victims of domestic abuse if that is an issue in the case.

Proposed law requires that mental health evaluations are subject to certain evidentiary restrictions.

Proposed law (R.S. 9:331.3) provides a separate procedure for the appointment of a child custody evaluator to conduct a court-appointed child custody evaluation in a custody or visitation proceeding.

Proposed law requires the child custody evaluator to be a licensed mental health professional and to use the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases.

Proposed law requires a child custody evaluator to have completed at least five co-evaluations prior to being appointed by the court.

Proposed law requires parties and children to cooperate in the evaluation.

Proposed law requires the child custody evaluator to have experience working with perpetrators and victims of domestic abuse if that is an issue in the case.

Proposed law provides for the payment of costs, the consideration of the parties' ability to pay, and the reallocation of costs upon conclusion of the matter.

Proposed law provides for the issuance of a written report to the parties and for the evaluator to serve as a witness and be subject to cross-examination.

Proposed law provides that there shall not be a presumption in favor of the evaluator's findings.

Proposed law prohibits ex parte communication between the litigants or their attorneys and the child custody evaluator.

Proposed law requires that child custody evaluations are subject to certain evidentiary restrictions.

(Amends R.S. 9:331; Adds R.S. 9:331.3)

#### Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Requires that mental health and child custody evaluations are subject to certain evidentiary restrictions.