

2024 Regular Session

HOUSE BILL NO. 236

BY REPRESENTATIVE MCMAKIN

(On Recommendation of the Louisiana State Law Institute)

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.

20 B. The court may order a party or the child to submit to and cooperate in the
21 mental health evaluation, testing, or interview by the licensed mental health

1 professional. The licensed mental health professional shall provide ~~the court and the~~
2 parties with a written report. The licensed mental health professional shall serve as
3 ~~the a witness of the court~~, subject to cross-examination by a party.

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

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

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

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

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

1 of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in
2 Family Law Cases.

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

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

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

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

20 F. The child custody evaluator shall provide the parties with a written report.
21 This report shall state the basis of the evaluator's conclusions or recommendations,
22 and the extent to which the information obtained limits the reliability and validity of
23 the opinion and the conclusions and recommendations of the evaluator.

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

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

28 I. When a child custody evaluator has been appointed by the court, there
29 shall be no ex parte communication by the litigants or their attorneys with the child

1 custody evaluator unless authorized by law or court order or agreed to by the parties.
2 All oral communication with the child custody evaluator shall be by teleconference
3 or meeting in which each party to the proceeding participates either through the
4 party's attorney or as a self-represented litigant. All written communication or
5 correspondence to the child custody evaluator, along with any attachments thereto,
6 shall be provided contemporaneously to all parties to the litigation or their attorneys
7 of record. Communications initiated by the child custody evaluator with a litigant
8 for the purpose of conducting the court-ordered evaluation shall not be considered
9 ex parte communications prohibited by this Subsection.

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

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

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

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

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

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

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

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

5 Revision Comments - 2024

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____