

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 enact R.S. 9:330, relative to evidence in child custody cases; to provide for evidentiary  
3 restrictions during mental health evaluations; to provide for applicability of the  
4 Children's Code in child custody cases; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:330 is hereby enacted to read as follows:

7 §330. Evidence in child custody cases

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

13 B. When a minor child subject to a child custody proceeding is alleged to  
14 have been a witness to, or the victim of, any parental behavior or other conduct  
15 constituting domestic violence, child abuse, child neglect, or any other conduct  
16 detrimental to the child, the child's testimony shall be governed by the provisions of  
17 the Code of Evidence applicable to any other witness in a civil case. The court shall  
18 hear the child's testimony on the record in chambers and may impose the safeguards  
19 set forth in Children's Code Article 329. The child's testimony, if relevant to the

1 factual allegations at issue, shall not be excluded on any other grounds other than  
2 those set forth in Code of Evidence Articles 601, 602, and 603.

3 C. Mental health evaluations conducted pursuant to R.S. 9:331 are subject  
4 to the following evidentiary restrictions:

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

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

11 (3) No mental health professional shall be permitted to testify to an opinion  
12 concerning the application or interpretation of substantive law, including Civil Code  
13 Article 134.

14 (4) All opinion testimony offered by a mental health professional shall be  
15 subject to Code of Evidence Articles 702 and 703.

16 (5) No mental health professional conducting an evaluation pursuant to this  
17 Section shall undertake or perform any other role or function relative to the parties  
18 or children.

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

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

24 (8) All parties shall have the right to full pre-trial discovery of the entire file  
25 of the mental health professional regarding the case, including the right to depose the  
26 mental health professional.

27 (9) No indigent parent shall be denied the opportunity to depose,  
28 cross-examine, or otherwise challenge a court-appointed mental health professional  
29 in the same manner as a non-indigent parent, and any fees and costs incurred in any

1 such deposition shall be considered within the purview of Code of Civil Procedure  
2 Article 5185.

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

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

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

15 (13) No court shall delegate to any mental health professional the  
16 determination of any disputed factual issues or any substantive determinations  
17 concerning child custody or visitation.

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

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

1           F. A video recording prepared in compliance with Children's Code Article  
2           326 shall be admissible in any child custody proceeding if the provisions of  
3           Children's Code Article 327 are satisfied.

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

#### 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)]

HB 787 Original

2024 Regular Session

Egan

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

Proposed law provides that 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 that the Children's Code shall govern cases in courts exercising juvenile jurisdiction pursuant to Ch.C. Arts. 302 through 313.

Proposed law provides that a minor child's testimony shall be governed by the provisions of the Code of Evidence when the minor child has been subject to conduct detrimental to the child.

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 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 Ch.C. Art. 327 are satisfied, a video recording made pursuant to 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.

(Adds R.S. 9:330)