

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

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

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

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

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

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

14 (5) No mental health professional 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 (6) Every mental health professional conducting an evaluation pursuant to
18 this Section shall comply with all statutory and administrative licensing and ethical
19 rules and regulations otherwise applicable to the profession.

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

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

25 (9) No indigent parent shall be denied the opportunity to depose,
26 cross-examine, or otherwise challenge a court-appointed mental health professional
27 in the same manner as a non-indigent parent, and any fees and costs incurred in any
28 such deposition shall be considered within the purview of Code of Civil Procedure
29 Article 5185.

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

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

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

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

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

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

27 F. A video recording prepared in compliance with Children's Code Article
28 326 shall be admissible in any child custody proceeding if the provisions of
29 Children's Code Article 327 are satisfied.

1 G. A statement made by a child for the purposes of medical treatment, or
 2 medical diagnosis in connection with treatment, otherwise admissible under Code
 3 of Evidence Article 803(4), shall not be excluded by the court solely because the
 4 health care professional to whom the statement was made failed to conduct an
 5 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 Engrossed

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)