

2018 Regular Session

SENATE RESOLUTION NO. 46

BY SENATOR PERRY

LEGISLATIVE AGENCIES. Requests the Louisiana State Law Institute to review state laws, rules, regulations, policies, and procedures relative to mental health evaluations used in child custody and visitation proceedings.

1 A RESOLUTION

2 To urge and request the Louisiana State Law Institute to review state laws, rules,
3 regulations, policies, and procedures relative to mental health evaluations used in
4 child custody and visitation proceedings.

5 WHEREAS, Louisiana has two statutes, R.S. 9:331 and 9:355.15, that govern mental
6 health evaluations in child custody and visitation proceedings; and

7 WHEREAS, R.S. 9:331 provides that the court may order an evaluation of a party
8 or the child by a mental health professional in a child custody or visitation proceeding for
9 good cause shown; and

10 WHEREAS, R.S. 9:331 further states that the court may order a party or the child to
11 submit to and cooperate in the evaluation, testing, or interview by the mental health
12 professional and that the mental health professional shall issue a report of their evaluation
13 and serve as a witness in the court proceeding; and

14 WHEREAS, R.S. 9:355.15 provides that the court, on motion of either party or on
15 its own motion, may appoint an independent mental health expert to render a report to assist
16 the court in determining the best interest of the child; and

17 WHEREAS, R.S. 9:331 was enacted in 1993 and R.S. 9:355.15 was enacted in 1997
18 and neither law has been modified or updated to provide any additional clarity or guidance

1 on conducting mental health evaluations in child custody and visitation proceedings,
2 including the expertise of the mental health professional conducting the evaluation; and

3 WHEREAS, according to reported decisions, mental health evaluations have
4 increased at least ten-fold since the nineteen nineties, when these statutes were enacted, and
5 more recently have doubled in the last eight years; and

6 WHEREAS, the 4th, 14th, 15th, 16th, 18th, 22nd, and 27th judicial districts, as well
7 as the Orleans Civil District Court, have found it necessary to adopt detailed court-specific
8 rules concerning mental health evaluations in family law proceedings; and

9 WHEREAS, the rules of the judicial districts include provisions such as:

10 1. Selection of a particular professional to conduct the evaluation.

11 2. Qualifications of the professional to conduct the evaluation.

12 3. Communications between counsel and the professional conducting the evaluation,
13 including methods of communication and notice to the other party, the provision of
14 documents and other information to the professional conducting the evaluation by the parties
15 and their counsel, the time within which to comply with any order, and the amount of time
16 prior to any hearing or trial in the matter the parties and the court must receive the report.

17 4. Information to be included in any report to the court.

18 5. Weight to be given a report regarding custody or visitation.

19 6. Ability to get further information from the evaluator by the court or the parties.

20 7. Manner in which the costs of the evaluation should be advanced by the parties.

21 8. Procedures used by hearing officers.

22 9. Notice to the parties, the court, and the evaluator; and

23 WHEREAS, there is confusion as to whether R.S. 9:331 or Code of Civil Procedure
24 Arts. 1464, 1465, and 1465.1, relating to experts, apply in a child custody and visitation
25 proceeding; and

26 WHEREAS, there is further confusion as to whether, when, and how Code of
27 Evidence Arts. 702 through 706 regarding experts and 801 through 804 regarding hearsay
28 apply in child custody and visitation proceedings when a mental health evaluation is ordered;
29 and

30 WHEREAS, this confusion is to the detriment of those parties diligently trying to

