

2022 Regular Session

HOUSE RESOLUTION NO. 228

BY REPRESENTATIVES GREGORY MILLER AND JEFFERSON

CHILDREN/CUSTODY: Requests the Louisiana State Law Institute to study evaluations conducted by mental health professionals used in child custody and visitation proceedings

1 A RESOLUTION

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

5 WHEREAS, evaluations conducted by mental health professionals are in integral part  
6 of child custody and visitation judicial proceedings; and

7 WHEREAS, at least two statutes, R.S. 9:331 and 355.15, govern evaluations  
8 conducted by mental health professionals in child custody and visitation proceedings; and

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

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

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

19 WHEREAS, R.S. 9:331 was enacted in 1993, and R.S. 9:355.15 was enacted in 1997,  
20 and neither law has been significantly amended to provide additional clarity or guidance on

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

4 WHEREAS, according to reported decisions, evaluations conducted by mental health  
5 professionals have increased at least ten-fold since the 1990s when these statutes were  
6 enacted and more recently have doubled in the last eight years; and

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

11 WHEREAS, the rules of these judicial districts may include provisions addressing  
12 the following:

13 (1) Custody evaluations serving as the de facto primary evidence gathering  
14 mechanism and the court's primary due process procedures.

15 (2) Encouraging collaborative coparenting while discouraging approaches that strip  
16 parental and custodial rights from one parent, unless justified under the existing domestic  
17 violence laws.

18 (3) The evaluator's treatment of coercive control or other forms of emotional abuse  
19 when evaluating co-parenting dynamics. The finding and rulings provided by the custody  
20 evaluation significantly influence co-parenting dynamics and the final custody arrangement  
21 as these two areas are intertwined.

22 (4) Information included in any report to the court and the scientific methodology  
23 used to create any reports and evaluations.

24 (5) Administrative rules and guidelines to ensure that evaluators adhere to the proper  
25 rules of evidence, the court upholds its constitutional due process requirements; and the  
26 removal of a parent's fundamental rights is only considered under the United States Supreme  
27 Court's strict scrutiny standard.

28 (6) The amount of weight allowed to be given to an evaluation by the judge in  
29 determining custody or visitation rights.

1           (7) Mechanisms to disqualify custody evaluators and the proper sanctions imposed  
2 if disqualified.

3           (8) The manner in which the costs of the evaluation should be advanced by the  
4 parties utilizing the existing curator system to ensure a blind payment structure and avoid  
5 bias in the evaluation process.

6           (9) Procedures used by hearing officers.

7           WHEREAS, there is ambiguity as to whether R.S. 9:331 or Code of Civil Procedure  
8 Articles 1464, 1465, and 1465.1, regarding experts, apply in child custody and visitation  
9 proceedings; and

10           WHEREAS, there is additional ambiguity as to whether, when, and how Code of  
11 Evidence Articles 702 through 706, regarding experts, and 801 through 804, regarding  
12 hearsay, apply in child custody and visitation proceedings when an evaluation conducted by  
13 a mental health professional is ordered; and

14           WHEREAS, this ambiguity and uncertainty detrimentally impacts those parties  
15 diligently trying to provide for the health and welfare of their children which is a matter of  
16 utmost consideration relating to the best interest of Louisiana children in child custody and  
17 visitation proceedings.

18           THEREFORE, BE IT RESOLVED that the House of Representatives of the  
19 Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to  
20 study the various laws, rules, regulations, policies, and procedures relative to evaluations  
21 conducted by mental health professionals used in child custody and visitation proceedings  
22 to address the need for any revisions and recommendations to improve, clarify, and  
23 standardize these procedures across the state in family court proceedings.

24           BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
25 director of the Louisiana State Law Institute and that the Louisiana State Law Institute report  
26 its findings and recommendations to the legislature on or before March 1, 2023.

27           BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit  
28 one print copy and one electronic copy of any report produced pursuant to this Resolution  
29 to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

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)]

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Gregory Miller

Requests the La. State Law Institute to study the various state laws, rules, regulations, policies, and procedures relative to mental health evaluations used in child custody and visitation proceedings to address the need for any revisions and recommendations to improve, clarify, and standardize these procedures across the state in family court proceedings.