

2024 Regular Session

HOUSE BILL NO. 236

BY REPRESENTATIVE MCMAKIN

(On Recommendation of the Louisiana State Law Institute)

CHILDREN/CUSTODY: Provides for evaluations in child custody proceedings

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.

1 B. The court may order a party or the child to submit to and cooperate in the
2 mental health evaluation, testing, or interview by the licensed mental health
3 professional. The licensed mental health professional shall provide ~~the court and the~~
4 parties with a written report. The licensed mental health professional shall serve as
5 ~~the a~~ witness of the court, subject to cross-examination by a party.

6 C. "Licensed mental health professional" as used in this Chapter means a
7 person who possesses at least a master's degree and who ~~is licensed~~ holds a current
8 unrestricted license in counseling, social work, psychology, or marriage and family
9 counseling, ~~or exempt from licensing requirements pursuant to R.S. 37:1113 and~~
10 ~~1121.~~

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

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

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Revision Comments - 2024

Introduction and use of mental health evaluations in court are governed by the general rules of the Code of Civil Procedure and the Code of Evidence.

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§331.3. Custody or visitation proceeding; court-ordered child custody evaluation

A. The court may order a child custody evaluation in a custody or visitation proceeding for good cause shown. The child custody evaluation shall be made by a licensed mental health professional, as defined in R.S. 9:331, using the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases.

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

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

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

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

F. The child custody evaluator shall provide the parties with a written report. This report shall state the basis of the evaluator's conclusions or recommendations,

1 and the extent to which the information obtained limits the reliability and validity of
2 the opinion and the conclusions and recommendations of the evaluator.

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

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

7 I. When a child custody evaluator has been appointed by the court, there
8 shall be no ex parte communication by the litigants or their attorneys with the child
9 custody evaluator unless authorized by law or court order or agreed to by the parties.
10 All oral communication with the child custody evaluator shall be by teleconference
11 or meeting in which each party to the proceeding participates either through the
12 party's attorney or as a self-represented litigant. All written communication or
13 correspondence to the child custody evaluator, along with any attachments thereto,
14 shall be provided contemporaneously to all parties to the litigation or their attorneys
15 of record. Communications initiated by the child custody evaluator with a litigant
16 for the purpose of conducting the court-ordered evaluation shall not be considered
17 ex parte communications prohibited by this Subsection.

18 Revision Comments - 2024

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

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

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

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 236 Engrossed

2024 Regular Session

McMakin

Abstract: Provides for evaluations in child custody proceedings.

Present law (R.S. 9:331) authorizes the court to order an evaluation by a mental health professional in a child custody or visitation proceeding and prohibits ex parte communication.

Proposed law retains present law and clarifies that the evaluation is a mental health evaluation only.

Present law provides for the awarding of costs.

Proposed law retains present law and provides for the consideration of the parties' ability to pay and for the reallocation of costs upon conclusion of the matter.

Present law defines "licensed mental health professional".

Proposed law modernizes the language and removes the exemption.

Proposed law adds a requirement that the professional have experience working with perpetrators and victims of domestic abuse if that is an issue in the case.

Proposed law (R.S. 9:331.3) provides a separate procedure for the appointment of a child custody evaluator to conduct a court-appointed child custody evaluation in a custody or visitation proceeding.

Proposed law requires the child custody evaluator to be a licensed mental health professional and to use the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases.

Proposed law requires a child custody evaluator to have completed at least five co-evaluations prior to being appointed by the court.

Proposed law requires parties and children to cooperate in the evaluation.

Proposed law requires the child custody evaluator to have experience working with perpetrators and victims of domestic abuse if that is an issue in the case.

Proposed law provides for the payment of costs, the consideration of the parties' ability to pay, and the reallocation of costs upon conclusion of the matter.

Proposed law provides for the issuance of a written report to the parties and for the evaluator to serve as a witness and be subject to cross-examination.

Proposed law provides that there shall not be a presumption in favor of the evaluator's findings.

Proposed law prohibits ex parte communication between the litigants or their attorneys and the child custody evaluator.

(Amends R.S. 9:331; Adds R.S. 9:331.3)