

2016 Regular Session

SENATE BILL NO. 461

BY SENATOR CARTER

FAMILY LAW. Provides relative to evaluation by mental health professional in child custody and visitation cases. (gov sig)

1 AN ACT

2 To enact R.S. 9:331.2, relative evaluation by a mental health professional in a custody or
3 visitation proceeding; to provide relative to the admissibility of evidence; to provide
4 with respect to a child's statement and testimony of a minor child in certain
5 circumstances; to provide relative to mental health evaluation; to provide with
6 respect to evidentiary restrictions; to provide relative to testimony of a mental health
7 professional in child custody and visitation cases; to provide relative to parental
8 conduct; to provide with respect to the admissibility of a video recording in child
9 custody proceeding; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:331.2 is hereby enacted to read as follows:

12 **§331.2. Evidence in child custody and visitation cases**

13 **A. Article 1101(B)(2) of the Code of Evidence shall apply as in any other**
14 **civil proceeding when the court is adjudicating factual allegations of specific**
15 **parental conduct relevant to a child's best interest.**

16 **B. When a minor child subject to a child custody proceeding is alleged**
17 **to have been a witness to, or the victim of, any parental behavior or other**

1 conduct constituting domestic violence, child abuse, or any other conduct
2 detrimental to the child's best interest, the child's testimony shall be governed
3 by the provisions of the Code of Evidence applicable to any other witness in a
4 civil case. The court shall hear the child's testimony on the record in chambers,
5 and may impose the safeguards set forth in Children's Code Article 329. The
6 child's testimony, if relevant to the factual allegations at issue, shall not be
7 excluded on any grounds other than those set forth in Code of Evidence Articles
8 601, 602 and 603.

9 C. Mental health evaluations conducted pursuant to this Section are
10 subject to the following evidentiary restrictions:

11 (1) The court shall not, absent express stipulation of the parties on the
12 record perfected no sooner than five days after the report has been furnished
13 to and reviewed by the parties and their attorneys, read or consider any report
14 prepared by a mental health professional, until such time that the report is duly
15 admitted into evidence pursuant to the Code of Evidence, and all parties have
16 been allowed the opportunity to cross-examine the mental health professional
17 in open court.

18 (2) A mental health professional's opinion on the credibility of a person
19 shall not be admissible, as such is exclusively within the purview of the trial
20 court.

21 (3) A mental health professional shall not be permitted to testify to an
22 opinion concerning the application of substantive law to the parties, as such is
23 exclusively within the purview of the trial court.

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

26 (5) A mental health professional conducting an evaluation pursuant to
27 this Section shall not undertake to perform any other role or function relative
28 to the parties.

29 (6) A mental health professional conducting an evaluation pursuant to

1 this Section shall comply with all statutory and administrative licensing and
2 ethical rules and regulations otherwise applicable to the profession.

3 (7) The court shall not engage in any *ex parte* communication with a
4 mental health professional.

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

8 (9) An indigent parent shall not be denied the opportunity to depose,
9 cross-examine, or otherwise challenge a court-appointed mental health
10 professional in the same manner as a non-indigent parent.

11 (10) Evidence concerning polygraphs, voice-stress analysis, or other such
12 physiological measures shall not be admitted into evidence in any form. All
13 psychological testing utilized by a mental health professional shall be limited to
14 that which has been empirically established and generally accepted as reliable
15 and valid for the parameters purportedly tested.

16 (11) A mental health professional shall not be permitted to testify to, or
17 base any opinion on, hearsay statements regarding disputed factual issues,
18 however, any admissions or declarations against interest made to the mental
19 health professional by a parent, and any statement made by a minor child in the
20 course of the evaluation, shall be admissible.

21 D. Neither the absence of an arrest or criminal prosecution, nor the
22 inaction of any public child protection agency, shall *ipso facto* be considered by
23 the court as evidence that any alleged parental conduct did not occur.

24 E. A video recording prepared in compliance with Children's Code
25 Article 326 shall be admissible in any child custody proceeding if the provisions
26 of Children's Code Article 327 are satisfied.

27 F. A statement made by a child for the purposes of medical treatment,
28 or medical diagnosis in connection with treatment, otherwise admissible under
29 Code of Evidence Article 803(4), shall not be excluded by the court solely

1 because the health care professional to whom the statements were made failed
2 to conduct an investigation into the accuracy of the child's statements.

3 Section 2. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 461 Original

2016 Regular Session

Carter

Proposed law provides that present law (C.E. Art. 1101(B)(2)) shall apply as in any other civil proceeding when the court is adjudicating factual allegations of specific parental conduct relevant to a child's best interest.

Proposed law provides that when a minor child subject to a child custody proceeding is alleged to have been a witness to, or the victim of, any parental behavior or other conduct constituting domestic violence, child abuse, or any other conduct detrimental to the child's best interest, the child's testimony shall be governed by the provisions of present law applicable to any other witness in a civil case.

Proposed law provides that the court shall hear the child's testimony on the record in chambers, and may impose the safeguards set forth in present law (Ch.C. Art. 329). The child's testimony, if relevant to the factual allegations at issue, shall not be excluded on any grounds other than those set forth in present law (C.E. Arts. 601-603).

Proposed law provides that a mental health evaluations conducted pursuant to proposed law are subject to the following evidentiary restrictions:

1. The court shall not, absent express stipulation of the parties on the record perfected no sooner than five days after the report has been furnished to and reviewed by the parties and their attorneys, read or consider any report prepared by a mental health professional, until such time that the report is duly admitted into evidence pursuant to present law, and all parties have been allowed the opportunity to cross-examine the mental health professional in open court.
2. A mental health professional's opinion on the credibility of a person shall not be admissible, as such is exclusively within the purview of the trial court.
3. A mental health professional shall not be permitted to testify to an opinion concerning the application of substantive law to the parties, as such is exclusively within the purview of the trial court.
4. All opinion testimony offered by a mental health professional shall be subject to present law (C.E. Arts. 702-703).
5. A mental health professional conducting an evaluation pursuant to proposed law shall not undertake to perform any other role or function relative to the parties.

6. A mental health professional conducting an evaluation pursuant to proposed law shall comply with all statutory and administrative licensing and ethical rules and regulations otherwise applicable to the profession.
7. The court shall not engage in any *ex parte* communication with a mental health professional.
8. All parties shall have the right to full pre-trial discovery of the entire file of the mental health professional regarding the case, including the right to depose the mental health professional.
9. An indigent parent shall not be denied the opportunity to depose, cross-examine, or otherwise challenge a court-appointed mental health professional in the same manner as a non-indigent parent.
10. Evidence concerning polygraphs, voice-stress analysis, or other such physiological measures shall not be admitted into evidence in any form. All psychological testing utilized by a mental health professional shall be limited to that which has been empirically established and generally accepted as reliable and valid for the parameters purportedly tested.
11. A mental health professional shall not be permitted to testify to, or base any opinion on, hearsay statements regarding disputed factual issues, however, any admissions or declarations against interest made to the mental health professional by a parent, and any statement made by a minor child in the course of the evaluation, shall be admissible.

Proposed law provides that neither the absence of an arrest or criminal prosecution, nor the inaction of any public child protection agency, shall *ipso facto* be considered by the court as evidence that any alleged parental conduct did not occur.

Proposed law provides that a video recording prepared in compliance with present law (Ch.C. Art. 326) shall be admissible in any child custody proceeding if the provisions of present law (Ch.C. Art. 327) are satisfied.

Proposed law provides that a statement made by a child for the purposes of medical treatment, or medical diagnosis in connection with treatment, otherwise admissible under present law (C.E. Art. 803(4)), shall not be excluded by the court solely because the health care professional to whom the statements were made failed to conduct an investigation into the accuracy of the child's statements.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:331.2)