



LOUISIANA STATE LAW INSTITUTE

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March 1, 2023

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 46 OF THE 2018 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to mental health evaluations.

Sincerely,

A handwritten signature in blue ink that reads "Guy Holdridge".

Guy Holdridge
Director

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 46 OF THE 2018 REGULAR SESSION**

Relative to mental health evaluations

Prepared for the
Louisiana Legislature on

March 1, 2023

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

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Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

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SENATE RESOLUTION NO. 46

BY SENATOR PERRY

A RESOLUTION

To urge and request 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.

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

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

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

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

WHEREAS, R.S. 9:331 was enacted in 1993 and R.S. 9:355.15 was enacted in 1997 and neither law has been modified or updated to provide any additional clarity or guidance on conducting mental health evaluations in child custody and visitation proceedings, including the expertise of the mental health professional conducting the evaluation; and

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

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

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

(1) Selection of a particular professional to conduct the evaluation.

(2) Qualifications of the professional to conduct the evaluation.

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

(4) Information to be included in any report to the court.

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

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

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

(8) Procedures used by hearing officers.

(9) Notice to the parties, the court, and the evaluator; and

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

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

WHEREAS, this confusion is to the detriment of those parties diligently trying to provide for the health and welfare of our children as the mental health of the parties is of utmost consideration relating to the best interest of Louisiana children in child custody and visitation proceedings.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study the various state

SR NO. 46

ENROLLED

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 needed to improve, clarify, and standardize across the state this area of law.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations to the legislature on or before February 1, 2019.

PRESIDENT OF THE SENATE

March 1, 2023

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SENATE RESOLUTION NO. 46 OF THE 2018 REGULAR SESSION**

Senate Resolution No. 46 of the 2018 Regular Session urged and requested 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 and to address the need for any revisions to improve, clarify, and standardize this area of the law.” In fulfillment of this request, the Law Institute assigned the project to its Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter.

The Marriage-Persons Committee met and discussed this resolution in detail over the course of several meetings. The sentiment expressed by one family law scholar was that this study was needed given the inconsistent application by Louisiana courts of the law in this area. As the Committee explored the issues, it began to focus on R.S. 9:331, which authorized a court to order a mental health evaluation but failed to provide qualifications for evaluators or rules on ex parte communications. The Committee noted, however, that courts have created local rules to guide this procedure and found the Twenty-Second Judicial District Court’s rules to be particularly instructive.

Recognizing that judicial discretion is necessary given the exceptional importance of custody and visitation decisions and based on the Marriage-Persons Committee’s research and detailed discussion of both civil and local court rules in Louisiana, the Law Institute recommended limited changes to require that mental health professionals be licensed and to prohibit ex parte communications.

The Law Institute’s recommendations were introduced during the 2022 Regular Session as House Bill No. 272 by Representative Patrick Jefferson and were ultimately enacted by the Legislature as Acts 2022, No. 614.