



LOUISIANA STATE LAW INSTITUTE

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March 8, 2023

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 242 OF THE 2022 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to the *Bergeron* standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

cc: Representative Polly Thomas
Representative Tanner Magee

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**

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE
TO HR NO. 242 OF THE 2022 REGULAR SESSION**

Relative to the *Bergeron* standard

Prepared for the
Louisiana Legislature on

March 8, 2023

Baton Rouge, Louisiana

LOUISIANA STATE LAW INSTITUTE MARRIAGE-PERSONS COMMITTEE

Dawn Amacker, Covington

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Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

Jessica G. Braun, Staff Attorney

2022 Regular Session

HOUSE RESOLUTION NO. 242

BY REPRESENTATIVES THOMAS AND MAGEE

A RESOLUTION

To urge and request the Louisiana State Law Institute to study the *Bergeron* standard applied to requests to modify a considered decree of permanent custody as it compares to similar standards in other states and make recommendations on the codification of an appropriate standard.

WHEREAS, Civil Code Article 131 provides that in a proceeding for divorce or thereafter, the court shall award custody of a child in accordance with the best interest of the child; and

WHEREAS, as described in the revision comments of Civil Code Article 131, an additional, jurisprudential requirement is imposed in actions to change custody decisions rendered in considered decrees which was established by the Louisiana Supreme Court in *Bergeron v. Bergeron*, 492 So.2d 1193 (La. 1986); and

WHEREAS, referred to as the *Bergeron* standard, the court held that "[w]hen a trial court has made a considered decree of permanent custody the party seeking a change bears a heavy burden of proving that the continuation of the present custody is so deleterious to the child as to justify a modification of the custody decree, or of proving by clear and convincing evidence that the harm likely to be caused by a change of environment is substantially outweighed by its advantages to the child", *Id.* at 1200; and

WHEREAS, it is in the legislature's interest to codify an appropriate standard for such considerations, whether that standard be a direct codification of the *Bergeron* standard or an alternate standard; and

WHEREAS, as part of its consideration of codification, it is in the legislature's interest to determine how the *Bergeron* standard compares to similar standards in other states.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the *Bergeron* standard as it compares to similar standards in other states and make recommendations on the codification of an appropriate standard to be applied by Louisiana courts in actions to modify custody decisions rendered in considered decrees and report its findings, including any proposed legislation, no later than March 10, 2023.

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

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

March 8, 2023

To: Representative Clay Schexnayder
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 242 OF THE 2022 REGULAR SESSION**

House Resolution No. 242 of the 2022 Regular Session urges and requests the Louisiana State Law Institute to study the *Bergeron* standard applied to requests to modify a considered decree of permanent custody as it compares to similar standards in other states and to make recommendations on the codification of an appropriate standard. In response to 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 and is comprised of judges, lawyers, and law professors with expertise in this area of the law.

The Marriage-Persons Committee conducted fifty-state research on this issue and noted that there are numerous cases each year that highlight the inconsistencies in the application of the *Bergeron* standard. The Committee understands the importance of adding clarity to the law for the benefit of self-represented litigants and to educate lawyers and judges regarding the second segment of the standard related to harm that is often overlooked and misunderstood. The Committee will work on a proposal that clarifies the application of *Bergeron* only to considered decrees, describes the meaning of “deleterious,” and sets forth the type of proceedings in which the standard applies. Comments will also be drafted to explain the intent of retaining forty years of case law but clarifying the meaning and application thereof to create consistency in the law.

The Committee anticipates that a final report and recommendations for revisions to the law will be submitted to the Legislature for introduction during the 2024 Regular Session, after the Committee’s proposals have been reviewed and approved by the Law Institute’s Council.