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March 1, 2023

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

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

**RE: SENATE RESOLUTION NO. 186 AND HOUSE RESOLUTION NO. 228 OF
THE 2022 REGULAR SESSION**

Dear Mr. President and Mr. Speaker:

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

Sincerely,

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

Guy Holdridge
Director

cc: Senator Barrow Peacock
Representative Gregory A. Miller
Representative Patrick O. Jefferson

email cc: David R. Poynter Legislative Research Library
drplibary@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
SR NO. 186 AND HR NO. 228 OF THE 2022 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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SENATE RESOLUTION NO. 186

BY SENATOR PEACOCK

A RESOLUTION

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

WHEREAS, mental health evaluations are an integral part of child custody and visitation judicial proceedings; and

WHEREAS, Louisiana has at least 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 nor 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 tenfold since the 1990s, when these statutes were enacted, and more

recently have doubled in the last eight years; and

WHEREAS, the Fourth, Fourteenth, Fifteenth, Sixteenth, Eighteenth, Twenty-second, and Twenty-seventh 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 these judicial districts may include provisions addressing the following:

(1) Custody evaluation serving as the de facto primary evidence gathering mechanism and the Court's primary due process procedures;

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

(3) Evaluators' treatment of coercive control or other forms of emotional abuse when evaluating the coparenting dynamics. The finding and rulings provided by the Child Custody Evaluation significantly influence the coparenting dynamics and the final child physical custody arrangement as these two areas are intertwined;

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

(5) Administrative rules and guidelines to ensure the following: (1) Evaluators adhere to the proper rules of evidence; (2) the Court upholds its constitutional due process requirements; and (3) removal of a parent's fundamental rights is only considered under the Supreme Court's strict scrutiny standard;

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

(7) Mechanisms to disqualify Custody Evaluators and the proper sanctions imposed if disqualified;

(8) Manner in which the costs of the evaluation should be advanced by the parties utilizing the existing curator system to ensure a blind payment structure and avoid bias in the evaluation process; and

(9) Procedures used by hearing officers; and

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

WHEREAS, there is additional ambiguity as to whether, when, and how Code of Evidence Articles 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 ambiguity and uncertainty detrimentally impacts those parties diligently trying to provide for the health and welfare of their children which is a matter 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 laws, rules, regulations, policies, and procedures relative to mental health evaluations used in child custody and visitation proceedings, and report its findings and recommendations to the legislature on or before March 1, 2023, in order to address the need for any revisions and recommendations to improve, clarify, and standardize these procedures across the state in family court proceedings.

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

PRESIDENT OF THE SENATE

2022 Regular Session

HOUSE RESOLUTION NO. 228

BY REPRESENTATIVES GREGORY MILLER AND JEFFERSON

A RESOLUTION

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

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

WHEREAS, at least two statutes, R.S. 9:331 and 355.15, govern evaluations conducted by mental health professionals 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 the 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 significantly amended to provide additional clarity or guidance on evaluations conducted by mental health professionals in child custody and visitation proceedings, including the expertise of the mental health professional conducting the evaluation; and

WHEREAS, according to reported decisions, evaluations conducted by mental health professionals have increased at least ten-fold since the 1990s 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 evaluations conducted by mental health professionals in family law proceedings; and

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

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

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

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

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

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

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

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

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

(9) Procedures used by hearing officers.

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

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

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

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby direct the Louisiana State Law Institute to study the various laws, rules, regulations, policies, and procedures relative to evaluations conducted by mental health professionals 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.

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 March 1, 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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

March 1, 2023

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

Representative Clay Schexnayder
Speaker of the House
P.O. Box 94062
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**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 186 AND HR NO. 228 OF THE 2022 REGULAR SESSION**

Senate Resolution No. 186 and House Resolution No. 228 of the 2022 Regular Session 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 to address the need for revisions and recommendations to improve, clarify, and standardize procedures across the state. In response to these requests, the Law Institute assigned this project to its Marriage-Persons Committee, which is comprised of judges, lawyers, and law professors with expertise in this area of the law. The Committee had previously researched these issues in response to Senate Resolution No. 46 of the 2018 Regular Session and recommended Act No. 614 of the 2022 Regular Session to address licensure of mental health evaluators and prohibit ex parte communications.

The Marriage-Persons Committee has reviewed the relevant statutes, Code of Civil Procedure articles, and Code of Evidence articles concerning mental health evaluations in family law proceedings and has conducted research with respect to the detailed court-specific rules that have been adopted by various district courts. The Committee has also discussed many areas of concern and will first focus their efforts on four issues: distinguishing between mental health and custody evaluations, determining the weight that is to be given to reports, reducing costs, and training for situations of domestic abuse.

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.