

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.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES