



LOUISIANA STATE LAW INSTITUTE

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May 6, 2024

Representative Phillip R. DeVillier
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 report to the legislature relative to codification of the *Bergeron* standard.

Sincerely,

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

Guy Holdridge
Director

GH/pc

Enclosure

cc: Representative Polly Thomas

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

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

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

**REPORT IN RESPONSE TO HOUSE RESOLUTION
NO. 242 OF THE 2022 REGULAR SESSION**

Relative to codification of the *Bergeron* standard

Prepared for the
Louisiana Legislature on

May 6, 2024

Baton Rouge, Louisiana

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

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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

May 6, 2024

To: Representative Phillip R. DeVillier
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HOUSE RESOLUTION NO. 242 OF THE 2022 REGULAR SESSION**

House Resolution No. 242 of the 2022 Regular Session requested the Louisiana State Law Institute to study the standard set forth by the Louisiana Supreme Court in *Bergeron v. Bergeron*, 492 So. 2d 1193 (La. 1986), as applied to requests to modify a considered decree of permanent custody, particularly as it compares to similar standards in other states, and to make recommendations concerning the codification of an appropriate standard in Louisiana. In fulfillment of this request, the resolution was assigned to the Law Institute's Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter.

In accordance with the resolution, the Committee conducted and reviewed fifty-state research and noted that there are numerous cases each year that highlight the inconsistencies in the application of this standard. Members of the Committee expressed the importance of adding clarity to the law for the benefit of self-represented litigants, as well as to educate lawyers and judges regarding the second segment of the *Bergeron* standard that is often overlooked and misunderstood. The Law Institute's proposal clarifies and codifies the standard set forth by the Louisiana Supreme Court for modification of custody orders pursuant to considered decrees and also codifies the existing and lesser standard for modifying consent decrees. Further, the proposed revision addresses the treatment of judgments that arise from a hybrid proceeding in which the court hears evidence of parental fitness but the parties ultimately agree to an award of custody.

The Law Institute's proposed revisions to codify the jurisprudential standard set forth in the *Bergeron* case were submitted to the Legislature and introduced as House Bill No. 722 of the 2024 Regular Session.