

ADMISSION OF THE EVALUATION INTO EVIDENCE

Below is statutory authority for admission of an Evaluation into evidence when the other party will not agree to its admission.

1. TRIAL TO THE COURT: Custody evaluations are no longer filed with the Court. The easiest method of admitting the Evaluation into evidence is through the evaluator by proving up the evaluator as an expert. If that is done through Texas Rules of Evidence 705, the evaluation may come into evidence as a “disclosure of facts or data underlying expert opinion.”
2. TRIAL BY JURY: Only those portions of an Evaluation which are admissible under the rules of evidence may be disclosed to the jury.
 - A. The easiest method for admitting an Evaluation into evidence is through the evaluator in the same manner which is stated above in the Trial to the Court.
 - B. However, because an evaluation usually contains many statements made to the evaluator that would otherwise be hearsay, these statements can be admissible under one of two basic principles:
 1. NOT hearsay: Statements meeting the definition of admission by a party-opponent under TRE 801 (e) (2) (A)-(E) are not hearsay and are admissible.
 2. EXCEPTIONS TO HEARSAY: a court-ordered Evaluation, once admitted into evidence, may have exceptions to hearsay by:
 - A) reporting statements that reflect a then-existing mental, emotional or physical condition, under TRE 803 (3);
 - B) containing disclosures that constitute reputation concerning personal or family history per TRE 803 (19);
 - C) containing statements that constitute reputation as to character, fitting the exception in TRE 803 (21); or
 - D) containing statements that constitute statements against interest, for purposes of the exception in TRE 803 (24).
3. It is possible for a redacted Evaluation, eliminating any hearsay statements that do not meet an exception under TRE 803, to be submitted to the jury.