

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

February 21-22, 2014

Friday, February 21, 2014

Persons Present:

Abramson, Neil C.	Jewell, John Wayne
Adams, Marguerite (Peggy) L.	Knighten, Arlene D.
Alston, Elizabeth A.	Kostelka, Robert "Bob" W.
Baiamonte, Joseph	Landry, Ron J.
Baker, Katherine S.	Lanier, Walter I., Jr.
Bergstedt, Thomas	Lavergne, Luke
Breard, L. Kent	Lea, R.H. "Rick"
Brister, Dorrell J.	Leefe, Richard K.
Carroll, Andrea	Levy, H. Mark
Casso, Teri	Medlin, Kay C.
Crawford, William E.	Morris, Glenn G.
Crigler, James C., Jr.	Norman, Rick J.
Cromwell, L. David	Pohorelsky, Peter
Curry, Kevin C.	Riviere, Christopher H.
Davidson, James J., III	Roberson, Lynette
Dawkins, Robert C.	Schenteaber, Elliot
Di Giulio, John	Shea, Joseph L., Jr.
Dimos, Jimmy N.	Sole, Emmett C.
Doguet, Andre	Stewart, James E., Sr.
Florman, Marc	Suprenant, Monica T.
Forrester, William R., Jr.	Thibeaux, Robert P.
Freel, Angelique	Tucker, Zelda W.
Garrett, J. David	Turner, Terrilyn
Gasaway, Grace B.	Whitehead, Jack K., Jr.
Hallstrom, Kären	Wilder-Doomes, Erin
Hamilton, Leo C.	Wilson, Evelyn
Hammond, Margo	Wingerter, Isabel
Hayes, Thomas M., III	Woodruff-White, Lisa
Hester, Mary C.	Ziober, John David
Hogan, Lila T.	
Holdridge, Guy	

The Friday, February 21, 2014 meeting of the Council of the Louisiana State Law Institute was called to order by the President, James C. Crigler, Jr., at 10:00 a.m. at the Hotel Monteleone in New Orleans, Louisiana. He called on Children's Code Committee Co-Reporters Kären Hallstrom and Isabel Wingerter.

Children's Code

Co- Reporter Kären Hallstrom presented the Committee's proposal to revise the Children's Code Articles dealing with intrafamily adoption and criminal background checks in adoptions as contained in 2.4.14 ChC Revised Petition for intrafamily adop-council.

She discussed the proposal, on page one, to amend Article 1243.

It was moved and seconded to adopt the proposal and the accompanying Comment as presented. The motion to adopt passed.

The adopted proposal reads as follows:

Art. 1243. Persons who may petition for intrafamily adoption

A. A stepparent, step-grandparent, great-grandparent, grandparent, or collaterals within the twelfth degree may petition to adopt a child if all of the following elements are met:

(1) The petitioner is related to the child by blood, adoption, or affinity through ~~a parent recognized as having parental rights~~ the mother of the child or through a father who is filiated to the child in accordance with the Civil Code.

(2) The petitioner is a single person over the age of eighteen or a married person whose spouse is a joint petitioner.

(3) The petitioner has had legal or physical custody of the child for at least six months prior to filing the petition for adoption.

B. When the spouse of the stepparent or one joint petitioner dies after the petition has been filed, the adoption proceedings may continue as though the survivor was a single original petitioner.

~~C. For purposes of this Chapter "parent recognized as having parental rights" includes not only an individual enumerated in Article 1193, but also:~~

~~(1) A father who has formally acknowledged the child with the written concurrence of the child's mother.~~

~~(2) A father whose name or signature appears on the child's birth certificate as the child's father.~~

~~(3) A father, if a court of competent jurisdiction has rendered a judgment establishing his paternity of the child.~~

Comment - 2014

The Civil Code provides that a man may be filiated to a child when the child is born during his marriage to the mother or within 300 days from the date of termination of the marriage (C.C. Art. 185), when he marries the mother of the child and acknowledges the child by authentic act or by signing the birth certificate (C.C. Art. 195), by acknowledging the child by authentic act or by signing the birth certificate (C.C. Art. 196), by judgment of paternity (C.C. Art. 198), or by adoption (C.C. Art. 199). Note that proof of a father's filiation in accordance with the Civil Code, as provided in this Article, permits the filiated father's relative to petition for intrafamily adoption, but does not necessitate the father's consent to adoption unless his consent is specifically required under Ch.C. Art. 1193.

The Council next considered the proposals, beginning on page 3, to amend Articles 1131, 1173, and 1243.2.

It was moved and seconded to adopt, as presented, the proposal to amend Article 1131. The motion to adopt passed.

It was moved and seconded to adopt, as presented, the proposal to amend Article 1173. The motion to adopt passed.

It was moved and seconded to adopt, as presented, the proposal to amend 1243.2. The Co-Reporter pointed that the motion to adopt should include the strike through on page five, line eight of "the office of". The motion to adopt passed.

The adopted proposals read as follows:

Art. 1131. Filing of surrender; institution of records check

* * *

E. Upon the filing of any court order approving the adoptive placement pursuant to Article 1178, the court shall immediately issue both of the following orders:

(1) That the ~~sheriff or the office of state police~~, Louisiana State Police Bureau of Criminal Identification and Information, conduct a records check for all federal arrests and convictions and all state arrests and convictions in this and any other states in which either of the prospective adoptive parents has been domiciled. Prospective adoptive parents shall submit a set of fingerprints to the ~~sheriff or the office of state police~~.

* * *

G. The ~~sheriff or the office of state police~~, Louisiana State Police Bureau of Criminal Identification and Information, and the department shall accord priority to these orders and shall provide a certificate indicating all information discovered or that no information has been found.

* * *

Art. 1173. Preplacement home study; requirements

* * *

B. The ~~sheriff~~ Louisiana State Police Bureau of Criminal Identification and Information and department shall conduct and accord priority to requests for a criminal records check for all federal and state arrests and convictions and validated complaints of child abuse or neglect, respectively, in this or any other state of each prospective adoptive parent, and shall provide a certificate indicating all information discovered or that no information has been found, all

in accordance with the applicable rules and regulations promulgated by the department.

* * *

Art. 1243.2. Institution of records check

A. Upon the filing of a petition, the court shall immediately issue both of the following orders:

(1) That the ~~local sheriff or the office of state police~~, Louisiana State Police Bureau of Criminal Identification and Information, conduct a records check for all federal arrests and convictions and all state arrests and convictions for each of the prospective adoptive parents. Prospective adoptive parents shall submit a set of fingerprints to the ~~sheriff or the office of state police~~.

* * *

C. The ~~sheriff or the office of state police~~, Louisiana State Police Bureau of Criminal Identification and Information, and the department shall accord priority to these orders and shall provide a certificate indicating all information discovered, or that no information has been found.

It was subsequently pointed out that the proposals might more appropriately contain the full name of the Louisiana Bureau of Criminal Identification and Information. The Co-Reporter agreed and will make that revision where indicated.

Co-Reporter Isabel Wingerter presented the Committee's report in response to HCR 85 of 2011 as contained in 1.21.14 Chc Legis Report on HCR 85.

After some discussion it was moved and seconded that the Council adopt the policy of a move toward more open adoption records but with the proviso that the Committee draft a policy that addresses the protection of confidentiality of the parties.

A substitute motion was made and seconded. It was moved to recommit the Committee's report and to direct the Committee to draft a policy that provides for more open adoption records but that also addresses confidentiality concerns. The motion to recommit further directs the Committee to draft proposed legislation that provides clear standards for the court to apply when considering whether to grant access to an adoption record. The proposed legislation would replace the "compelling reasons" standard that the court currently utilizes.

It was then moved and seconded to table discussion and recommit the report to the Committee. The motion failed.

The question was called on the substitute motion. It passed.

The Council then voted on the substitute motion. The motion passed.

The President adjourned the meeting for lunch and announced that the meeting would reconvene at 1:30 PM.

LUNCH

The meeting reconvened at 1:30 p.m.

Code of Civil Procedure

William Forrester, Reporter for the Code of Civil Procedure Continuous Revision Committee, began the Friday afternoon session. Materials distributed in advance of the meeting included the main document “Proposed Adoption of the Uniform Interstate Depositions and Discovery Act”; “Interim Report to the Louisiana Legislature in Response to HCR 174 of the 2013 Regular Session, Self-Authenticated Records in the Evidence Code”; and, “Continuous Revision of the Code of Civil Procedure, Art. 1469, approved by the Council November 22, 2014 [corrected title: 2013]”. A handout showing the states that have adopted the Uniform Interstate Depositions and Discovery Act, prepared by the Uniform Law Commission, was also distributed at the meeting.

The Reporter began the meeting with presentation of the Art. 1469 document:

Art. 1469. Motion for order compelling discovery. Members approved the deletion of “prior to the hearing on the motion” in the article earlier approved by Council for submission as part of the 2014 proposed continuous revision bill.

Self-authenticating records. The Reporter next reviewed the self-authenticating records interim report to the legislature. Members were apprised that the C.C.P. Committee has reconsidered the issues, as noted in the report, and will present new recommendations to the Council after further review.

Uniform Interstate Depositions and Discovery Act. The Reporter next presented the main document, proposing the UIDDA for Louisiana [R.S.13:3825], and amendments to existing statutes [R.S.13:3822, 3823 and 3824]:

[p.1] Introductory Note from the Reporter UIDDA. The Reporter emphasized that the new procedures, if adopted, will not affect the two alternative procedures that Louisiana now provides for lawyers to conduct discovery out-of-state: R.S.13:3823 and CCP Art. 1435.

[p.3] R.S.13:3822. Members approved the Section with a reference change relating to the existing Uniform Foreign Depositions Law.

[p.4] R.S.13:3823. Members approved the Section with the added reference to CCP Art.1435 and provision for contradictory hearing on objections to a commission or letter rogatory.

[p.5] R.S.13:3824. Members approved the addition of a reference to the La UIDDA [proposed R.S.13:3825], and deleted language from current §3824 and the Committee proposal [now 3825(A)(2)], as follows:

R.S. 13:3824. Assistance to tribunals and litigants in another state, or in a territory, district, or foreign jurisdiction

A. ~~A court of this state may order a~~ A person who is domiciled or is found within this state may be compelled to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal court in another state, ~~or in a~~ territory, district, or foreign jurisdiction pursuant to:

(1). R.S. 13:3825; or

~~(1)-(2).~~ The An order ~~may be~~ made upon the application of any

interested person or in response to a letter rogatory ~~and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of the tribunal of the other state, or territory, district, or foreign jurisdiction, for taking the testimony or statement or producing the documents or other things.~~ To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with that of the court of this state issuing the order. The order may direct that the testimony or statement be given, or document or other thing produced, before a person appointed by the court. The person appointed shall have power to administer any necessary oath; or

B. A person within this state may voluntarily give his testimony or statement or produce documents or other things for use in a proceeding before a tribunal in another state, or in a territory, district, or foreign jurisdiction in any manner acceptable to him.

[p.6] R.S.13:3825. Uniform Interstate Depositions and Discovery Act. Members adopted the proposed Section with only minor changes: references to sections/act were made consistent; “a filing or docket number” was changed to “an identifying number”; and Subsection (C)(4), reciprocity, was deleted as unnecessary. In comment, the reference to the “process server (or other agent of the party)” was changed to the “party seeking issuance of the subpoena”. Members also suggested that proposed Subsection H (application to pending actions) be made an Act Section, and that Subsection I be deleted so as to have the Act effective on the general effective date—August 1st.

The Friday session adjourned at 3 pm.

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Baiamonte, Joseph
Baker, Katherine S.
Bergstedt, Thomas
Breard, L. Kent
Burris, William J.
Cicardo, Katherine Leigh
Crawford, William E.
Crigler, James C.
Cromwell, L. David
Davidson, James J., III
Dawkins, Robert G.
Di Giulio, John
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Joseph, Cheney
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Marocco, Justin John
McWilliams, Ford
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Riviere, Christopher H.
Sole, Emmett C.
Tate, George J.
Tucker, Zelda W.
Whitehead, Jack K., Jr.
Wilder-Doomes, Erin
Wilson, Evelyn
Woodruff-White, Lisa
Ziober, John David

President James C. Crigler, Jr. opened the Saturday session of the February 2014 Council meeting at 9:00 AM on Saturday, February 22, 2014 at the Monteleone Hotel at New Orleans, LA.

Code of Criminal Procedure

The President called on Judge Robert Morrison, Code of Criminal Procedure Revision Committee Co-Chair, and Professor Cheney Joseph, the Committee's Reporter, to present the Committee's materials.

Code of Criminal Procedure

They first discussed the Committee's report, as contained in document 1.27.14-Vehicular Homicide, which recommends amending certain provisions in Title 14 to include vehicle homicide as a crime of violence when the offender's blood alcohol level exceeds .20 percent.

It was moved and seconded to approve the report as presented. The motion to approve the report passed unanimously.

The approved provisions read as follows:

§2. Definitions

RS 14:2

* * *

B. In this Code, "crime of violence" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as "crimes of violence":

* * *

(45) Vehicular homicide when the operator's blood alcohol concentration exceeds .20 percent by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

R.S. 14:32.1. Vehicular homicide

* * *

C. Whoever commits the crime of vehicular homicide shall be sentenced as an offender convicted of a crime of violence if the offender's blood alcohol concentration, at the time of the offense, exceeds .20 percent by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

The Council next considered the Committee's interim report on its response to SCR 97 of 2013, as contained in document 1 27 14 Response to SCR 97 of 32013. The Co-Chairman and the Reporter explained that the resolution deals with providing responsive verdicts to the crime of aggravated incest. They noted that the Committee has not yet considered the proposed revisions to the Code of Criminal Procedure contained in the report but that it will do so at its next meeting. The purpose of this report is to alert the Council that the Committee will report to the Council on this matter at a future Council meeting.

It was moved and seconded to approve the interim report as presented. The motion to approve the interim report passed unanimously.

The Council then discussed the Committee's final report in response to HCR 3 of 2012, as contained in 2.3.14 hcr 3 Final Report-Revised. The report deals with the expungement of criminal records. The Co-Chair explained that the Committee did extensive work on the project and was able to reach a consensus on major policy items but that time constraints did not permit the Committee to meet prior to the 2014 Regular Session to consider incorporating those policy decisions in proposed legislation. He noted that HB 55 has been prefiled for the 2014 Regular Session and that bill essentially incorporates those major policy decisions contained in the committee's report.


It was moved and seconded to approve the report as presented. The motion to approve the report passed unanimously.

CONCLUSION

There being no additional business the meeting adjourned at 10 AM.



Joseph Baiamonte 8/20/14
Date



H. Mark Levy 8-20-14
Date