



LOUISIANA STATE LAW INSTITUTE

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January 30, 2015

Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR 26 of 2014

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2014 House Concurrent Resolution No. 26, relative to gun ownership rights of individuals who have attempted suicide.

Sincerely,

A handwritten signature in blue ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Henry Burns

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

LOUISIANA STATE LAW INSTITUTE

**CRIMINAL CODE AND CODE OF
CRIMINAL PROCEDURE REVISION COMMITTEE**

**Report to the Louisiana Legislature
In Response to HCR 26 of the 2014 Regular Session
Relative to Gun Ownership Rights of Individuals Who Have Attempted Suicide**

Prepared for the Louisiana Legislature

January 30, 2015
Baton Rouge, LA

**Frank Foil, Co-Chair
Robert Morrison, III, Co-Chair
Cheney C. Joseph, Jr., Reporter
Joseph J. Baiamonte, Staff Attorney**

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CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE

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Judge Frank Foil, Co-Chair

Judge Robert Morrison, III, Co-Chair

Cheney C. Joseph, Jr., Reporter

Joseph J. Baiamonte, Staff Attorney

January 30, 2015

**To: Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804-9602**

**Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804**

**From: Cheney C. Joseph, Jr., Reporter
Code of Criminal Procedure Revision Committee of the Louisiana State
Law Institute**

**Report to the Louisiana Legislature
In Response to HCR 26 of the 2014 Regular Session
Relative to Gun Ownership Rights of Individuals Who Have Attempted Suicide**

HCR 26 of 2014 requested the Louisiana State Law Institute to "study and make recommendations concerning gun ownership rights of persons who have attempted suicide".

The Law Institute assigned the responsibility for responding to the resolution to its Code of Criminal Procedure Revision Committee.

During its October 2014 meeting, the Law Institute's Council considered a preliminary committee report in response to HCR 26 of 2014. A copy of that report is included and a copy of HCR 26 is a part of the report.

The Committee's Reporter, Cheney C. Joseph Jr, summarized the applicable Louisiana law, laws of other states, and federal law. He explained that proposing a restriction in the context of civil law would, for a variety of reasons, be problematical and recommended that any proposed legislation should be in the context of criminal law. The Reporter further noted that any proposed legislation would be subject to the "strict scrutiny" standard now provided for in Article I, Section 11 Louisiana's Constitution. Additionally, the report included proposed legislation. See page 3 of the report.

After a discussion of the issues involved and reviewing the proposed legislation, the Council elected not to recommend the proposed legislation. However, the Council did adopt a motion to report to the legislature that the gun ownership restrictions provided by federal law, 18 USC§ (g) (4), currently provide sufficient protections to the state's citizens, and therefore the Institute proposes no additional legislation at this time.

Respectfully Submitted:
Cheney C. Joseph, Jr., Reporter
Code of Criminal Procedure Revision Committee
Louisiana State Law Institute

LOUISIANA STATE LAW INSTITUTE

**CRIMINAL CODE AND CODE OF
CRIMINAL PROCEDURE REVISION COMMITTEE**

**PRELIMINARY REPORT TO THE COUNCIL
IN RESPONSE TO HCR 26 OF 2014**

**(GUN OWNERSHIP RIGHTS OF INDIVIDUALS WHO
HAVE ATTEMPTED SUICIDE)**

**Prepared for the Meeting
of the Council
October 10-11, 2014
New Orleans**

**Frank Foil, Co-Chair
Robert Morrison, III, Co-Chair
Cheney C. Joseph, Jr.
Reporter
Joseph J. Baiamonte
Staff Attorney**

9-26-14

CONTINUOUS REVISION ADVISORY COMMITTEE
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* * * * *

Judge Frank Foil, Co-Chair

Judge Robert Morrison, III, Co-Chair

Cheney C. Joseph, Jr., Reporter

Joseph J. Baiamonte, Staff Attorney

1 HCR 26 of 2014 Preliminary Report To The Council
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3

4 The Reporter intends to present the following to the Code of Criminal
5 Procedure Revision Committee at a future meeting and provides this preliminary
6 report to the Council for its information and guidance.
7

8 HCR 26, by Representative Henry Burns, “urges and requests” the Law
9 Institute to study and make recommendations concerning gun ownership rights of
10 persons who have attempted suicide. The Institute is to report its findings to the
11 legislative committees on health and welfare and criminal justice “on or before
12 February 1, 2015.” The Institute may engage and collaborate with “stakeholder
13 groups with an interest in suicide prevention”. The Institute's Code of Criminal
14 Procedure Revision Committee has been assigned the responsibility of
15 responding to that request. A copy of HCR 26 is attached.
16

17 As a result of preliminary analysis and research of the issues involved in
18 formulating a response, the Reporter has determined that the initial approach will
19 be to address this matter within the context of a criminal offense rather a
20 restriction of firearm ownership in a civil context. A civil approach could authorize
21 the Department of Health and Hospitals, Department of Mental Health to seek an
22 injunction which would become an element of a criminal offense. However that
23 approach has traditionally not been within the Committee's purview. Therefore,
24 unless directed by the Council to do otherwise, the current plan is for the
25 Committee to pursue the criminal approach and to consider the legislation
26 proposed below.
27

28 R.S.14:32.12 defines the offense of “Criminal Assistance to Suicide”. The
29 elements of the offense include aiding another in attempting to commit suicide.
30 The statute defines suicide as “the intentional and deliberate act of taking one’s
31 own life through the performance of an act intended to result in death.” There are
32 exceptions for medical treatment situations in which life support is terminated.
33 The “principal” theory of criminal liability will not allow extension of culpability for
34 assisting suicide to the person who attempts to commit suicide since the focus of
35 the statute is clearly only on the “aider”, not the suicidal individual. Thus, unless
36 there is a judicial finding of attempted suicide resulting in the commitment of the
37 individual who engaged in the attempt to terminate his or her life, there will likely
38 be no judicial determination that a person has in fact attempted to commit
39 suicide. The provisions of Louisiana law dealing with judicial commitment due to
40 the determination that the person is a “danger to himself” must be studied.
41 Further, determination must be made regarding the number of persons found to
42 have been committed based on the finding that those persons attempted suicide.

1 Without such a judicial finding, the facts in each case must establish the
2 unsuccessful suicidal act.

3
4 Federal law contains prohibitions regarding the sale or delivery of a
5 firearm knowing or having reason to believe the person to whom the firearm has
6 been sold, delivered or otherwise disposed "has been adjudicated as a mental
7 defective or has been committed to any mental institution". See 18 USC §922 (d)
8 (4). Federal law also prohibits a person "who has been adjudicated as a mental
9 defective or who has been committed to a mental institution" to possess or
10 receive a firearm which has been shipped or transported in interstate commerce.
11 See 18 USC §922(g)(4).

12
13 The definition of firearm below is taken from R.S. 14:95.10, enacted by
14 Acts 2014, No. 195, and is consistent with other statutory definitions of firearm in
15 the criminal code.

16
17 The Institute would be reasonable in proposing a provision similar in some
18 respects to the federal statutes, but combining the concepts into a single offense,
19 as in R.S. 14:95.11 below. However, if the "under treatment for mental illness"
20 means of commission is included, serious problems of proof would arise
21 regarding the application of the privilege provided in Code of Evidence Article
22 510, the Health Care Provider – Patient Privilege.

23
24 There is ongoing research to determine whether the Louisiana mental
25 health laws contain any limitations on firearm possession by persons who have
26 been committed or otherwise determined to be in need of treatment for
27 conditions related to mental illness.

28
29 In *State v. Eberhardt c/w State v. Taylor*, 2013-2306 c/w 2014-0209(La.
30 7/1/14), ___ So.3d ____, the Supreme Court of Louisiana stated in a very broadly
31 worded opinion that the legislative history of the amendment to La. Constitution
32 Article I, Section 11 reflected approval of the existing regulations on firearm
33 possession, even under the strict scrutiny standard adopted by that amendment.
34 Eberhardt obviously does not provide blanket approval for any future
35 regulation adopted by the Legislature and any such provisions must meet the
36 strict scrutiny standard. Federal courts have generally used an intermediate
37 scrutiny standard under the Second Amendment and the jurisprudence
38 developing the "Heller Standard". Thus, the use of virtually identical language in
39 a Louisiana statute does not guarantee approval under the Louisiana
40 constitution's strict scrutiny review requiring the government to establish that the
41 statute is "narrowly tailored to serve a compelling governmental interest."

1 The proposed statute to be considered by the Advisory Committee could
2 provide as follows:

3
4 R.S. 14:95.11 Possession, Sale, or Distribution of a Firearm – Persons

5 Who Attempted Suicide or Who Have Been Committed to a Mental
6 Institution or Who Are Currently Being Treated for Mental Illness

7 A. No person who has been committed to a mental institution or who has
8 attempted suicide or who is currently being treated for mental illness
9 shall possess a firearm.

10 B. No person shall sell or deliver a firearm to a person knowing or having
11 reasonable grounds to believe that the person to whom the firearm is
12 sold or delivered has attempted to commit suicide, has been
13 committed to a mental institution or is currently being treated for a
14 mental illness.

15 C. It shall be an affirmative defense that a period of at least ten years has
16 elapsed since the person who possessed the firearm or the person to
17 whom the firearm was sold or delivered was discharged from the
18 mental institution, attempted suicide, or was under treatment for mental
19 illness.

20 D. For the provisions of this Section, firearm means any pistol, revolver,
21 rifle, shotgun, machine gun, submachine gun, black powder weapon or
22 assault rifle that is designed to fire or is capable of firing fixed cartridge

1 ammunition or from which a shot or projectile is discharged by an
2 explosive.

3 E. Whoever violates the provisions of Paragraph A of this Section, shall
4 be imprisoned without hard labor for not more than six months or fined
5 not more than one thousand dollars, or both.

6 F. Whoever violates the provisions of Paragraph B of this Section, shall
7 be imprisoned with or without hard labor for not more than two years or
8 fined not more than five thousand dollars, or both.

Regular Session, 2014

HOUSE CONCURRENT RESOLUTION NO. 26

BY REPRESENTATIVE HENRY BURNS

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations concerning gun ownership rights of persons who have attempted suicide and to report its findings to the legislative committees on health and welfare and criminal justice.

WHEREAS, suicide is a pervasive public health problem in the United States; and

WHEREAS, in our nation, twice as many lives are lost annually to suicide than to homicide; and

WHEREAS, the National Strategy for Suicide Prevention published in 2012 by the United States Surgeon General's Office in conjunction with the National Action Alliance for Suicide Prevention highlights the following facts and statistics concerning suicide:

(1) On average, over thirty-three thousand Americans died each year as a result of suicide between 2001 and 2009, which equates to roughly one life lost to suicide every fifteen minutes.

(2) Over the one-year period prior to publication of National Strategy for Suicide Prevention, more than eight million adults reported having serious thoughts of suicide, two million five hundred thousand adults reported making a suicide plan, and one million one hundred thousand adults reported making a suicide attempt.

(3) Nearly sixteen percent of students in grades nine to twelve report having seriously considered suicide, and nearly eight percent of students in these grades report having attempted suicide one or more times in the past twelve months; and

WHEREAS, beyond the recommended approaches to prevention set forth in the National Strategy for Suicide Prevention, an emerging prevention strategy focuses on firearms access; and

WHEREAS, the prominent suicide prevention initiative of the Harvard School of Public Health known as "Means Matter" asserts that access to a firearm is a risk factor for suicide; and

WHEREAS, because firearm ownership rights encompass complex and highly nuanced legal issues, any prospective restriction on such rights merits careful and deliberate study; and

WHEREAS, R.S. 24:204 provides that among the purposes of the Louisiana State Law Institute are securing the better administration of justice, conducting scholarly legal research and scientific legal work, and promotion of better adaptation of Louisiana law to present social needs.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations concerning gun ownership rights of persons who have attempted suicide and to report its findings to the House Committee on Health and Welfare, the Senate Committee on Health and Welfare, the House Committee on the Administration of Criminal Justice, and the Senate Committee on Judiciary B on or before February 1, 2015.

BE IT FURTHER RESOLVED that in developing its study and recommendations, the Louisiana State Law Institute may engage, collaborate with, and obtain information and perspective from stakeholder groups with an interest in suicide prevention.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

1 ATTACHMENT II

2 DRAFT

3
4 Louisiana's Statutes on Mental Health Law and Possession of a Firearm by
5 People with Mental Illness

6
7
8 Compiled By Mallory Chatelain

9
10 Mental Health Law

11
12 La. R.S. 28:2. Definitions.

13
14 R.S. § 28:2(4): "Dangerous to self" means the condition of a person
15 whose behavior, significant threats or inaction supports a
16 reasonable expectation that there is a substantial risk that he will
17 inflict physical or severe emotional harm upon his own person.

18
19 R.S. § 28:2(20): "Person with mental illness" means any person
20 with a psychiatric disorder which has substantial adverse effects on
21 his ability to function and who requires care and treatment. It does
22 not refer to a person with, solely, an intellectual disability; or who
23 suffers solely from epilepsy, alcoholism, or drug abuse.

24
25 La. R.S. 28:53. Admission by emergency certificate; extension.

26
27 (A)(1): A person who is mentally ill or a person who is suffering
28 from substance abuse may be admitted and detained at a
29 treatment facility for observation, diagnosis, and treatment for a
30 period not to exceed fifteen days under an emergency certificate.

31 (A)(2): A person suffering from substance abuse may be detained
32 at a treatment facility for one additional period, not to exceed fifteen
33 days, provided that a second emergency certificate is executed. A
34 second certificate may be executed only if and when a physician at
35 the treatment facility and any other physician have examined the
36 detained person within seventy-two hours prior to the termination of
37 the initial fifteen day period and certified in writing on the second
38 certificate that the person remains dangerous to himself or others
39 or gravely disabled, and that his condition is likely to improve during
40 the extended period.

41
42 (B)(1): Any physician, psychiatric mental health nurse practitioner,
43 or psychologist may execute an emergency certificate only after an

1 actual examination of a person alleged to be mentally ill or suffering
2 from substance abuse who is determined to be in need of
3 immediate care and treatment in a treatment facility because the
4 examining physician, psychiatric mental health nurse practitioner,
5 or psychologist determines the person to be dangerous to self or
6 others or to be gravely disabled.
7

8 **La. R.S. 28:54. Judicial commitment; procedure.**
9

10 (A): Any person of legal age may file with the court a petition which
11 asserts his belief that a person is suffering from mental illness
12 which contributes or causes that person to be a danger to himself
13 or others or to be gravely disabled, or is suffering from substance
14 abuse which contributes or causes that person to be a danger to
15 himself or others or to be gravely disabled and may thereby request
16 a hearing.
17

18 (D)(1): As soon as practical after the filing of the petition, the court
19 shall review the petition and supporting documents, and determine
20 whether there exists probable cause to believe that the respondent
21 is suffering from mental illness which contributes to his being or
22 causes him to be a danger to himself or others or gravely disabled,
23 or is suffering from substance abuse which contributes to his being
24 or causes him to be a danger to himself or others or gravely
25 disabled. If the court determines that probable cause exists, the
26 court shall appoint a physician, preferably a psychiatrist, to examine
27 the respondent and make a written report to the court and the
28 respondent's attorney . . . This report shall set forth specifically the
29 objective factors leading to the conclusion that the person has a
30 mental illness or suffers from substance abuse, the actions or
31 statements by the person leading to the conclusion that the mental
32 illness or substance abuse causes the person to be dangerous to
33 himself or others or to be gravely disabled and in need of
34 immediate treatment as a result of such illness or abuse, and why
35 involuntary confinement and treatment are indicated.
36

37 **La. R.S. 28:55. Judicial hearings.**
38

39 (E)(1): If the court finds by clear and convincing evidence that the
40 respondent is dangerous to self or others or is gravely disabled, as
41 a result of substance abuse or mental illness, it shall render a
42 judgment for his commitment.
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La. R.S. 28:56. Judicial commitment; review; appeals.

(A)(1)(a): Except as provided in Subparagraph (b) of this Paragraph, all judicial commitments except those for alcoholism shall be for a period not to exceed one hundred eighty days. The period of commitment shall expire at the end of the judicial commitment period, and the patient, if not converted to a voluntary status, shall be discharged unless a petition for judicial commitment has been filed prior to the expiration of the commitment period. If the court finds by clear and convincing evidence that the patient is dangerous to self or others or is gravely disabled as a result of mental illness, it shall render a judgment for his commitment for an additional period. Except as provided in Subparagraph(b) of this Paragraph, each additional judicial commitment shall expire at the end of one hundred eighty days.

(A)(1)(b): If a person has been judicially committed for four consecutive one-hundred-eighty-day periods pursuant to the provisions of Subparagraph (a) of this Paragraph and during this time has not been conditionally discharged, the period of a subsequent judicial commitment may exceed one hundred eighty days but shall not exceed one year.

La. R.S. 28:57. Petition for restoration of right to possess firearm and to apply for permit for concealed handgun; procedures.

(A): A person who is prohibited from possessing a firearm or is ineligible to be issued a concealed handgun permit pursuant to the provisions of 18 U.S.C. 922(d)(4) and (g)(4) or of R.S. 40:1379.3(C)(13) because of an adjudication or commitment that occurred under the laws of this state may, upon release from involuntary commitment, file a civil petition seeking judgment ordering the removal of that prohibition.

Possession of a Firearm by People with Mental Illness

La. R.S. 40:1379.3. Statewide permits for concealed handguns; application procedures; definitions.

(C): To qualify for a concealed handgun permit, a Louisiana resident shall:

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(5): Not suffer from a mental or physical infirmity due to disease, illness, or retardation which prevents the safe handling of a handgun.

(13): Not have been adjudicated to be mentally deficient or been committed to a mental institution, unless the resident's right to possess a firearm has been restored pursuant to R.S. 28:57.

18 U.S.C.A. § 922. Unlawful acts.

(d): It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(g): It shall be unlawful for any person—

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.