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,

[Signature]
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
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
CONTINUOUS REVISION ADVISORY COMMITTEE
CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE

E. Pete Adams, Baton Rouge
Sue Bernie, Baton Rouge
Kyla M. Blanchard-Romanach, Baton Rouge
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Michelle W. Ghetti, Baton Rouge
C. Frank Holthaus, Baton Rouge
Robert W. Levy, Ruston
John Ford McWilliams, Shreveport
Judge Douglas P. Moreau, Baton Rouge
John Wilson Reed, New Orleans
Henry C. Walker, Shreveport

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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 94052  
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. Biamonte
   Staff Attorney

9-26-14
CONTINUOUS REVISION ADVISORY COMMITTEE
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. Bajamonte, Staff Attorney
HCR 26 of 2014 Preliminary Report To The Council

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

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

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

R.S.14:32.12 defines the offense of "Criminal Assistance to Suicide". The elements of the offense include aiding another in attempting to commit suicide. The statute defines suicide as "the intentional and deliberate act of taking one's own life through the performance of an act intended to result in death." There are exceptions for medical treatment situations in which life support is terminated. The "principal" theory of criminal liability will not allow extension of culpability for assisting suicide to the person who attempts to commit suicide since the focus of the statute is clearly only on the " aider", not the suicidal individual. Thus, unless there is a judicial finding of attempted suicide resulting in the commitment of the individual who engaged in the attempt to terminate his or her life, there will likely be no judicial determination that a person has in fact attempted to commit suicide. The provisions of Louisiana law dealing with judicial commitment due to the determination that the person is a "danger to himself" must be studied. Further, determination must be made regarding the number of persons found to have been committed based on the finding that those persons attempted suicide.
Without such a judicial finding, the facts in each case must establish the unsuccessful suicidal act.

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

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

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

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

In State v. Eberhardt c/w State v. Taylor, 2013-2306 c/w 2014-0209(La. 7/1/14), ____So.3d ____ , the Supreme Court of Louisiana stated in a very broadly worded opinion that the legislative history of the amendment to La. Constitution Article I, Section 11 reflected approval of the existing regulations on firearm possession, even under the strict scrutiny standard adopted by that amendment. Eberhardt obviously does not does not provide blanket approval for any future regulation adopted by the Legislature and any such provisions must meet the strict scrutiny standard. Federal courts have generally used an intermediate scrutiny standard under the Second Amendment and the jurisprudence developing the "Heller Standard". Thus, the use of virtually identical language in a Louisiana statute does not guarantee approval under the Louisiana constitution's strict scrutiny review requiring the government to establish that the statute is "narrowly tailored to serve a compelling governmental interest."
The proposed statute to be considered by the Advisory Committee could provide as follows:

R.S. 14:95.11 Possession, Sale, or Distribution of a Firearm – Persons Who Attempted Suicide or Who Have Been Committed to a Mental Institution or Who Are Currently Being Treated for Mental Illness

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

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

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

D. For the provisions of this Section, firearm means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon or assault rifle that is designed to fire or is capable of firing fixed cartridge
ammunition or from which a shot or projectile is discharged by an
explosive.

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

F. Whoever violates the provisions of Paragraph B of this Section, shall
be imprisoned with or without hard labor for not more than two years or
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
ATTACHMENT II

DRAFT

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

Compiled By Mallory Chatelain

Mental Health Law


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

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


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

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

(B)(1): Any physician, psychiatric mental health nurse practitioner, or psychologist may execute an emergency certificate only after an
actual examination of a person alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate care and treatment in a treatment facility because the examining physician, psychiatric mental health nurse practitioner, or psychologist determines the person to be dangerous to self or others or to be gravely disabled.


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

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


(E)(1): If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment.

(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:
(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.


(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.