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January 13, 2017

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

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: SCR 100 OF 2016

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to continuing child support awards for adult children with disabilities.

Sincerely,

A handwritten signature in cursive script that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Wesley T. Bishop

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
DISABLED ADULT CHILDREN COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR 100 OF THE 2016 REGULAR SESSION**

**Relative to continuing child support awards for adult children with
disabilities**

Prepared for the
Louisiana Legislature on

January 13, 2017

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
DISABLED ADULT CHILDREN COMMITTEE**

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SENATE CONCURRENT RESOLUTION NO. 100

BY SENATOR BISHOP

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the feasibility of revising state law enacted in Act No. 379 of the 2015 Regular Session of the Legislature to account for the financial burden that continuing child support awards for adult children with disabilities places on elderly parents.

WHEREAS, during the 2015 Regular Session of the Legislature, the Legislature, in Act No. 379, enacted certain changes to law relative to awards of child support for adult children with disabilities; and

WHEREAS, such changes, in part, provide that an award of child support continues or shall be set with respect to any unmarried child who, whether institutionalized or not, is incapable of self-support and requires substantial care and personal supervision because of an intellectual or physical disability that is manifested before the child attains the age of majority; and

WHEREAS, such child support awards can continue indefinitely without taking into account their financial burden on elderly parents.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the feasibility of revising state law enacted in Act No. 379 of the 2015 Regular Session of the Legislature to account for the financial burden a continuing child support award for adult children with disabilities places on elderly parents.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings, together with any recommendations in the form of proposed legislation, to the Legislature of Louisiana no later than February 1, 2017.

SCR NO. 100

ENROLLED

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

January 13, 2017

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

Representative Taylor F. Barras
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**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR NO. 100 OF THE 2016 REGULAR SESSION**

After lengthy study and analysis, the Louisiana State Law Institute recommended to the legislature in the 2015 legislative session the passage of a package of legislation designed to ensure that disabled adult children in Louisiana would be entitled to financial support from their parents. *See* Acts 2015, No. 379. Before this enactment, parents in Louisiana had an “alimentary” obligation under the Civil Code to support their adult children who were no longer entitled to child support, but only for the necessities of life, and only to the extent that other sources, including governmental programs, were unavailable. *See, e.g.*, C.C. Art. 237. Thus, the right to support was exceptionally narrow, and Louisiana law was generally perceived to be inadequate to address the growing needs of Louisiana’s disabled adults who are no longer eligible for child support and cannot receive the support they need, for educational or therapeutic programs and the like, from their parents.

With Act 379 of 2015, by extending the Louisiana Child Support Guidelines to cover disabled adults, Louisiana joined the ranks of the quickly growing number of states that have tackled the problem of support for disabled adult children. Under this Act, severely disabled adults may collect child support from their parents on roughly the same terms as can minors.

SCR No. 100 of the 2016 Regular Session asked the Law Institute to consider a revision of the law that would “account for the financial burden a continuing child support award for adult children with disabilities places on elderly parents.” After undertaking a review of Louisiana law on the subject, the Disabled Adult Children Committee of the Law Institute concluded that no legislative change is necessary at this time, as a number of existing statutory provisions protect elderly parents in the child support context, and permit for both consideration of their particular considerations and solutions to the problem of indefinite support for disabled adult children.

First, all child support in Louisiana, including that for disabled adult children, is based upon *both* the child’s need and the *ability of the parents to pay*. C.C. Art. 141. With the exception of a mandatory minimum child support amount (adopted by the legislature for largely expressive reasons) (R.S. 9:315.20), no child support award will be rendered when the child’s

parents cannot pay. The Civil Code recognizes as much in articulating “ability to pay” as a *sine qua non* of the rendition of a support order. C.C. Art. 141. As parents age and their earning capacity diminishes, so too does their ability to pay. The Civil Code, then, mandates a consideration of the particular constraints of aging obligors.

Second, Act 379 itself recognizes the difficult position of aging obligors, given the fact that support awarded to disabled adult children is indefinite and can be long-lasting. Specifically, the Act expressly gives Louisiana judges the duty to deviate from the recommended guidelines sum if the “support awarded is for an adult child with a disability, as defined in R.S. 9:315.22(E),” as the legislature recognized that such support “may be a long-term and financially burdensome obligation that warrants the court’s special consideration of the circumstances surrounding the manifestation of the disability and the financial burden imposed by the obligor.” As a result of this express deviation provision, Louisiana judges are already permitted – and indeed are *likely* given the express direction of the statute – to consider directly the financial burden on the elderly parent in setting the child support award.

The Disabled Adult Children Committee did have some concerns about the propriety of the \$100 mandatory minimum on all child support awards in Louisiana. While those minimums serve an important signaling function in the minor support context, the potential duration of support awards for adults with disabilities makes their fairness more questionable in that context. The Committee believed that the mandatory minimum may need to be lifted or modified in the disabled adult child support context. However, because there has not yet been any application of the statute, the Committee felt it is best not to recommend legislative change at this time, but to allow a body of cases involving child support for adult disabled children to work their way through the system. It may be that too few cases implicate such low obligor income as to warrant modification of the mandatory minimum. It may be that the mandatory minimum appears, as the cases develop, to be highly inequitable to low income child support obligors. But the reality of the operation of Act 379, which did not become effective until August 1, 2016, will not be fully known until more time has passed and the jurisprudence is allowed to develop. Until then, the Disabled Adult Children Committee intends to watch the jurisprudential developments on this statute and to make a recommendation for change if it deems change appropriate in the coming years.