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January 28, 2020

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

RE: HOUSE RESOLUTION NO. 250 OF THE 2019 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to interference with custody.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge", with a long horizontal line extending to the right.

Guy Holdridge
Director

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

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 250 OF THE 2019 REGULAR SESSION**

Relative to interference with custody

Prepared for the
Louisiana Legislature on

January 28, 2020

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

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Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

Jessica G. Braun, Attorney

2019 Regular Session

HOUSE RESOLUTION NO. 250

BY REPRESENTATIVE ABRAMSON

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and issue a report of its findings regarding interference with the custody of a child when there is no court order defining custody of a child, and the child is taken, enticed, or decoyed away by a person who is not identified as a parent on the birth certificate of the child and who reasonably believes himself to be a parent of the child, with intent to detain or conceal such child from the sole parent identified on the birth certificate of the child.

WHEREAS, R.S. 14:45.1 defines the crime of interference with the custody of a child and prohibits any person from taking, enticing, or decoying away of a minor child by a parent not having a right of custody with the intent to detain or conceal the child from a parent having the right of custody pursuant to a court order; and

WHEREAS, there are situations in which a minor child is taken, enticed, or decoyed away by a person who is not identified on the birth certificate of the child but who reasonably believes himself to be a parent of the child, with the intent to detain or conceal such child from the sole parent identified on the birth certificate of the child; and

WHEREAS, in such situations, R.S. 14:45.1 does not apply because there is no court-ordered custody, and there is no mechanism by which law enforcement can act to return the child to the parent identified in the birth certificate; and

WHEREAS, while the sole parent identified on the birth certificate may file a petition to establish sole custody of the child, this process comes at an unjust cost to the mother, who as the natural tutrix of the child is the only person with a legal right to the child, and does not allow for the prompt response of law enforcement which is necessary in such situations to return the child to the parent.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the issue of interference with the custody of a child when there is no court order defining custody of a child, and the child is taken, enticed, or decoyed away by a person who is not identified as a parent on the birth certificate of the child and who reasonably believes himself to be a parent of the child, with intent to detain or conceal such child from the sole parent identified on the birth certificate of the child.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall issue a report of its findings to the Legislature of Louisiana prior to February 1, 2020, which shall include an adequate remedy in such situations for the sole parent identified on the birth certificate of the child and that allows law enforcement to immediately take action and return the child to the parent.

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

January 28, 2020

To: Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 250 OF THE 2019 REGULAR SESSION**

House Resolution No. 250 of the 2019 Regular Session urges and requests the Louisiana State Law Institute “to study and issue a report of its findings regarding interference with the custody of a child when there is no court order defining custody of a child, and the child is taken, enticed, or decoyed away by a person who is not identified as a parent on the birth certificate of the child and who reasonably believes himself to be a parent of the child, with intent to detain or conceal such child from the sole parent identified on the birth certificate of the child.” In fulfillment of this request, the Law Institute assigned the project to the Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter.

The Marriage-Persons Committee conducted research that revealed that 41 states (including Louisiana) and Washington D.C. have legislation addressing custodial interference. Most of these statutes require that one must *knowingly* take or entice a child from the custody of his or her parent or guardian. A few statutes extend to reckless taking or enticement of the child. Some statutes even provide for attempted interference. Some states, such as North Dakota, require an existing custody order before there can be criminal custodial interference. In other states, such as Arizona, taking, enticing, or keeping a child before the entry of a court order determining custodial rights may still constitute criminal custodial interference. The law varies greatly among the states on this question.

The Marriage-Persons Committee reviewed R.S. 14:45.1, a criminal statute, and evaluated whether revision is needed, given that this statute does not apply in the absence of a custody order. The Committee also reviewed House Bill No. 499 of the 2019 Regular Session and considered a case in which a biological father who was not listed on the birth certificate took the child to another state. The outcome of that case was that law enforcement could not act to return the child to his mother without a custody order. This case prompted the proposal of House Bill No. 499 to close this gap between civil and criminal law, but it stalled during the legislative process, thus ultimately resulting in the study resolution to the Law Institute.

The Marriage-Persons Committee also discussed the fact that, under the Civil Code, an unmarried mother is the natural tutrix of a child, a rule that appears inconsistent with the criminal law requirement of a custody decree before any claim of interference with custody may be made.

The Committee, however, did not find the solution proposed in House Bill No. 499 – tying criminal culpability to the birth certificate – viable. Under well-established Louisiana law, a person may be a legal parent even when not reflected as a parent on the child's birth certificate. The Committee was further troubled by creating or expanding a criminal statute to enforce a civil matter. In this vein, the Committee discussed the existence of temporary restraining orders and protective orders under present law as remedies to address the problems raised by House Resolution No. 250.

Based on the Marriage-Persons Committee's research and detailed discussion of both the Louisiana civil and criminal law statutes, and those of the other 49 states, the Law Institute recommends that no change to present law on custodial interference be made at this time.