



LOUISIANA STATE LAW INSTITUTE

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February 7, 2013

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

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

RE: HCR NO. 90 of 2012

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2012 House Concurrent Resolution No. 90, relative to costs associated with post conviction relief.

Sincerely,

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

William E. Crawford
Director

WEC/puc

cc: Representative Alan Seabaugh

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us

LOUISIANA STATE LAW INSTITUTE

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE:
COSTS ASSOCIATED WITH POST CONVICTION RELIEF**

RESPONSE TO HOUSE CONCURRENT RESOLUTION NO. 90 OF 2012

February 7, 2013

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

INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO HCR 90 OF 2012

The Louisiana State Law Institute has received HCR No. 90 of the 2012 Regular Session, attached, which directs the Institute's Criminal Code Committee "to study the issue of post-conviction relief, specifically with regard to the costs associated with providing such relief, and to issue a report to the Legislature of Louisiana no later than March 1, 2013, which shall include its findings and recommendations on the feasibility of imposing certain fees for applications for post-conviction relief."

The Law Institute's Code of Criminal Procedure Revision Committee has undertaken the responsibility to respond to HCR 90. The Committee's Reporter, Professor Cheney C. Joseph, Jr. conducted extensive research into this matter and consulted with those individuals and entities which have an interest in the matter. The Reporter is serving as a member of the Louisiana Supreme Court's Post Conviction Relief Committee; which has completed its report and submitted it to the Court. However that final report is still under review. The report, once approved, will offer insight and guidance to the Committee in formulating its response to HCR 90. Attempting to formulate a response absent that guidance could prove counterproductive requiring the Committee to revisit its work; therefore the Reporter has determined that the Committee should defer action until it receives that guidance.

The Committee met earlier this fall in order to examine the issues involved in responding to the resolution's request. The Reporter discussed his research and offered a preliminary proposal. He further reported that the Supreme Court still has the Post Conviction Relief Committee's report under review and that it is his preference that the Committee await guidance from the Court. After a great deal of discussion there was a consensus that the breadth and depth of the issues involved would require additional time before the Committee would be in a position to complete its work and make a report to the Council of the Law Institute and the Legislature.

Respectfully Submitted,
Cheney C. Joseph, Jr.
Reporter, Code of Criminal Procedure
Revision Committee

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 90 BY

REPRESENTATIVE SEABAUGH

A CONCURRENT RESOLUTION

To direct the Criminal Code Committee of the Louisiana State Law Institute to study the issue of post-conviction relief, specifically with regard to the costs associated with providing such relief, and to issue a report of its findings and recommendations on the feasibility of assessing certain fees for applications for post-conviction relief to the Legislature of Louisiana.

WHEREAS, pursuant to Louisiana law, once a criminal defendant has exhausted all possible appeals of his conviction and sentence, the defendant may then file an application for post-conviction relief, which is a petition filed by the defendant seeking to have the conviction and sentence set aside; and

WHEREAS, in the case of *State a rel. Glover v. State*, 93-2330 (La. 1995), 660 So.2d 1189, the Louisiana Supreme Court discussed the constitutionality of a provision of the Code of Criminal Procedure which provides time limitations for filing an application for post-conviction relief, and the court, relying on support from decisions by the United States Supreme Court, stated that states are not required by the constitution to provide post-conviction relief; and

WHEREAS, in the same case, the Louisiana Supreme Court cited a United States Supreme Court case in which Justice Rehnquist, writing for a four justice plurality, stated that "[t]he Due Process Clause ... does not establish any right to an appeal ... and certainly does not establish any right to collaterally attack a final judgment of conviction." *Glover*, 660 So.2d at 1194 (citing *United States v. MacCollom*, 426 U.S. 317, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976)); and

WHEREAS, the court stated further in the *Glover* decision that "[o]ne of the goals of Louisiana's system of justice is to provide the accused and the state fair and prompt trials, appeals, and further proceedings to correct error," but that this system of justice should also reflect the "legitimate concern ... that this process should also end within a reasonable period of time." *Glover*, 660 So 2d at 1196; and

WHEREAS, it is necessary in choosing to provide criminal defendants with access to post-conviction relief, that certain interests also be considered, including but not limited to equal access to the courts, efficiency of the judicial and criminal justice system, costs associated with providing such access, and finality of court determinations, including criminal convictions and sentencing.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby direct the Criminal Code Committee of the Louisiana State Law Institute to study the issue of post-conviction relief, specifically with regard to the costs associated with providing such relief, and to issue a report to the Legislature of Louisiana no later than March 1, 2013, which shall include its findings and recommendations on the feasibility of imposing certain fees for applications for post-conviction relief.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the Criminal Code Committee of the Louisiana State Law Institute.