



**LOUISIANA STATE LAW INSTITUTE**

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January 31, 2017

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

**RE: SR 142 OF 2016**

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to equal physical custody.

Sincerely,

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

William E. Crawford  
Director

WEC/puc

Enclosure

cc: Senator Troy Carter

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

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

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR 142 OF THE 2016 REGULAR SESSION**

**Relative to equal physical custody**

Prepared for the  
Louisiana Legislature on

**January 31, 2017**

Baton Rouge, Louisiana

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

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SENATE RESOLUTION NO. 142

BY SENATOR CARTER

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding the feasibility of revisions to present laws to require physical custody of children to be shared equally.

WHEREAS, present laws in Louisiana provide relative to a joint custody decree and implementation order in child custody cases relative to joint custody of children; and

WHEREAS, the implementation order allocates the time periods during which each parent shall have physical custody of the child so that the child is assured of frequent and continuing contact with both parents; and

WHEREAS, present laws provide that to the extent feasible and considering the best interest of the child, physical custody of children should be shared equally; and

WHEREAS, in a child custody proceeding in which joint custody is decreed, physical custody of the children should be required to be shared equally, unless it is not in the best interest of the child.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations regarding the feasibility of revisions to present laws to require physical custody of children to be shared equally.

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.

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

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PRESIDENT OF THE SENATE

January 31, 2017

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

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR NO. 142 OF THE 2016 REGULAR SESSION**

Senate Resolution No. 142 of the 2016 Regular Session asks the Louisiana State Law Institute to study the issue of “shared custody” under Louisiana law, with a view toward determining whether the law should impose on judges an imperative in making custody determinations.<sup>1</sup> Specifically, the Resolution notes that Louisiana legislation provides for equal sharing of physical custody of children, to the extent such arrangements are “feasible and in the best interest of the child.”<sup>2</sup> The Resolution opines that “physical custody of children should be *required* to be shared equally, unless it is not in the best interest of the child.”<sup>3</sup> The Law Institute was asked to “study and make recommendations regarding the feasibility of revisions to present laws to require physical custody of children to be shared equally.”<sup>4</sup>

The Marriage-Persons Committee of the Law Institute, which is the Committee charged with continuously reviewing and recommending improvements to the legislature regarding Louisiana family law matters, has studied this issue at length. In fact, the Law Institute receives inquiries about the desirability of change in this area about every five years. The Marriage-Persons Committee’s view, despite changing Committee composition over the years, remains steadfast: no imperative on physical custody should be imposed upon Louisiana judges and families.

When parents are awarded joint custody in Louisiana, both parents necessarily are awarded substantial physical time with the child. The law recognizes the importance of both parents’ involvement in the child’s life. Indeed, in a joint custody arrangement, the court is required to assure both parents the opportunity for “frequent and continuing contact” with the child.<sup>5</sup> The law also recognizes that “frequent and continuing” is not quantified, and that the development of a meaningful relationship with a parent takes substantial physical time in the presence of that parent. Accordingly, Louisiana’s joint custody statute provides that “to the extent it is feasible and in the best interest of the child, physical custody *should* be shared equally.”<sup>6</sup>

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<sup>1</sup> SR 142 (2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> *Id.*

<sup>5</sup> LA. REV. STAT. ANN. §9:335 (2016).

<sup>6</sup> *Id.* (emphasis added).

The Marriage-Persons Committee believes that the language of present law strikes the appropriate balance between judicial discretion and the need to encourage close relationships between children and both parents. Custody determinations are among the most difficult ones judges make. They are fact-intensive calls, and what is best for one family may very well not be what is best for another. Further, social science research over the course of the last decade has demonstrated that the goal of evenly split time between parents is not only not desirable for every family, but may not even be ideal for *most* families, particularly as children age.<sup>7</sup> Louisiana law needs to remain flexible enough to allow the judge in a custody case to evaluate carefully and to make a determination that would be in the best interest of the particular child in court. The family law judges, scholars, and practitioners of the Louisiana State Law Institute believe that mandating equal sharing – even as a starting point – undermines the much needed-flexibility that should be afforded to judges in custody matters.

Louisiana’s legislation does guide judges toward shared physical custody. The joint custody statute provides that custody “should be shared equally.”<sup>8</sup> The law is expressive, and here it informs judges as to the values of Louisiana’s citizens. When it is best for the child, custody should be shared equally. Mandating such an arrangement for all families, however, would simply go too far.

As such, it is the recommendation of the Louisiana State Law Institute that no change to Louisiana’s child custody provisions be made at this time. The Marriage-Persons Committee will continue to monitor family law developments in the state and will return to the legislature with proposals for legislative change on this matter in an upcoming year, if and when the Committee believes changes are appropriate.

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<sup>7</sup> See, e.g., Elizabeth Scott, *Rethinking Joint Custody*, 45 OHIO St. L.J. 455 (1984) (cataloguing and evaluating social science research on the impact of various custody arrangements on child development).

<sup>8</sup> LA. REV. STAT. ANN. §9:335 (2016).