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January 31, 2018

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

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

**RE: HOUSE CONCURRENT RESOLUTION NO. 79 OF THE 2017 REGULAR
SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature relative to domestic violence.

Sincerely,

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

William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Malinda B. White

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
CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE
COMMITTEE AND MARRIAGE-PERSONS COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR NO. 79 OF THE 2017 REGULAR SESSION**

**Relative to studying state laws governing domestic abuse, domestic violence,
and stalking**

Prepared for the
Louisiana Legislature on

January 31, 2018

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
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PROCEDURE COMMITTEE**

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Andrea B. Carroll, Reporter
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2017 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 79

BY REPRESENTATIVE WHITE

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study state laws governing domestic abuse, domestic violence, and stalking.

WHEREAS, Louisiana is ranked second in the nation for domestic violence homicides; and

WHEREAS, the Louisiana Legislature has enacted or amended over 50 provisions of law relative to domestic violence, family violence, and stalking since the 2014 Regular Session to assist and protect victims; and

WHEREAS, the majority of the laws enacted have been proposed by the United Against Domestic Violence Coalition, comprised of the Public Policy Committee of United Way of Southeast Louisiana, the Louisiana Coalition Against Domestic Violence, and the New Orleans Family Justice Center Alliance; and

WHEREAS, the Louisiana Commission to Prevent Domestic Violence was formed in 2014 to solicit recommendations for legislation that it deems necessary and appropriate upon approval by a two-thirds vote of the commission members present; and

WHEREAS, the Louisiana Commission to Prevent Domestic Violence has worked closely with the United Against Domestic Violence Coalition to make recommendations to the Louisiana Legislature since its inception, with recommendations and advocacy undertaken by the coalition; and

WHEREAS, there remains a need for a consistent and comprehensive definition of "domestic abuse" in Louisiana statutes, with the understanding that domestic violence is a physical manifestation of domestic abuse, and which further recognizes that domestic abuse

is a pattern of assaultive or coercive behaviors, including but not limited to physical, sexual, and psychological threats and attacks, and financial control; and

WHEREAS, a revision of the domestic abuse battery statute (R.S. 14:35.3) should be reviewed, as the statute currently is not recognized as a crime of violence in Louisiana; and

WHEREAS, R.S. 14:35.3 should also be reviewed with the goal of providing consistency in sentencing, particularly with respect to sentencing enhancements for those criminal acts involving strangulation, pregnancy, burning, and child endangerment; and

WHEREAS, there exists no crime of domestic abuse which takes into consideration the non-physical element of coercive control inherent in domestic abuse; and

WHEREAS, there may be a need for revision of the criminal stalking statute (R.S. 14:40.2) which separates harassment and bullying provisions from actual acts of stalking, differentiates between stalking an intimate partner from stalking a stranger, and recognizes that stalking an intimate partner is a precursor to domestic homicide; and

WHEREAS, it is of the utmost importance to evaluate orders of protection for victims of intimate partner violence, including domestic abuse, sexual abuse, and stalking, which will prohibit a defendant from directing a third party to perform prohibited acts and which will protect a victim from a convicted stalker until that person is found to present threat of harm to the victim; and

WHEREAS, there exists a need for definitions of "physical abuse" and "sexual abuse" and for clarification of the types of civil and criminal protective orders and other orders which will qualify for a divorce based upon Civil Code Article 104(4) or (5); and

WHEREAS, the need for consistency in the assessment of costs and attorney fees, including appeals, against an abuser in the Domestic Abuse Assistance Act, the Post Separation Family Violence Relief Act, and obligations incurred in an action for divorce should be considered; and

WHEREAS, there exists a need to assess whether custodial parents denied visitation with children pursuant to a protective order should have expedited hearings in courts; and

WHEREAS, these needs should be considered in the context of the historical domestic violence laws passed unanimously by this legislature in 2014 and thereafter.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that the Louisiana State Law Institute study the laws of domestic violence to address the need for any revisions and recommendations to this area of law.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to work in conjunction with the United Against Domestic Violence Coalition and any other agencies or associations deemed appropriate by the working group regarding this study.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations to the Legislature of Louisiana on or before February 1, 2018.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

January 31, 2018

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

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 9413
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HCR NO. 79 OF THE 2017 REGULAR SESSION**

House Concurrent Resolution No. 79 of the 2017 Regular Session urges and requests the Louisiana State Law Institute “to study state laws governing domestic abuse, domestic violence, and stalking” and “to address the need for any revisions and recommendations to this area of law.” In fulfillment of this request, the Law Institute assigned the project to two of its continuous revision Committees, the Criminal Code and Code of Criminal Procedure Committee, under the direction of Judge Guy Holdridge as Acting Reporter, and the Marriage-Persons Committee, under the direction of Professor Andrea B. Carroll as Reporter.

With respect to the criminal law issues contained in the resolution, background research on existing law, including the domestic abuse battery statute, R.S. 14:35.3, and the criminal stalking statute, R.S. 14:40.2, is being conducted and compiled. The Criminal Code and Code of Criminal Procedure Committee is also forming a Domestic Violence Subcommittee comprised of members with expertise in this specialized area of criminal law. Both the Committee and Subcommittee plan to meet several times over the course of the next year in conjunction with the appropriate agencies and associations to consider this research and to make recommendations concerning both revisions and additions to existing law.

With respect to the family law issues contained in the resolution, extensive research was prepared on topics including varying definitions of “domestic violence” and “domestic abuse”; unintended consequences in divorce, custody, and visitation; procedural anomalies in the law in the domestic violence arena; and inconsistent rules regarding costs and fees. The Marriage-Persons Committee has met many times to consider and draft preliminary recommendations with respect to each of these topics. The Committee will recommend two bills to the Law Institute Council and, if approved, to the legislature, this year. The first is an attempt to address concerns regarding the intersection of domestic violence with grounds for divorce and spousal support. The second is an effort to create consistency in the assessment of costs and attorney fees in domestic abuse cases. The Committee will continue meeting over the course of the next year in conjunction with the appropriate agencies and associations to draft additional recommendations with respect to these and other issues.

A final report will be submitted to the Legislature once the Criminal Code and Code of Criminal Procedure Committee and the Marriage-Persons Committee have received approval of their recommendations from the Council of the Law Institute.

Respectfully submitted,

Judge Guy Holdridge, Acting Reporter
Criminal Code and Code of Criminal Procedure Committee
Louisiana State Law Institute

Professor Andrea B. Carroll, Reporter
Marriage-Persons Committee
Louisiana State Law Institute