LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

January 9, 2026

Friday, January 9, 2026

Persons Present:

Abrams, Dominick
Amacker, Dawn
Ayala, Robert
Baker, Pamela
Baxter-Payer, Julie
Belanger, Katie
Braun, Jessica G.
Breard, L. Kent
Bromley, Kris T.
Brown, Brandon B.
Carroll, Andrea B.
Castle, Marilyn
Cromwell, L. Daivd
Daniels, Zachary T.
Dara, Joshua J., Jr.
Darensburg, June Berry
Davrados, Nikolaos A.
Deville, Louis
Diez, Madison "Maddie" L.
Dorsey, Dominque
Fielding, Semaj M.
Flemings-Davillier, Tracey
Forrester, William R., Jr.
Franklin, Gary
Gray, John Taylor
Green, Chelsee
Gregorie, Isaac M. "Mack"
Grover, Gail
Guice, Jon K.
Hamilton, Leo C.
Hebert, Christopher B.
Holthaus, C. Frank
Johnson, Rachael D.
Lonegrass, Melissa T.
Manning, C. Wendell
Marcel, Timothy
Marien, Laurie
McCallum, Jay B.
Miller, Gregory A.
Penzato, Allison H.
Philips, Harry "Skip", Jr.
Pittman, Richard
Pleasant, Madison
Pontiff, Cameron J.
Price, Donald W.
Rantisi, Yazan
Rector, Aubrey D.
Richardson, Sally Brown
Richey, Kathleen Stewart
Robinson, Levar
Romanach, Kyla
Ruffin, Aaron M.
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Simoneaux, Ryan P.
Smith, Mary Watson
Sossamon, Meera U.
Theus, Susannah "Suze" F.
Thibaut, Martha A.
Thibeaux, Robert P.
Tucker, Zelda W.
Ventulan, Josef
Viator, James Etienne
Waller, Mallory C.
Weems, Charles S., III
Womble, Jennifer
Woods, Revettea
Wright, LaJon
Ziober, John David

President Leo C. Hamilton called the first January Council meeting to order at 10:00 a.m. on Friday, January 9, 2026 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves, the President called on retired Judge Marilyn Castle, Reporter of the Criminal Code and Code of Criminal Procedure Committee, to begin her presentation of materials.

Criminal Code and Code of Criminal Procedure Committee

The Reporter began her presentation with a report in response to House Concurrent Resolution No. 35 of the 2025 Regular Session, which requests a review of "Duncan misdemeanors" located throughout the Louisiana Revised Statutes. She explained that these misdemeanors arise when the fine imposed may be in excess of one thousand dollars or the sentence may be for more than six months because the United States Supreme Court, in *Duncan v. Louisiana*, found that jury trials are required when the classification of the penalty for the crime makes it a serious offense. Duncan

misdemeanors have created issues within the judicial system because certain courts are not equipped and do not have jurisdiction to handle jury trials.

Law Institute and legislative staff worked together to compile a list of Duncan misdemeanors that appear throughout the law and found that there are over three hundred. The Reporter informed the Council that because the resolution did not request a solution, the Committee proposes attaching to the report a list and chart identifying the exact language that renders each statute a Duncan misdemeanor. Because the Committee discussion naturally evolved into a discussion of possible solutions, however, those suggestions are also included in the report for consideration by the legislature.

One Council member then asked whether increasing the fine threshold to adjust for inflation would be acceptable to the Supreme Court. The Reporter responded that the threshold is higher in the federal courts, but the true test from the Duncan case is not a specific dollar amount but rather whether the fine is excessive enough to warrant a jury trial. Another Council member thanked the Committee for their work in creating this road map for the legislature, and after a motion and second, the report was approved by the Council. Judge Castle then concluded her presentation, and the President called on Professor Richard Pittman, Reporter of the Children's Code Committee, to begin his presentation of materials.

Children's Code Committee

Professor Pittman began his presentation with a report relative to adoption proceedings and in response to both House Concurrent Resolution No. 79 of the 2016 Regular Session and House Resolution No. 192 of the 2024 Regular Session. He noted that after careful study, the Committee determined that there are no gaps in present law, the differing time periods for the three types of adoptions are warranted due to the level of services received throughout each process, and current law carefully balances the rights of all parties. One Council member inquired as to why the Law Institute has been asked to study these issues so frequently, and the Reporter noted that this is most likely due to the emotionally fraught nature of the proceedings. Another reason may be because adoptions are not occurring as frequently across the country due to surrogacy and other technologies, but attorneys and agencies are still looking for business. Without further discussion, the Committee's report was approved by the Council.

The Reporter then asked the Council to review the document marked "Advice of Rights in FINS" and reminded them that in 2024, the Law Institute recommended and the legislature passed a very similar advice of rights provision for Children In Need of Care. The Committee is now recommending a revision of the law in the Families In Need of Services article, not to expand the rights, but to ensure that parents and children are aware of the possible consequences resulting from such proceedings. One Council member questioned the need to include the duties of attorneys, and the discussion included the fact that although children are appointed an attorney, the parents are not, and the interests of the parent and the child may conflict. Members then expressed the need to clarify whether each of the listed items pertain to the child or the parent or both and suggested moving the parents' rights to the end of the list. The Reporter agreed to take the proposal back for reorganization, and the Council further instructed that the fact that the child may be removed from the home should be added as a consequence.

At this time, Professor Pittman began presenting the "Findings of Fact" materials and explained that the Pelican Center, during their work in creating a bench book, found that absent parents are not always notified of certain proceedings. Therefore, the Committee reviewed the law and is recommending that courts make written findings of fact in orders or the minutes to ensure that parents, children, and other interested parties are properly notified and given the opportunity to be present as due process requirements dictate. Turning to Children's Code Article 624, the Reporter stated that because this hearing happens within three days of a child being taken into custody, the department provides notice and the court may continue even if parties are absent. Discussion included the fact that other articles specify the type and form of the notice, and a member of the judiciary added that sometimes notice is only a telephone call or text message due

to the emergency nature of the continued custody hearing. The following language was ultimately approved by the Council:

Article 624. Continued custody hearing; continued safety plan hearing; federal Indian Child Welfare Act

* * *

B. After notice to all parties and when a child is in foster care, to any foster parent, pre-adoptive parent, and relative providing care, and upon a showing of good cause, the court may grant, deny, or condition a requested continuance of the proceeding in accordance with the best ~~interests~~ interest of the child. The hearing may be continued for up to three additional days. If a continuance is granted, the court shall issue a written order identifying the mover and reciting the particular facts justifying the continuance.

C.(1) If a parent is absent, the court shall make written findings of fact or include in the minutes whether notice of the date, time, and place of the hearing and the right to attend and be heard was properly provided by the department. If it appears from the record that, after diligent efforts by the department, the parent cannot be found or has been served a summons or notified by the department to appear at the continued custody or continued safety plan hearing and fails to appear at the hearing, then the hearing may be held in the parent's absence.

(2) If a foster parent, pre-adoptive parent, ~~adoptive parent,~~ or relative providing care for the child ~~fails to appear at the hearing, the department shall report to~~ is absent, the court shall make written findings of fact or include in the minutes whether notice ~~was given, or, if not, what~~ of the date, time, and place of the hearing and the right to attend and be heard was properly provided by the department. If the court determines that diligent efforts were made to locate and notify the absent person, ~~. The~~ the court may permit the hearing to be held in the person's absence.

With respect to Children's Code Article 646, Professor Pittman mentioned that in this case, parents are served and if a child is not present, the court must ask if the correct procedure was followed to justify the absence. The Council revised the proposal to appear in active voice and added that the court's determination shall be made on the record. The following language was approved:

Article 646. Answer; appearance; objection

A. The court shall require the parent to appear and to answer the petition at any time prior to the adjudication hearing but no later than fifteen days after the filing of the petition. If a parent is absent, the court shall make written findings of fact or include in the minutes whether notice of the date, time, and place of the hearing and the right to attend and be heard was properly served.

* * *

C. At the appearance, the court may either convene immediately a prehearing conference authorized by Article 646.1, or set a date for the conference.

* * *

F. If a child is absent, the court shall make written findings of fact or include in the minutes whether the attorney for the child moved to waive the presence of the child if the child is twelve years of age or older or whether the attorney for the child or the court requested the presence of the child if the child is under the age of twelve years. If presence was not waived or the

child is not present after a request, the custodian or the department shall provide reasons for the absence of the child, and the court shall determine on the record whether the hearing may proceed.

The Council suggested that these same changes be made to Children's Code Article 679(C) and deleted a redundancy in Subsection E before approving the provision as follows:

Article 679. Notice; presence at disposition

* * *

B. If a parent is absent, the court shall make written findings of fact or include in the minutes whether notice of the date, time, and place of the hearing and the right to attend and be heard was properly served. The court shall permit a disposition hearing to be held in the absence of a parent if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.

C. A child twelve years of age or older shall be present in court unless ~~his~~ the child's presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If a child is absent, the court shall make written findings of fact or include in the minutes whether the attorney for the child moved to waive the presence or presence was requested. If presence was not waived or the child is not present after a request, the custodian or the department shall provide reasons for the absence of the child, and the court shall determine on the record whether the hearing may proceed. If the child is present in court, ~~he~~ the child may choose to testify as to his wishes, and the court shall consider ~~his~~ the child's testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.

* * *

E. If a foster parent, pre-adoptive parent, or relative providing care for the child ~~fails to appear at the disposition hearing, the department shall report to~~ is absent, the court shall make written findings of fact or include in the minutes whether notice ~~was given, or, if not, what~~ of the date, time, and place of the hearing and the right to attend and be heard was properly provided by the department. If the court determines that diligent efforts were made to locate and notify the absent person, ~~The~~ the court may permit the hearing to be held in the person's absence.

Moving to Children's Code Article 694, the Council quickly approved the provision without discussion. After making the same changes to Article 695 as were previously made to parallel provisions, the Council then approved the following:

Article 694. Notice; absent parents

A. If a parent is absent, the court shall make written findings of fact or include in the minutes whether notice of the date, time, and place of the hearing and the right to attend and be heard was properly served. The court shall permit a case review hearing to be held in the absence of a parent if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.

* * *

Article 695. Notice; foster parents, pre-adoptive parents, relatives providing care; right to be heard

* * *

C. If a foster parent, pre-adoptive parent, or relative providing care for the child ~~fails to appear at a case review hearing, the department shall report to~~ is absent, the court shall make written findings of fact or include in the minutes whether notice ~~was given or, if not, what~~ of the date, time, and place of the hearing and the right to attend and be heard was properly provided by the department. If the court determines that diligent efforts were made to locate and notify the absent person, ~~The~~ the court may permit the hearing to be held in the person's absence.

Thereafter, the Council reviewed and made identical changes to Children's Code Article 696 concerning case review hearings and Articles 704 through 706 concerning permanency hearings. The following provisions were approved:

Article 696. Rights of parties

* * *

B. A child twelve years of age or older shall be present in court unless ~~his~~ the child's presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If a child is absent, the court shall make written findings of fact or include in the minutes whether the attorney for the child moved to waive the presence or presence was requested. If presence was not waived or the child is not present after a request, the custodian or the department shall provide reasons for the absence of the child, and the court shall determine on the record whether the hearing may proceed. If the child is present in court, ~~he~~ the child may choose to testify as to his wishes, and the court shall consider ~~his~~ the child's testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.

* * *

Article 704. Notice; absent parents

A. If a parent is absent, the court shall make written findings of fact or include in the minutes whether notice of the date, time, and place of the hearing and the right to attend and be heard was properly served. The court shall permit a permanency hearing to be held in the absence of a parent if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.

* * *

Article 705. Notice; right to be heard

* * *

C. If a foster parent, pre-adoptive parent, or relative providing care for the child ~~fails to appear at the hearing, the department shall report to~~ is absent, the court shall make written findings of fact or include in the minutes whether notice ~~was given or, if not, what~~ of the date, time, and place of the hearing and the right to attend and be heard was properly provided by the department. If the court determines that diligent efforts were made to locate

and notify the absent person. ~~The~~ the court may permit the hearing to be held in the person's absence.

* * *

Article 706. Rights of parties

* * *

B. A child twelve years of age or older shall be present in court unless ~~his~~ the child's presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If a child is absent, the court shall make written findings of fact or include in the minutes whether the attorney for the child moved to waive the presence or presence was requested. If presence was not waived or the child is not present after a request, the custodian or the department shall provide reasons for the absence of the child, and the court shall determine on the record whether the hearing may proceed. If the child is present in court, ~~he~~ the child may choose to testify as to his wishes, and the court shall consider ~~his~~ the child's testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.

Turning to the next set of materials, the Reporter noted that in the past, intervention by a nonparent or noncustodian occurred after adjudication. A few years ago, the law was amended to allow intervention before adjudication, but the implementation of the changes has resulted in inconsistent practices throughout the state that warrant further clarification. Therefore, the Committee is proposing a definition of intervention and corresponding parameters to protect the privacy interests of the family. Focusing on the definition, members of the Council noted an issue with parallelism and suggested revisions that were accepted by the Reporter. Next, Council members questioned why intervenors are not considered parties and the ramifications thereof. Professor Pittman explained that due to the privacy interests of the child and the family, it may not be appropriate for an intervening neighbor to have full access to the record. Members of the Council further questioned how intervenors could be entitled to relief if they are not considered parties. The Reporter tried to explain that this type of intervention is not the same as general civil law intervention that is governed by the Code of Civil Procedure, and members of the Council responded that perhaps a term other than intervention should be used. A legislator commented that the changes were intended to allow, in limited circumstances, other suitable individuals to participate in the proceeding to the extent permitted by the judge without these individuals becoming actual parties. The law simply provides a framework through which a person may indicate their desire to participate in the process. Another Council member noted that Children's Code Article 650(B) currently allows the court to limit the nature and extent of the intervenor's participation in the hearing, but this Article does not say that the intervenor is not a party. Further discussion revealed that current practice allows courts to grant custody or visitation to people who have not intervened, so the existence of a remedy for intervenors who are not parties is perhaps not as concerning.

The Reporter then accepted a motion to strike the last sentence of the proposed definition, and the following language was approved:

Article 603. Definitions

As used in this Title:

* * *

(17) "Intervention" means a process by which a relative or other suitable individual may participate formally in a proceeding to facilitate permanency or to present evidence that it would be in the best interest of a child for the intervenor to be awarded custody of the child, visitation with the child, or another remedy.

* * *

Members of the Council indicated that because this process is not the same as what is commonly thought of as intervention, perhaps the limitations could be moved to a new article and refined to just include presenting evidence and appearing as a witness. Other members noted that those are not requirements for a person to ask for custody in this often emergency procedure to find a placement for a child.

Due to time constraints, Professor Pittman then concluded his presentation, and the Council adjourned for lunch.

Marriage-Persons Committee

After lunch, the President called on Professor Andrea B. Carroll, Reporter of the Marriage-Persons Committee, to begin her presentation of materials.

Professor Carroll began by first noting to the Council that the proposals are largely similar to those presented at the previous Council meeting, then directed the Council's attention to the materials titled "Response to House Concurrent Resolution No. 28 of the 2024 Regular Session." The Reporter explained that House Concurrent Resolution No. 28 of the 2024 Regular Session seeks to address issues with respect to minor parents concerning the establishment of paternity and the collection of child support. She further indicated that during its research, the Committee identified several concerns including whether minors, given their limited contractual capacity, should be able to execute an acknowledgment of paternity and whether, in light of a minor's limited earning capacity, the child support obligation should extend to the parents of the minor parent. Although the Committee eventually determined that imposing a child support obligation upon the parents of the minor parent would be inappropriate, it concluded that the law should provide for a framework allowing a minor parent to execute an acknowledgment of paternity. The Reporter then reminded the Council that at its last meeting, it had adopted revisions to R.S. 9:315.1 providing additional grounds for deviation from the child support guidelines, but several concerns were raised with respect to proposed R.S. 9:405.1 relative to the acknowledgment of paternity.

The Reporter then directed the Council's attention to proposed R.S. 9:405.1. She reminded the Council that acknowledgment of paternity is deemed to be a finding of paternity with respect to child support, visitation, and custody and thus has serious implications. Moreover, while minors typically lack contractual capacity, Civil Code Article 1923 permits minors to enter into certain contracts. Accordingly, R.S. 9:405.1 would extend to unemancipated minors who are sixteen or seventeen years of age the ability to execute, with judicial authorization, an acknowledgment of paternity, while R.S. 9:405.2 and 405.3 would address concerns raised with respect to the procedure for obtaining judicial authorization and considerations the court may use in determining whether to grant judicial authorization, respectively. The Reporter then pointed to the Comments to R.S. 9:405.1, reflecting the Committee's reasoning. After brief discussion, the Council adopted R.S. 9:405.1 as follows:

R.S. 9:405.1. Minors; acknowledgment of paternity

An unemancipated minor under the age of sixteen may not enter into an acknowledgment of paternity. An unemancipated minor sixteen or seventeen years of age may not enter into an acknowledgment of paternity without judicial authorization.

Revision Comments – 2026

(a) The rights of emancipated minors are governed by Book I, Chapter 2 of the Civil Code, and depend upon the type of emancipation.

(b) Unemancipated minors lack the procedural capacity to sue and be sued. Accordingly, the provisions of Civil Code Articles 222 and 683 apply in this context and provide for representation by married parents or the minor's tutor in a proceeding to acquire judicial authorization.

(c) This provision mirrors Civil Code Articles 90.1 and 2333 that provide that minors under the age of sixteen are not permitted to marry or enter into matrimonial agreements, and sixteen- and seventeen-year-old minors may enter into those contracts under limited circumstances.

Next, Professor Carroll reminded the Council that it previously asked that the Committee include within its proposal further details regarding judicial authorization. R.S. 9:405.2 addresses the Council's procedural concerns and provides that a request may be submitted in either the parish in which the minor executing the acknowledgment is domiciled or the parish in which the child to be acknowledged is domiciled. The Reporter further indicated that a similar provision exists within the Children's Code requiring a minor to obtain judicial authorization to enter marriage. The Council subsequently adopted the proposed language as follows:

R.S. 9:405.2. Minors; judicial authorization of acknowledgment of paternity; venue

A request for judicial authorization brought pursuant to this Chapter may be submitted in the parish in which the minor executing the acknowledgment is domiciled or in the parish in which the minor child acknowledged is domiciled.

The Reporter then presented R.S. 9:405.3, indicating that the new proposal incorporates many of the thoughts expressed at the previous Council meeting including clarification as to whether a hearing or the presence of the minor should be required and guidance to courts with respect to whether a minor should be able to execute the acknowledgment. Professor Carroll stated that the revised proposal provides that a request for authorization may be granted ex parte after considering the best interests of the minor parent and the child to be acknowledged. The proposal further provides that the court may require the minor parent to be present so that the court can determine whether the parent understands the nature and consequences of the acknowledgment, whether the parent understands his right to seek DNA testing, and whether the parent has discussed the potential acknowledgment with his parents or tutor. The Reporter also emphasized that while parental authorization is not required, the proposal implements several safeguards and affords the court with much discretion in determining whether to grant the authorization.

Beginning discussion, one Council member raised that ensuring that the minor parent understands the significance of executing an acknowledgment of paternity seems to be a best practice and questioned why that factor is seemingly left to the court's discretion. The Reporter indicated that the factor is framed by whether the court requires the presence of the minor parent. The provision allots the court discretion as to whether the substance of the request and any documentation attached to the request lends to a determination as to whether the authorization should be granted. The Committee reasoned, and the Council previously agreed, that requiring a minor's presence should be left to a court unable to determine whether authorization is appropriate by the request alone.

Discussion then turned to the procedural aspects of the proposal, and one Council member raised that, regarding the weighing of the best interests of the minor parent and the child to be acknowledged, an acknowledgment is typically in the best interest of both. The Council then revisited whether a minor mother should be present at a hearing for authorization and able to oppose the execution of the acknowledgment. The Reporter reminded the Council that it previously concluded that the presence of the minor mother

was not necessary. It was then raised that federal law already requires that an acknowledgment contain the signatures of both the mother and father – thus, if the mother were to reject the putative father's paternity, she could simply decline to execute the acknowledgment. The Reporter responded that the proposal is distinguishable from federal law, as a father may already unilaterally execute an acknowledgment of paternity under, for example, Civil Code Articles 195 and 196. Moreover, the validity of certain acknowledgments is not necessarily predicated upon compliance with federal law. Professor Carroll further noted that acknowledgments are often inconsistent with birth certificates. A Council member subsequently questioned whether the proposal should delineate which courts have jurisdiction over the authorization. The Reporter, however, indicated that such a question is already addressed by various other jurisdictional statutes. Another Council member then expressed that perhaps the proposal should include a form for the minor parent to use when acknowledging paternity. The Reporter noted that various forms exist within the Revised Statutes – specifically, hospital-based formal acknowledgments. She further indicated that these forms are distinguishable and that the Committee declined to propose a similar form. Moreover, various courts may elect to provide forms tailored to their own standards and requirements.

Professor Carroll then directed the Council's attention to the Comment, or in the alternative, Subsection C of the proposal. She stated that the Comment was drafted in response to a suggestion that the proposal include a provision, in the event of the court's refusal to grant authorization, setting forth that the proper procedural vehicle in furtherance of execution of an acknowledgment is a petition for judicial emancipation. Since a minor may file for judicial emancipation at any time, the Reporter initially opposed the provision's inclusion in the body of the Section as unnecessary but was amenable to its inclusion as a Comment. Members of the Council agreed with the Reporter's assessment and suggested that the Comment cite to Civil Code Article 366 relative to judicial emancipation. Professor Carroll accepted this suggestion, and the Council adopted the amended proposal as follows:

R.S. 9:405.3. Minors; application for judicial authorization of acknowledgment of paternity; procedure

A. Upon request by an unemancipated minor who is sixteen or seventeen years of age, the court may authorize the acknowledgment of paternity ex parte after considering the best interest of the minor parent executing the acknowledgment and the best interest of the child to be acknowledged.

B. The court may, in its discretion, require that the minor parent executing the acknowledgment be present to evaluate whether the minor parent understands the nature and consequences of an acknowledgment of paternity, whether the minor parent understands his right to seek blood and tissue tests for determination of paternity before executing the acknowledgment, and whether the minor parent has discussed the acknowledgement with his parents or tutor.

Revision Comments – 2026

If the court denies the request, the minor parent may file a petition for judicial emancipation. See Civil Code Article 366.

Next, the Reporter directed the Council's attention to the report to the Legislature in response to House Concurrent Resolution No. 28 of the 2024 Regular Session. She indicated that the Marriage-Persons Committee determined that in addition to proposed legislation, a report was necessary to address why the Committee declined to incorporate a form of "vicarious liability" within Louisiana's child support regime – a concept that the resolution suggested as a possible solution to its queries. After brief discussion, the Council adopted the report.

Professor Carroll then began her presentation of materials relative to the codification of *Bergeron* and stated that the proposal had been modified since the last

meeting to integrate the Council's previous suggestions. The Reporter then directed the Council's attention to House Resolution No. 242 of the 2022 Regular Session, citing *Bergeron v. Bergeron*, 492 So.2d 1193 (La. 1986). She explained that the current standards for the modification of child custody are drawn from the holding of *Bergeron* and have yet to be codified, causing various issues in the area of family law. Moreover, while the legislature declined to enact the Marriage-Persons Committee's initial proposal in response to the resolution, the Committee thought it prudent to revise its work and, under the Committee's continuous revision authority, suggest germane legislation.

The Reporter subsequently pointed to proposed Civil Code Article 138 and stated that while the Committee entertained the notion that the language would be more appropriate in the Revised Statutes, it ultimately concluded that the concept belongs in the Civil Code. She then contextualized the Committee's proposal by explaining the current framework of child custody modification. Professor Carroll indicated that two standards exist and their applications rely on whether a court has rendered a consent or considered decree. A consent decree is rendered when the parents have agreed upon the custody arrangement and the court then signs a custody order pursuant to that agreement. To modify such an order, courts consider a material change in circumstances and the best interest of the child. The Reporter then explained that *Bergeron*, seeking to deter repetitive, excessive litigation, imposes a heightened standard if the court has rendered a considered decree – that is, a decree entered after the court has heard evidence of parental fitness to exercise care, custody, and control of a child. Pursuant to *Bergeron*, a considered decree may only be modified upon proof of either of the following: that continuation of the present custody arrangement is so deleterious to the child as to justify modification of the custody decree, or by clear and convincing evidence that the harm likely to be caused by a change of environment is substantially outweighed by its advantages to the child. Professor Carroll then stated that this heightened burden may be problematic – for example, while the mere passage of time may cause to manifest numerous changes in a child's life, those changes may not satisfy the heightened burden even though a change in the custody decree would be in the best interest of the child. This issue was raised during a previous legislative session, and it was suggested that perhaps a time limitation should be imposed upon the heightened standard. The Reporter noted that while most states implementing a time limit utilize two years, the Committee incorporated a five-year limitation, deeming the two-year limitation insufficient. She concluded her explanation by noting that the proposal further sets forth definitions for consent and considered decree, derived from jurisprudence, as the Code does not explicitly provide for their meanings.

Beginning discussion, one Council member asked for clarification with respect to the current duration of the heightened burden. The Reporter explained that the heightened standard of *Bergeron* persists for the duration of child custody, and the proposal would ostensibly lessen the effect of this by imposing the temporal limitation. She further noted that though the proposal provides definitions for consent and considered decrees, this is not intended to change the law but rather simply to codify and clarify existing law as jurisprudence is not entirely consistent relative to when the heightened burden should apply. For example, often a court will receive evidence as to parental fitness, but parents will stipulate to a custody arrangement prior to the conclusion of a hearing or trial. Further, the amount of evidence varies between cases; some practitioners argue that if the amount of evidence is substantial, the heightened standard should apply, regardless of whether the parties stipulate – this school of thought, however, is problematic since often the evidence of only one party is fully received by the court prior to the stipulation. In either example, the lesser standard should apply, as application should be consistent and predicated upon the type of decree rendered.

The Reporter then provided a detailed explanation of each provision. Beginning with Paragraph A, she indicated that the provision codifies the standard applicable to consent decrees and is largely similar to the standards used for modification in other areas of family law. Proceeding to Paragraph B, the Reporter indicated that the provision codifies the holding of *Bergeron*. She then stated that Paragraph C provides for the five-year temporal limitation, while Paragraph D defines consent and considered decrees. One Council member then pointed to Comment (d) of the Article, acknowledging "hybrid" proceedings and suggesting that in order to clearly demarcate application of the

heightened burden, the article should be restructured to define only considered decree, set forth that the heightened burden is applicable, and provide that "in all other cases" the lesser standard would apply. She asserted that the proposed definition of consent decree may risk misinterpretation as it does not quite capture the entire spectrum of consent decrees – particularly, hybrid proceedings. Another Council member agreed that restructuring would lend to the overall clarity of the article. The Reporter was amenable to these suggestions, and the Council discussed the potential revisions. After finalizing the new structure of the article, it was raised that the article include a Comment clarifying that the use of "in all other cases" in the new Paragraph B contemplates application of the lesser evidentiary standard to modification of a consent decree, a considered decree once five years have elapsed from the date of that decree, and a judgment as a result of hybrid proceedings.

A question was then asked as to whether the article would prohibit parties from stipulating to the heightened burden. The Reporter indicated that the Committee decided that the article should remain silent on the matter, neither prohibiting nor encouraging such a stipulation due to potential inequities as a result of a party's financial resources. Members of the Council then questioned whether a five-year limitation was excessive. Professor Carroll explained that while several states implement a two-year limitation, the Committee determined that such a limitation would undermine the purpose of *Bergeron* seeking to prevent unnecessary litigation. Likewise, in light of frequent changes as to the developmental stages of a child, the Committee considered a limitation of three years. The Committee, however, determined five years to be reasonable as no limitation is currently imposed. In support of the five-year limitation, one member expressed that frequent litigation may be detrimental to the minor child and lead to collateral consequences – for example, a party may leverage issues of custody against the other parent in the partition of community property proceeding. Moreover, while the argument that the five-year limitation may be excessive is well-taken, litigation often lasts for much longer than two years.

Discussion then turned to the inclusion of the language "final and appealable" on lines 15 and 16 of page 1. The Reporter indicated that a similar sentiment is expressed in Comment (f) of the proposal providing that the article is inapplicable to interim, temporary, or interlocutory custodial orders. While some Council members expressed support with respect to including this language, others questioned its compatibility with Code of Civil Procedure Article 1915. Professor Carroll then explained that the language was suggested by the Reporter of the Code of Civil Procedure Committee, and any issues that arise may be addressed by either Committee.

The Council then discussed revisions to the article's Comments and granted the Reporter authority to make necessary revisions consistent with the Council's amendments. After additional brief discussion, the Council voted to adopt the amended proposal as follows:

Article 138. Modification of custody award

A. When a court has awarded custody pursuant to a judgment rendered by considered decree, the award may be modified by the court within the period of five years after the date of the award, in accordance with the best interest of the child, only upon proof of either of the following:

(1) By clear and convincing evidence that the harm likely to be caused by a change of custody is substantially outweighed by the advantages to the child.

(2) That the continuation of the present custody award is so harmful to the child as to justify modification.

B. In all other cases, an award of custody may be modified by the court upon a change in circumstances that materially affects the welfare of the child if the modification is in the best interest of the child.

C. A judgment is "rendered by considered decree" when the trial court receives evidence of parental fitness to exercise care, custody, and control of a child and enters a final and appealable judgment based on its evaluation of that evidence.

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(a) This revision codifies the standard set by the Louisiana Supreme Court for modification of custody orders pursuant to considered decrees in *Bergeron v. Bergeron*, 492 So. 2d 1193, 1200 (La. 1986), with modifications. It also codifies the existing, and lesser, standard for modifying consent decrees. See, e.g., *McCorvey v. McCorvey*, 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005). This revision is not intended to abrogate the jurisprudence interpreting *Bergeron*; rather, it is intended to add clarity by codifying the *Bergeron* standard and by calling attention to the often jurisprudentially overlooked alternative weighing standard set forth in *Bergeron*.

(b) Louisiana jurisprudence explains that a consent decree subject to the best interest standard is one made through "a stipulated judgment, such as when the parties consent to a custodial arrangement, and no evidence of parental fitness is taken . . ." Alternatively, a considered decree is one "wherein the trial court receives evidence of parental fitness to exercise care, custody, and control of a child." *McCorvey v. McCorvey*, 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005); see also *Evans v. Lungrin*, 708 So. 2d 731 (La. 1998). Some Louisiana courts have noted that judgments may be the result of "hybrid" proceedings, as when the court received some evidence of parental fitness, but the parties enter into a stipulated judgment prior to the court's ruling. Such judgments should be treated under the modification standard applicable to consent decrees. *McCorvey, supra* at 371.

(c) The use of "in all other cases" in Paragraph B of this Article contemplates application of the lesser evidentiary standard to modification of a consent decree, a considered decree once five years have elapsed from the date of that decree, and a judgment as a result of hybrid proceedings.

(d) The change in circumstances described in Paragraph B of this Article refers to a change that materially affects the child's welfare. *Burns v. Burns*, 236 So. 3d 571, 574 (La. App. 1 Cir. 2017). A parent's remarriage, engagement, and similar life changes do not necessarily rise to such a level. See *id.*

(e) The standards set forth in this Article apply to modifications of judgments of custody rendered by consent decree or considered decree and generally apply to both physical and legal custody. They do not, however, apply to minor changes, such as a change in visitation of a parent from a Tuesday night to a Wednesday night.

(f) Interim, temporary, or interlocutory custodial orders are not governed by the standards set forth in this Article.

(g) Custodial orders entered by hearing officers, whether interim or otherwise, are not "considered decrees" in accordance with this Article, as they are not custodial awards made by a "trial court."

Next, the Reporter directed the Council's attention to the proposed Comments to Article 131. She indicated that the proposed Comment clarifies that the enactment of Article 138 supersedes Comment (d) of the 1993 Revision Comments to Article 131. One Council member subsequently suggested that proposed Comment (a) be deleted and that proposed Comment (b) be relocated to Article 138, as it would be inappropriate to add a

Comment to an article that is not subject to actual revision. After brief discussion, the Council voted in favor of striking Comment (a) and incorporating Comment (b) into the Comments to Article 138. The Council adopted the language of the Comment as follows:

Article 138. Modification of custody award

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(h) On account of the enactment of this Article, Comment (d) of the 1993 Revision Comments to Article 131 has been superseded. This Article should be consulted, as it elaborates upon and modifies jurisprudential treatment of custody modification.

Turning to the materials relative to the presumption of parentage, the Reporter stated that the primary purpose of her presentation was to assess the Council's appetite for any suggested revision as to this area of law. She further indicated that any proposal would arise from the Committee's continuous revision authority aiming to reconcile recent jurisprudential inconsistencies. She next directed the Council's attention to Civil Code Article 185 setting forth that the husband of the mother is presumed to be the father of a child born during marriage or within three hundred days from the date of the termination of marriage. Professor Carroll reasoned that, in light of the holding of *Obergefell v. Hodges*, 576 U.S. 655 (2015) and subsequent jurisprudence extending to same-sex persons not only the right to marry but also the benefits attendant to marriage, the gendered language of the article may give rise to issues of constitutionality. She noted that jurisprudential inconsistencies in Louisiana have manifested as circuit splits. The Reporter then explained that the Third Circuit, drawing on the reasoning of *Pavan v. Smith*, 582 U.S. 563 (2017), concluded that a same-sex, nonbiological spouse is presumed to be the parent in accordance with Article 185, while the First Circuit held that the presumption applies only to heterosexual and same-sex female spouses and also limited the application of the presumption to same-sex female spouses by requiring the person who births the child to be a party to the marriage. The Second Circuit, however, explicitly rejected the interpretation of the Third Circuit and concluded that because our laws do not define "husband" or "father," its meaning cannot include a woman. In addition to declining to extend the Article 185 presumption to same-sex spouses, the Third Circuit also held that stepparent adoption was impermissible since the parties were already married at the time of the child's birth and, according to Black's Law Dictionary, a "stepparent" can only be the spouse of a biological parent through a subsequent marriage. Though diverging in their conclusions, the courts commonly expressed that the issue should be addressed by the legislature. Thus, the salient issue is whether the presumption afforded by Article 185 extends to same-sex spouses.

Professor Carroll asserted that, given the historical context and biological implications of Article 185, the presumption should not extend to same-sex spouses. The Committee, however, did reach the consensus that the law should afford all spouses analogous rights. The Committee found that other states approach this issue by utilizing intent-based and contractual regimes, particularly with respect to assisted reproduction. The Reporter then directed the Council's attention to Civil Code Article 188 and explained that while the language is gendered, it contemplates intent to parent the child born as a result of assisted conception. Accordingly, the Committee determined that the article could be revised to provide the basis for the appropriate legal mechanism extending the Article 185 presumption to same-sex spouses. Due to the technical nature of the proposed language, however, the Committee determined that it was more appropriately placed in the Revised Statutes. Consequently, the Committee suggested supplanting the substance of Article 188 with reference to the applicable statute, providing within the new statute a framework applicable to all spouses utilizing assisted conception, and setting forth the extent to which a spouse may disavow the child.

The Reporter subsequently reminded the Council that she was not seeking approval at this time, only presenting the draft to ascertain whether the Council was amenable to the Committee's pursuit of this work, then directed the Council's attention to proposed R.S. 9:411. She explained that Subsection A incorporates and makes gender neutral the concept currently found in Civil Code Article 188 and provides that when spouses consent to parenting a child, and a child is subsequently born through assisted conception using one of the spouse's gametes, both spouses are presumed to be the parent of the child and may not disavow the child born as a result of the agreement. Subsection B serves to prevent a spouse from disavowing a child whom the spouse has agreed to co-parent, serving to protect the interests of the child and extend the presumption to spouses who must necessarily use the genetic material of another. While this differs from an exact extension of Article 185, the proposal would extend a form of the presumption to all spouses, regardless of gender. Subsection C defines "assisted conception" to include in vitro fertilization, artificial insemination, acceptance of donated gametes through a laboratory or informal process, and any other circumstances in which the spouses agree to the participation of a third party in the conception process.

Beginning discussion, one Council member noted that requiring execution of the written agreement prior to the child's birth would preclude certain spouses from utilizing the statute and questioned whether the Committee considered providing for post-birth application. The Reporter explained that this was deliberate, as permitting a post-birth agreement would potentially allow spouses to circumvent the adoption process. It was then raised that the statute also denies spouses who have long been married, but do not agree in writing, the ability to establish the parentage of a child born as a result of assisted conception. The Reporter acknowledged the concern and noted that should the Council be inclined to entertain the Committee's work, this issue would be addressed in a subsequent proposal. One Council member further questioned whether, in light of statutory restrictions relative to surrogacy, the description of "assisted conception" sought to limit or broaden the term's scope. Professor Carroll stated that the definition of "assisted conception" is deliberately broad. In consideration of rapid advancements in reproductive technology and the means through which a child may be conceived, the description is illustrative and seeks to encompass all forms of assisted conception, including those in which the spouses agree to the participation of a third party in the conception process. A concern was then expressed regarding the possible creation of rights and obligations as to the third party. Members of the Council discussed that while the proposal would create legal benefits as to the spouses, it lacked appropriate statutory safeguards against any unintended consequences relative to visitation, custody, child support, and inheritance. One Council member asserted that safeguards were particularly important due to Louisiana laws relative to dual-paternity and forced heirship. The Reporter then asked the Council whether it would be inclined to approve the Committee's pursuit of an intent or consent-based presumption regime.

Members of the Council noted that the legislature had previously declined to enact similar proposals in the past and questioned whether the issues were frequent or limited such that more time should be allotted for jurisprudential development. Another Council member expressed that due to rapid developments in technology, perhaps the issue was not sufficiently mature as to require legislative intervention. Some Council members raised that the law should be revised to address any defects and in furtherance of comporting with recent interpretations of the Constitution. A member further expressed that these issues were not confined to only certain classes of spouses; thus, it would be appropriate for the Law Institute to address absurdities in the law. It was then suggested that prior to the Committee continuing its research, a legislative resolution should be sought to determine whether the legislature thinks it appropriate for the Law Institute to study issues relative to assisted conception. The Reporter subsequently asked that the Council make clear whether the study should include the feasibility of consent or intent-based presumptions of parentage. The Council was amenable to the suggestion and voted to seek a resolution tasking the Law Institute with a study to address concerns with respect to assisted conception.

At this time, Professor Carroll concluded her presentation, and the January 9, 2026 Council meeting was adjourned.

Jessica G. Braun

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