



LOUISIANA STATE LAW INSTITUTE

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December 18, 2013

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

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

RE: SCR NO. 97 of 2013

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2013 Senate Concurrent Resolution No. 97, relative to responsive verdicts to the crime of aggravated incest.

Sincerely,

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

William E. Crawford
Director

WEC/puc

cc: Senator Mike Walsworth

e-mail cc: David R. Poynter Legislative Research Library
drplib@legis.la.us
Secretary of State, Mr. Tom Schedler
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LOUISIANA STATE LAW INSTITUTE

CODE OF CRIMINAL PROCEDURE REVISION COMMITTEE

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO SENATE CONCURRENT RESOLUTION NO. 97
OF THE 2013 REGULAR SESSION
(RESPONSIVE VERDICTS TO THE CRIME OF AGGREGATED INCEST)**

December 18, 2013
Baton Rouge, LA

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CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE

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December 18, 2013

To: Senator John A. Alario, Jr.
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**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO SCR 97 OF THE 2013
REGULAR SESSION**

SCR 97 of the 2013 Regular Session requested the Louisiana State Law Institute to "study and make recommendations relative to the issue of whether the Code of Criminal Procedure should contain responsive verdicts for the crime of aggravated incest". The resolution additionally requested that the Institute report its findings and recommendations to the legislature no later than January 10, 2014. A copy of SCR 97 is attached.

The Law Institute's Code of Criminal Procedure Revision Committee has undertaken the responsibility to respond to SCR 97. The Committee's Reporter, Professor Cheney C. Joseph, Jr., with the Committee's Co-Chairman, Judge Robert Morrison, III, have completed their initial research and they anticipate that the Committee will be in a position to complete its work and present its report to the Institute's Council within a short period of time once the Committee has an opportunity to consider the matter.

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

SENATE CONCURRENT RESOLUTION NO. 97

BY SENATOR WALSWORTH

A CONCURRENT RESOLUTION

To urge and request that the Louisiana State Law Institute study and make recommendations relative to the issue of whether the Code of Criminal Procedure should contain responsive verdicts for the crime of aggravated incest.

WHEREAS, Code of Criminal Procedure Article 814 does not contain responsive verdicts particular to the crime of aggravated incest; and

WHEREAS, Code of Criminal Procedure Article 815 provides only that the responsive verdicts of "guilty," "guilty of a lesser and included grade of the offense", and "not guilty" are permitted with regard to the crime of aggravated incest, since responsive verdicts for that crime are not specifically provided in Article 814; and

WHEREAS, the lack of responsive verdicts for the crime of aggravated incest can result in a defendant being found "not guilty" when the specific facts of a particular case as established at trial do not permit either a finding of guilty or a finding of guilt on a lesser included offense, or can result in a defendant being found guilty of a lesser included offense with a maximum penalty that is insufficient to serve the interests of justice; and

WHEREAS, the crime of aggravated incest (La. R.S. 14:78.1) by its very nature involves heinous acts committed against minors who are particularly vulnerable and oftentimes reluctant to testify about the abuse to which they have been subjected, and who are further subjected to undue stress and embarrassment when they do testify; and

WHEREAS, the problems associated with the lack of responsive verdicts for the crime of aggravated incest can sometimes necessitate a new trial and the calling of victims as witnesses, thus subjecting them again to the stress and embarrassment of a second and subsequent legal proceedings; and

WHEREAS, the crime of aggravated incest also contains penalty provisions specific to the age of the victim such that the lack of responsive verdicts in the Code of Criminal Procedure can, depending on what facts are and are not established at trial, confront the judiciary with a range of possible sentences of imprisonment from five years to ninety-nine years, with no guidance to be found in the Code of Criminal Procedure.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study and make recommendations with regard to whether there is a need for responsive verdicts particular to the crime of aggravated incest, and if so, make recommendations relative to the specifics of any such responsive verdicts.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute report the results of its study findings and its recommendations to the legislature not later than January 10, 2014.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES