



LOUISIANA STATE LAW INSTITUTE

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February 7, 2013

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

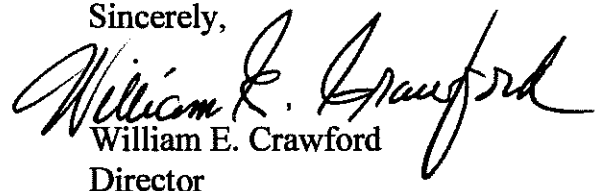
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR NO. 9 of 2010

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2010 House Concurrent Resolution No. 9, relative to finality and accuracy of criminal convictions.

Sincerely,


William E. Crawford
Director

WEC/puc

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drplibrary@legis.state.la.us

LOUISIANA STATE LAW INSTITUTE

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE:
FINALITY AND ACCURACY OF CRIMINAL CONVICTIONS**

RESPONSE TO HOUSE CONCURRENT RESOLUTION NO. 9 OF 2010

February 7, 2013

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Judge Frank Foil, Co-Chair
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 9 OF 2010

HCR No. 9 of the 2010 Regular Session (attached) which directs the Institute "to study and make recommendations for the revision of the laws regarding criminal procedure, the preservation of forensic evidence, confessions and admissions, the code of evidence, and all other issues regarding the finality and accuracy of criminal convictions in this state". The resolution also requested that the Institute "work in conjunction with and request information" from various entities which have an interest in the issues involved.

The Institute's Code of Criminal Procedure Revision Committee undertook the responsibility to respond to HCR 9. Representatives from those entities which the resolution names are participating with the Committee in its work.

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. Post conviction relief is a major component of that work and in that regard 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 9. 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.

Criminal discovery is another major component of HCR 9 and the Committee completed its report to the legislature on criminal discovery in response to HCR 115 of 2009. That report resulted in the introduction of SB 659 of 2012, which the legislature enacted as Act 852.

The Committee has met several times to consider this matter. Most recently this past fall the Reporter presented a proposal addressing the issues in responding to the resolution. 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 could provide a final 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, 2010

HOUSE CONCURRENT RESOLUTION NO. 9 BY

REPRESENTATIVE RICHMOND

A CONCURRENT RESOLUTION

To direct the Louisiana State Law Institute to study and make recommendations for the revision of the laws regarding criminal procedure, the preservation of forensic evidence, confessions and admissions, the code of evidence, and all other issues regarding the finality and accuracy of criminal convictions.

WHEREAS, wrongful convictions harm not only the innocent people who spend years in prison for crimes they did not commit, but the communities where the crimes are committed, and the actual criminals continue to commit crimes; and

WHEREAS, wrongful convictions harm the families of the victims of these crimes, who years after the crime are subjected once again to court proceedings, media coverage, and, perhaps worst of all, the realization that the finality they thought they had was an illusion; and

WHEREAS, wrongful convictions also harm the jurisdictions where they take place because enormous amounts of money are spent on court proceedings, and in the wake of each new exoneration, public confidence in law enforcement may be shaken; and

WHEREAS, since the first DNA exoneration in 1989, two hundred fifty-one people have been freed from United States prisons because of DNA testing; and

WHEREAS, in the last twenty years in which scientific evidence of wrongful convictions has come into existence, the question is no longer, "Could an innocent person be convicted in our justice system?" but, "How often does it happen?"; and

WHEREAS, the leading causes of wrongful convictions are eyewitness misidentification, false confessions or admissions, improper forensics, reliance on bad informants, ineffective assistance of counsel, and government misconduct; and

WHEREAS, careful review of the laws regarding each of these areas of the criminal justice system is warranted to effect reform efforts.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby direct the Louisiana State Law Institute to study and make recommendations for the revision of the laws regarding criminal procedure, the preservation of forensic evidence, confessions and admissions, the code of evidence, and all other issues regarding the finality and accuracy of criminal convictions in this state.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute work in conjunction with and request information from the Louisiana District Attorneys Association, the Louisiana Public Defender Board, the Louisiana Sheriffs' Association, the Louisiana State Police, the Louisiana Commission of Law Enforcement and the Administration of Criminal Justice, Innocence Project of New Orleans, and any other agencies or associations deemed appropriate by the committee 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 January 1, 2013.