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November 12, 2015

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

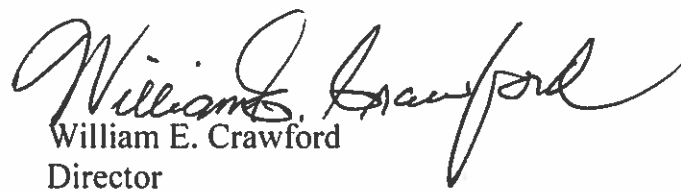
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR 156 of the 2012 Regular Session

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its final report to the legislature in response to 2012 House Concurrent Resolution No. 156, relative to implementing visitation orders in conjunction with support orders.

Sincerely,


William E. Crawford
Director

WEC/puc
Enclosure

cc: Representative Marcus Hunter
Senator Francis Thompson

email cc: David R. Poynter Legislative Research Library
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Secretary of State, Mr. Tom Schedler
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LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE IN
RESPONSE TO HCR NO. 156 OF THE 2012 REGULAR SESSION**

**Relative to Implementing Visitation Orders
in Conjunction with Support Orders**

Prepared for the Louisiana Legislature on

**November 12, 2015
Baton Rouge, Louisiana**

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 156

BY REPRESENTATIVE HUNTER AND SENATOR THOMPSON

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study certain procedures for implementing visitation orders in conjunction with support orders and to report its findings and recommendations in the form of specific proposed legislation to the legislature on or before January 1, 2013.

WHEREAS, R.S. 9:315.25 provides for consideration of custody or visitation matters in any proceeding for child support without having to be specifically pleaded. The court may hear and determine the issue if raised by one of the parties and all parties consent; and

WHEREAS, due to the fact that many child support proceedings are contentious, all parties are not likely to consent to the court considering custody or visitation if raised by a party in a child support proceeding; and

WHEREAS, an unrepresented party in a child support proceeding may not know he is entitled to visitation of a child for whom he is paying child support; and

WHEREAS, visitation of a child by a parent is a fundamental right that should not be prohibited because of a parent's inability to pay costs associated with a court determination of custody or visitation; and

WHEREAS, in order to promote the public policy of fostering relationships between parents and children and in an effort to provide for efficiency, the court should consider custody and visitation without consent of all parties but with proper notice given to all parties of a future court hearing on the

matter of custody or visitation without any additional costs to the party who raises the issue of custody or visitation in a child support proceeding.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study certain procedures for implementing visitation orders in conjunction with support orders and to report its findings and recommendations in the form of specific proposed legislation to the Legislature of Louisiana on or before January 1, 2013.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

**REPORT TO THE LOUISIANA LEGISLATURE ON IMPLEMENTING
VISITATION ORDERS IN CONJUNCTION WITH SUPPORT ORDERS**

HCR NO. 156 OF THE 2012 REGULAR SESSION

I. INTRODUCTION

House Concurrent Resolution (HCR) No. 156 of the 2012 Regular Session requested that the Louisiana State Law Institute "study certain procedures for implementing visitation orders in conjunction with support orders and to report its findings and recommendations in the form of specific proposed legislation..." Given the subject matter of the resolution, it was assigned to the Child Support Committee of the Louisiana State Law Institute for study.

The study resolution cites R.S. 9:315.25 as an important provision that allows for "consideration of custody or visitation matters in any proceedings for child support without [it] having to be specifically pleaded. The court may hear and determine the issue if raised by one of the parties and all parties consent..." The resolution highlights the fact that parties to child support proceedings are often not aware of their right to custody or visitation of a child. Moreover, as the resolution states, it is not unusual that, "all parties are not likely to consent to the court considering custody or visitation if raised by a party in a child support proceeding". This can present a problem for the use of R.S. 9:315.25, which requires the agreement of both parties in order for the provision to be employed. Such obstacles to reaching an agreement can create a significant problem, as children need both parents in their lives. The Law Institute believes that this can best be accomplished through the official setting of child support and the creation of a custody and visitation plan. As the resolution stresses, the "visitation of a child by a parent is a fundamental right..." In order to facilitate this most basic and critical necessity for a child, the Law Institute has studied, "certain procedures for implementing visitation orders *in conjunction* with support orders..." (emphasis added) and presents its solutions below.

After researching the issue and discussing possible solutions, it is the Law Institute's conclusion that the most efficient method for implementing visitation orders in conjunction with support orders is to provide better information to litigants of their right to visitation or custody of a child. The Law Institute proposes the use of two different mechanisms that would easily facilitate the delivery of information to litigants in proceedings for child support; namely, publicizing R.S. 9:315.25 in court and recommending to the Legislature specific, proposed legislation that would provide language for a new notice that would accompany the certified copy of the pleading in child support actions. In short, after having researched the issues presented in the resolution, the Law Institute proposes two solutions. They are discussed in greater detail below.

1 **II. BACKGROUND INFORMATION**

2
3 The number of children who are being raised in fatherless homes has increased
4 significantly from the 1960s.¹ This change to the makeup of the American family has had a
5 dramatic effect on those children who grow up in such households. Statistically, the children of
6 single-parent families are more prone to struggle in school and have increased chances of
7 dropping out of school, becoming a juvenile delinquent, experiencing low self-esteem, using
8 drugs, attempting suicide, and experiencing child pregnancy.² In order to combat these potential
9 detrimental effects to our nation's children, the federal government created the current child
10 support regime in 1975 under Title IV-D of the Social Security Act.³

11
12 The federal Office of Child Support Enforcement (OCSE) ensures the smooth
13 cooperation between the federal and local governments by helping states create and manage their
14 child support programs in accordance with federal law.⁴ Louisiana has received grant money
15 from the OCSE in its implementation of its child support program—Family Independence
16 Temporary Assistance Program, or FITAP. The goal of FITAP is to reduce the number of
17 individuals who require long-term assistance in providing for their children by helping parents
18 receive help in obtaining and maintaining a job.⁵

19
20 As stated above, the child support program is facilitated through a partnership between
21 the federal government and state, local, and tribal governments.⁶ In turn, local governments—
22 including tribal tribunals and state governments—often contract with district attorneys to handle
23 some of the caseload.⁷ In Louisiana, the Department of Children and Family Services (DCFS) is
24 in charge of the Title IV-D program and contracts with approximately 40 district attorneys
25 throughout the state to handle various services.⁸ DCFS also has attorneys on staff and provides

¹ The number of children being raised in such non-traditional homes was counted at 10 million in 1960. The current number of such children now stands at nearly 25 million. *Child Support Handbook: Children Need the Support and Love of Both Parents*, Office of Child Support Enforcement Administration for Children and Families, U.S. Department of Health and Human Services, 6.

² *Child Support Enforcement, Access and Visitation*, (Aug. 13, 2015, 9:34 AM), <http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=186>.

³ *Child Support Handbook*, 2.

⁴ *Id.*

⁵ *Child Support Enforcement, Family Independence Temporary Assistance Program (FITAP)*, <http://www.dcfs.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&nid=163&pnid=158&pid=139>.

⁶ *Id.*

⁷ *Id.*

⁸ The child support enforcement mechanisms that are currently in Louisiana law benefit more than just those individuals who have the greatest financial need. Many of the program requirements of OCSE are provided in R.S. 46:236 and apply to child support cases wherein litigants are required to assign their rights to establish, collect, and enforce child and medical support orders to DCFS and other child support cases where rights have not been assigned.

In cases with child support orders not being enforced by DCFS, R.S. 9:303(A) provides that:

In all new child support orders after January 1, 1994, that are not being enforced by the Department of Children and Family Services, the court shall include as part of the order an

1 services directly. Child support enforcement services are administered from twelve regional
2 offices that serve Louisiana's parishes.⁹ In addition to collecting and remitting child support
3 payments, DCFS must also perform four other tasks: (1) establishing and enforcing support
4 orders, (2) locating noncustodial parents, (3) modifying orders when appropriate, and (4)
5 establishing paternity.

6
7 Even though it may seem counterintuitive, federal law bifurcates child support from
8 custody and visitation.¹⁰ In an attempt to reunite these intimately-related issues, the federal
9 OCSE provides grants to states that develop programs to promote access and visitation, thereby
10 fostering an environment in these states that encourages noncustodial parents to actively
11 participate in their children's lives. Louisiana is one of the states that has received federal
12 money to develop programs to increase involvement of both parents in their children's lives.
13 DCFS Access and Visitation program services are provided in the parishes of Orleans, East
14 Baton Rouge, Jefferson, and Ascension by two attorneys staffed by the grant. In the Federal
15 Fiscal Year 2014 (10/01/2013 – 09/30/2014), a total of 242 clients were served, including 163
16 noncustodial fathers and four noncustodial mothers.¹¹ However, of the total served, the services
17 resulted in the establishment of only 73 parenting plans. In comparison, for the State Fiscal Year
18 2014 – 2015, DCFS reported a total of 246,223 active collection cases and 56,829 active intake
19 cases for a total of 303,052 active child support cases.¹² In the same period, DCFS reported
20 17,981 new child support obligations established and 28,372 new judgments of paternity
21 rendered.¹³ Although the periods compared differ because the Access and Visitation collection
22 data for the current Federal Fiscal Year 2015 is not currently available and the paternity and
23 child support data is based on the State Fiscal Year, the Access and Visitation Program services
24 are very limited in funding, availability, and outcomes as compared to the paternity and child
25 support program.

26
27 It is clear from the program data provided above that less than 1% of the cases with new
28 child support orders established obtain parenting plans through the Access and Visitation
29 program services provided by DCFS. The Louisiana DCFS also refers litigants to private
30 attorneys, legal service providers, and self-help providers for custody matters to be addressed.
31 Nonetheless, in the vast majority of cases brought by DCSF or the district attorneys, child
32 support and medical support judgments are rendered and custody issues are not addressed.

immediate income assignment unless there is a written agreement between the parties or the court
finds good cause not to require an immediate income assignment.

That is, since January 1994, Louisiana has required that all new child support orders that are *not* enforced by the
Department of Children and Family Services, the court include an immediate income assignment, unless there is a
written agreement between the parties or there exists good cause to not require an immediate income assignment.
Thus, practically every child support order must follow R.S. 9:303 and be administered by the state.

⁹ *Child Support, Frequently Asked Questions*,

<http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=185>.

¹⁰ *Child Support Handbook*, 6.

¹¹ *U.S. Department of Health and Human Services, Access and visitation FPLS State Services Portal*,

<https://fpls.dcfsls.gov/avonline/summarydataview.html>.

¹² *Department of Children and Family Services, Child Support Enforcement SFY 2014-2015 Report of Cases, Obligations, and Paternities*.

¹³ *Id.*

1 It is also important to note that the majority of the custodial parents served by DCFS do
2 not have previously established custody orders. Many of these litigants are required to cooperate
3 with DCFS in the establishment of paternity and support orders because they are receiving
4 financial or medical support from the state of Louisiana. These are means-tested programs
5 provided for individuals of limited resources who usually cannot afford private legal
6 representation to address the issue of custody. On account of the limited legal resources
7 available to low-income litigants, the option to have custody and visitation matters addressed in a
8 child support proceeding without the necessity of filing legal pleadings is a valuable and low-
9 cost option for custodial and noncustodial litigants.

10 11 **III. EXISTING LAW FOR CONSIDERING CUSTODY OR VISITATION MATTERS**

12
13 Revised Statute 9:315.25 currently provides that in any proceeding for child support a
14 court can hear and determine any issue relating to the custody or visitation with the child, or
15 both. The matter can be raised by either party to the proceeding.¹⁴ However, in order for a court
16 to do so, all parties must consent to the hearing and determination of the issue.¹⁵ During its
17 research the Law Institute learned that, despite the explicit and accessible language used in the
18 provision, few parties avail themselves of it.

19 20 **A. PUBLICIZING R.S. 9:315.25**

21
22 After having studied the issues of parties generally being unaware of their right to
23 visitation and thereby failing to have the court decide child custody or visitation during child
24 support proceedings, the Law Institute believes that these issues stem from, in part, the public's
25 general ignorance of the existence of R.S. 9:315.25. Unfortunately, despite having been enacted
26 into law in 1999, the number of persons aware of the existence of the provision is low. This has
27 resulted in its underutilization and in litigants failing to fully enjoy visitation rights of their
28 children in a timelier, more cost-efficient manner.¹⁶ Therefore, in an effort to alleviate this
29 current situation, the Law Institute seeks to increase awareness of R.S. 9:315.25. In order to do
30 so, the Law Institute suggests that the Legislature recommend to the Supreme Court of Louisiana
31 that it encourage family court judges to inform parties to a child support proceeding of R.S.
32 9:315.25.

33
34 The benefit of pursuing this solution is that it does not create any new, foreseeable
35 financial burdens for the State. Specifically, it would not require the creation of any new
36 positions, training procedures, or materials. It merely requires that the court make the Statute
37 known to relevant parties. This could be achieved by the courts merely announcing the
38 provisions of the Statute in open court before the litigants. The Law Institute believes, that if
39 judges alert parties to child support proceedings about R.S. 9:315.25, this will go a long way in
40 establishing more custody and visitation orders in child support proceedings.

41
42
43

¹⁴ R.S. 9:315.25.

¹⁵ *Id.*

¹⁶ Acts 1999, No. 447, §1.

1 **B. PROVIDING A NEW NOTICE TO ACCOMPANY PLEADING IN CHILD**
2 **SUPPORT ACTIONS**
3

4 In addition to suggesting that individuals be informed in court, by the court, of their right
5 to have visitation and custody issues, or both, heard and determined during child support
6 proceedings, the Law Institute also recommends that the citation or notice currently issued by the
7 clerk of court in child support proceedings be modified. The Law Institute has drafted specific
8 legislation—R.S. 13:3494 and 3495—that require that a notice be included with child support
9 actions. [See attached.] It should be noted that R.S. 13:3495 is similar to R.S. 13:3493 in that
10 the notice that will accompany a child support action is intended to be directory and not
11 mandatory. Thus, just as the failure to give the notice provided for in R.S. 13:3492 does not
12 invalidate divorces rendered pursuant to Civil Code Article 102, so, too, child support judgments
13 that are rendered pursuant to R.S. 9:315 et seq. will not be invalid if the notice required by R.S.
14 13:3494 is not given. In short, the notice found in R.S. 13:3494 will not be mandatory for child
15 support judgments, and its absence will not invalidate an otherwise valid child support judgment.

16 It is the Law Institute's intention that the clerks of court in Louisiana will include the
17 notice language of R.S. 13:3494 into any existing notice issued with legal pleadings in child
18 support actions along with the other relevant, helpful information they currently provide to
19 litigants. In an effort to aid litigants as much as possible, references to relevant information,
20 such as a citation to www.lawhelp.org/LA, have been included in the official comment that will
21 accompany proposed R.S. 13:3494. The Law Institute submits that the inclusion of the notice
22 will not create a significant financial burden or reduction in the efficiency of the clerks of court,
23 as it is anticipated that it will not require an additional page or separate mailing. This notice will
24 enable litigants to be informed of R.S. 9:315.25 before the court proceeding.
25

26 **IV. CONCLUSION**
27

28 After having researched and discussed the issues presented in HCR 156 of the 2012
29 Regular Session, the Law Institute has decided upon a two-fold solution. First, the Law Institute
30 suggests to the Legislature that it encourage family court judges to alert parties to a child support
31 action of the existence of R.S. 9:315.25. Second, the Law Institute proposes specific legislation
32 to the Legislature that includes a requirement that a notice also be sent to litigants. In the current
33 economic environment, these two solutions, which are aimed at increasing the litigants'
34 awareness of their fundamental right to address issues of custody and visitation with a child
35 would adequately apprise parties of their rights without creating any significant new costs for the
36 state. Additionally, these two solutions would be relatively easy to implement.

Proposed Legislation for 2016 Regular Legislative Session

Regular Session, 2016

HOUSE BILL NO. XXX

BY REPRESENTATIVE XXXX– Draft 11.12.2015 – Child Support

(On Recommendation of the Louisiana State Law Institute)

CHILD SUPPORT: Provides for notice in child support actions

1 AN ACT

2 To enact R.S. 13:3494 and 3495, relative to child support; to require notice; to provide for the
3 contents of the notice; to provide information to parties; to provide for hearing custody
4 and visitation issues; to provide for the validity of judgments; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 13:3494 and 3495 are hereby enacted to read as follows:

8 §3494. Child support notice; custody; visitation

9 A. A notice in a child support action shall be signed by the clerk of court or his
10 deputy with an expression of his official capacity and under the seal of his office,
11 accompanied by a certified copy of the pleading, and shall contain all of the following:

12 (1) The date of issuance.

13 (2) The title of the cause.

1 (3) The name of the person to whom it is addressed.

2 (4) The title and location of the issuing court.

3 (5) Statements to the following effect:

4 (a) The person served is being sued for child support.

5 (b) The person served may be entitled to raise issues relating to child custody or
6 visitation, or both.

7 B. The notice required in this Section shall provide substantially as follows and be
8 incorporated in every citation and notice issued:

9 ATTENTION:

10 YOU ARE BEING SUED FOR CHILD SUPPORT

11 (and)

12 YOU MAY HAVE THE RIGHT TO RAISE ISSUES IN THIS PROCEEDING
13 RELATING TO CUSTODY OF THE CHILD(REN) OR VISITATION WITH THE
14 CHILD(REN). ACCORDING TO LOUISIANA LAW (R.S. 9:315.25), THE COURT MAY
15 HEAR AND DECIDE CHILD CUSTODY OR VISITATION ISSUES IN A CHILD SUPPORT
16 PROCEEDING, PROVIDED THAT THE JUDGE AND ALL PARTIES AGREE TO HAVE
17 THE ISSUE(S) HEARD. IF ALL DO NOT AGREE, YOU WILL HAVE TO FILE LEGAL
18 PLEADINGS TO HAVE THE COURT DECIDE THE ISSUE(S) RELATING TO CHILD
19 CUSTODY OR VISITATION. NOTE THAT YOUR DECISION TO RAISE THESE ISSUES
20 MAY NOT BE USED TO DELAY THE CHILD SUPPORT PROCEEDINGS.

21 (and)

22 IF YOU DO NOT UNDERSTAND THIS NOTICE OR ARE UNSURE WHAT TO DO,
23 YOU SHOULD SEEK LEGAL ADVICE FROM AN ATTORNEY OR AN ORGANIZATION

1 THAT PROVIDES LEGAL SERVICES IN YOUR COMMUNITY.

2 Comment – 2016

3 This provision is new. It is intended to facilitate the use of R.S. 9:315.25 by litigants in
4 child support proceedings by increasing general knowledge of its existence. It is anticipated that
5 increased use of R.S. 9:315.25 will provide both custodial and non-custodial parents the option
6 to obtain a child custody judgment in a child support proceeding without filing any additional
7 proceedings and without the investment of further court or litigant resources. Clerks of court are
8 encouraged, when issuing the above notice, to append to it any information regarding statewide
9 and local pro bono or self-help providers, including local legal service providers, legal service
10 hotlines, self-help centers, and community legal clinics. Statewide resources include, Louisiana
11 State Bar Association Access to Justice (lsba.org/ATJ/ATJSelfrepresentedLitigants.aspx),
12 Louisiana Help (www.louisianalawhelp.org), and Louisiana Civil Justice Center (1-800-310-
13 7029 or laciviljustice.org).

14 §3495. Child support notice: directory only

15 A. The notice required by R.S. 13:3494 is directory and not mandatory.

16 B. All judgments of child support rendered pursuant to R.S. 9:315 et seq., in which
17 notice was not effected in accordance with R.S. 13:3494, shall not, for that reason alone, be
18 declared invalid or premature, as this provision is remedial and shall be applied retroactively.

19 DIGEST

20 The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no
21 part of the legislative instrument.
22

23 AUTHOR

24 HB NO. XXX

25 **Abstract:** Authorizes clerks of court to notify parties of their right to raise custody and
26 visitation issues in a child support action.
27

28 Present law (R.S. 9:315.25) provides that in any proceeding for child support a court can hear
29 and determine any issue relating to the custody or visitation with the child. However, present
30 law does not require notice relative to child visitation or custody be given during child support
31 proceedings.
32

33 Proposed law (R.S. 13:3494) requires clerks of court to include certain information regarding a
34 party's right to raise custody and visitation when it issues a notice in a child support action.
35
36
37

1 Proposed law (R.S. 13:3494) provides language to be included in the notice.

2

3 Proposed law (R.S. 13:3495) provides that the notice is directory only and the failure to issue it
4 does not invalidate an otherwise valid child support judgment.

5

6 (Adds R.S. 13:3494 and 3495)