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March 9, 2018

Representative Taylor Barras
Speaker of the House of Representatives
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Baton Rouge, Louisiana 70804

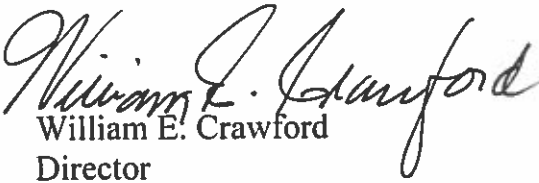
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HOUSE CONCURRENT RESOLUTION NO. 10 OF THE 2017 REGULAR SESSION

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to paternity and birth certificates.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Stephen C. Dwight

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
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**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR NO. 10 OF THE 2017 REGULAR SESSION**

Relative to paternity and birth certificates

Prepared for the
Louisiana Legislature on

March 9, 2018

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
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Andrea B. Carroll, Reporter

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2017 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 10

BY REPRESENTATIVE DWIGHT

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding Louisiana laws governing paternity and birth certificates.

WHEREAS, while it is of the utmost importance to ensure that Louisiana children are supported, there is also a need to protect men who are not biological fathers from the obligations of paternity and child support; and

WHEREAS, Civil Code Article 185 provides that the husband of the mother is presumed to be the father of a child born during the marriage or within three hundred days from the date of the termination of the marriage; and

WHEREAS, R. S. 40:34.5(A) provides that if the child is born to a mother who either is married or was married within three hundred days prior to the birth of the child, the full name of the father shall be recorded in the same manner provided for the recordation of the surname of the child under Louisiana law; and

WHEREAS, given these two legal principles, there are circumstances which would mandate that a mother falsely and knowingly identify an ex-husband as the biological father on a child's birth certificate.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that the Louisiana State Law Institute study the laws governing paternity and birth certificates to establish procedures to protect those husbands and ex-husbands who are not the biological fathers of children.

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, 2018.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

March 9, 2018

To: 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
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**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR NO. 10 OF THE 2017 REGULAR SESSION**

House Concurrent Resolution No. 10 of the 2017 Regular Session urged and requested the Louisiana State Law Institute to study the laws governing paternity and birth certificates to establish procedures to protect husbands and ex-husbands who are not the biological fathers of children. Pursuant to this request, the Law Institute assigned the project to the Marriage-Persons Committee, which is led by Professor Andrea B. Carroll as Reporter and is comprised of judges, practitioners, and law professors with expertise in this area.

The Committee met and conducted research with regard to the approaches of other states and ultimately recommended the addition of a provision that would allow the mother, her husband or former husband presumed to be the father of a child, and the biological father of the child to execute a three-party acknowledgment of paternity. The Committee's proposals also direct the state registrar to record the proper information on the child's birth certificate and, in the substantive law of filiation, provide that the husband or former husband is not presumed to be the father of the child and that the biological father of the child is presumed to be the child's father. The Law Institute submitted the Committee's recommendations to the legislature as House Bill No. 147 of the 2018 Regular Session, a copy of which is appended to this report.

2018 Regular Session

HOUSE BILL NO. 147

BY REPRESENTATIVE DWIGHT

(On Recommendation of the Louisiana State Law Institute)

FAMILY LAW: Provides for the filiation of a child

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AN ACT

To amend and reenact R.S. 40:34.2(2)(a)(introductory paragraph), 34.5(A), and 46.4(A), to enact Civil Code Article 190.1 and R.S. 40:34.5.1 and 34.5.2, and to repeal R.S. 40:46.9, relative to filiation; to provide for presumptions of paternity; to provide for the acknowledgment of a child; to provide relative to the birth certificate of the child; to provide for a three-party acknowledgment of paternity; to provide for the creation of a form; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:34.2(2)(a)(introductory paragraph), 34.5(A), and 46.4(A) are hereby amended and reenacted and R.S. 40:34.5.1 and 34.5.2 are hereby enacted to read as follows:

§34.2. Original birth certificate; required contents; name of child

* * *

(2) Surname.

(a) ~~Except~~ Unless otherwise provided by law and except as otherwise provided in Subparagraph (c) of this Paragraph, if the child is born to a mother who either is married or was married within three hundred days prior to the birth of the child, the surname of the child shall be recorded in accordance with the following requirements:

* * *

1 Revision Comments - 2018

2 The "unless otherwise provided by law" clause in Subparagraph (2)(a) refers
3 to the special rule in R.S. 40:34.5.1, which provides for the possibility of a different
4 surname of the child when the mother, the husband or former husband of the mother,
5 and the biological father of the child execute the three-party acknowledgment under
6 that statute.

7 * * *

8 §34.5. Original birth certificate; required contents; name of father

9 A. If the child is born to a mother who either is married or was married
10 within three hundred days prior to the birth of the child, the full name of the father
11 shall be recorded in the same manner provided for the recordation of the surname of
12 the child in R.S. 40:34.2(2)(a) and (c), unless otherwise provided by law.

13 * * *

14 Revision Comments-2018

15 The "unless otherwise provided by law" clause in Subsection A refers to the
16 special rule in R.S. 40:34.5.1, which provides for the possibility of a different
17 surname of the child when the mother, the husband or former husband of the mother,
18 and the biological father of the child execute the three-party acknowledgment under
19 that statute.

20 §34.5.1. Three-party acknowledgment of paternity; effect

21 Notwithstanding the provisions of R.S. 40:34.2(2)(a) and (c) and 34.5(A), the
22 husband or former husband presumed to be the father of the child, the mother, and
23 the biological father of the child may execute a three-party acknowledgment of
24 paternity pursuant to Civil Code Article 190.1 on the form provided by the Louisiana
25 Department of Health. Upon receipt of that form, the state registrar shall:

26 (1) For the father of the child, record the full name of the biological father.

27 (2) For the surname of the child, record the maiden name or surname of the
28 mother, at her discretion. However, if the biological father and the mother agree, the
29 state registrar shall record as the surname of the child the maiden name or surname
30 of the mother, the surname of the biological father, or a combination of the surname
31 of the biological father and the maiden name or surname of the mother.

1 §34.5.2. Form and notice for three-party acknowledgment of paternity

2 The Louisiana Department of Health, office of public health, shall develop
3 a form, and a notice of consequences of executing the form, for the purposes of
4 implementing R.S. 40:34.5.1. The form shall include the following:

5 (1) A declaration in authentic form by the husband or former husband
6 presumed to be the father of the child that he is not the father of the child.

7 (2) A declaration in authentic form by the biological father that he is the
8 father of the child.

9 (3) A declaration in authentic form by the mother, husband or former
10 husband presumed to be the father of the child, and the biological father of the child
11 that each understands the form and has executed it voluntarily, and that each has
12 received written notice of the consequences of executing the form.

13 * * *

14 §46.4. Change of paternal filiation; disavowal of paternity or three-party
15 acknowledgment

16 A. If the surname of the child, the name of the father of the child, or other
17 information pertaining to the father as it was entered on the birth certificate was that
18 of the man who was presumed to be the father of the child under Civil Code Article
19 185, 186, or 195, and if the man or his successor, ~~after the birth certificate was~~
20 ~~prepared;~~ obtains a final and definitive judgment disavowing paternity of the child
21 or the parties execute the three-party acknowledgment provided in Civil Code Article
22 190.1, the state registrar, upon receipt of a certified copy of that judgment or three-
23 party acknowledgment, shall amend the birth certificate as follows:

24 (1) ~~Strikethroughs:~~ Strike through the surname of the child, the name of the
25 father of the child, and all other information pertaining to him, in particular, his age,
26 race, ethnicity, residence, birthplace, and social security number.

27 (2) Additions:

28 (a) If the judgment of disavowal does not trigger the presumption of
29 paternity established in the first sentence of the second paragraph of Civil Code

1 Article 186, the state registrar shall amend the birth certificate as follows: for the
2 surname of the child, enter the maiden name or surname of the mother of the child,
3 at her discretion.

4 (b) If the judgment of disavowal action triggers the presumption of paternity
5 established in the first sentence of the second paragraph of Civil Code Article 186,
6 the state registrar shall amend the birth certificate as follows:

7 (i) For the surname of the child, enter either that of the second husband of
8 the mother of the child or, if both he and the mother agree, her maiden name or
9 surname or a combination of his surname and her maiden name or surname.

10 (ii) For the name of the father of the child, his age, race, ethnicity, residence,
11 birthplace, and social security number, enter those of the second husband of the
12 mother.

13 (c) If the state registrar receives the three-party acknowledgment provided
14 in R.S. 40:34.5.1, the state registrar shall amend the birth certificate as follows:

15 (i) For the surname of the child, enter the maiden name or surname of the
16 mother, at her discretion. However, if the biological father and the mother agree, the
17 state registrar shall enter as the surname of the child the maiden name or surname of
18 the mother, the surname of the biological father, or a combination of the surname of
19 the biological father and the maiden name or surname of the mother.

20 (ii) For the name of the father of the child, his race, ethnicity, residence,
21 birthplace, and social security number, enter those of the biological father.

22 * * *

23 Section 2. Civil Code Article 190.1 is hereby enacted to read as follows:

24 Art. 190.1. Three-party acknowledgment; alternative to disavowal; time period

25 The husband or former husband presumed to be the father of the child, the
26 mother, and the biological father of the child may execute a three-party
27 acknowledgment in authentic form declaring that the husband or former husband is
28 not the father of the child and that the biological father is the father of the child.
29 When a three-party acknowledgment is executed, the husband or former husband is

1 not presumed to be the father of the child. The biological father who has
 2 acknowledged the child by three-party acknowledgment is presumed to be the father
 3 of the child.
 4 To have effect, this acknowledgment shall be executed no later than ten years
 5 from the day of the birth of the child but never more than one year from the day of
 6 the death of the child. These time periods are preemptive.
 7 Revision Comments - 2018
 8 For the method of changing the child's birth certificate, see R.S. 40:34.5.1
 9 and 34.5.2.
 10 Section 3. R.S. 40:46.9 is hereby repealed in its entirety.

 DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 147 Original

2018 Regular Session

Dwight

Abstract: Provides for the filiation and birth certificate of a child when the husband is not the biological father of the child.

Present law (C.C. Arts. 185-190) provides that the husband of the mother is presumed to be the father of the child born during the marriage or within 300 days from the date of termination of the marriage and provides for the disavowal of paternity.

Proposed law (C.C. Art. 190.1) retains present law but provides that the husband or former husband of the mother is not presumed to be the father of the child if the parties execute a three-party acknowledgment regarding the paternity of the child. Proposed law further provides that the person acknowledging that he is the biological father of the child is presumed to be the father.

Proposed law provides a ten-year preemptive period from the day of the birth of the child and a one-year preemptive period from the day of the death of the child for the execution of this acknowledgment.

Present law (R.S. 40:34.2) provides for the contents of the birth certificate of a child.

Proposed law retains present law but provides an exception for the surname of a child born to a married mother if the parties have executed a three-party acknowledgment.

Present law (R.S. 40:34.5) provides for the name of the father on the birth certificate of a child.

Proposed law retains present law but provides an exception for the information pertaining to the father of a child born to a married mother if the parties have executed a three-party acknowledgment.

Proposed law (R.S. 40:34.5.1) provides that the husband or former husband presumed to be the father of a child, the mother, and the biological father may execute a three-party

acknowledgment of paternity. Proposed law then directs the state registrar to record the information on the birth certificate of the child.

Proposed law (R.S. 40:34.5.2) requires the La. Dept. of Health to develop a form for the three-party acknowledgment.

Present law (R.S. 46.4) provides for the amendment of a birth certificate of a child when there is a change of paternal filiation.

Proposed law retains present law and further provides for the amendment of a birth certificate upon the execution of a three-party acknowledgment. Proposed law then directs the state registrar to record the information on the birth certificate of the child.

Present law (R.S. 40:46.9) authorizes the amendment of a birth certificate of a child if the husband and the mother lived separate and apart for 180 days prior to conception and did not reconcile and the biological father is someone other than the husband of the mother.

Proposed law repeals present law.

(Amends R.S. 40:34.2(2)(a)(intro. para.), 34.5(A), and 46.4(A); Adds C.C. Art. 190.1 and R.S. 40:34.5.1 and 34.5.2; Repeals R.S. 40:46.9)