



LOUISIANA STATE LAW INSTITUTE

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August 24, 2023

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 109 OF THE 2021 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to abortion or sterilization of an interdict.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge", with a long horizontal stroke extending to the right.

Guy Holdridge
Director

cc: Representative Charles Owen

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 109 OF THE 2021 REGULAR SESSION**

Relative to consent of a curator to abortion or sterilization

Prepared for the
Louisiana Legislature on

August 24, 2023

Baton Rouge, Louisiana

LOUISIANA STATE LAW INSTITUTE MARRIAGE-PERSONS COMMITTEE

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Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

Jessica G. Braun, Staff Attorney

2021 Regular Session

HOUSE RESOLUTION NO. 109

BY REPRESENTATIVE CHARLES OWEN

A RESOLUTION

To urge and request the Louisiana State Law Institute to study provisions of law relative to consent of a curator to an abortion or sterilization of an interdict, and to report its findings to the House of Representatives of the Legislature of Louisiana no later than February 1, 2022.

WHEREAS, persons with disabilities have equal personal dignity and human rights as all other individuals; and

WHEREAS, any invasion of the autonomy of a person with a disability must have a strong legal justification; and

WHEREAS, the practice of sterilizing individuals with disabilities and aborting pregnancies of persons with disabilities without their consent began based on flawed eugenic principles of hereditary inferiority; and

WHEREAS, the legislature rejects forced sterilization and forced abortion based on negative stereotypes about persons with disabilities, as such stereotypes are immoral and inconsistent with the values of the citizens of this state; and

WHEREAS, Code of Civil Procedure Article 4566 allows a person with a disability who has been interdicted or placed under a continuing tutorship to be forcibly sterilized or receive a forced abortion with the approval of a judge; and

WHEREAS, the current law in Louisiana establishes no process, legal standard, or burden of proof and provides inadequate legal protections for the person with a disability who is faced with the possibility of a forced sterilization or forced abortion; and

WHEREAS, in the absence of a governing legal standard, the judicial authorization of a forced sterilization or forced abortion may be based on stigma, personal bias, or negative stereotypes about persons with disabilities; and

WHEREAS, the current law allowing forced sterilization and forced abortion is inconsistent with fundamental principles of human rights and equal dignity for all individuals; and

WHEREAS, the law should include a set of robust procedural protections for persons with disabilities who have been interdicted or placed under a continuing tutorship; and

WHEREAS, procedural protections should include specific requirements to assess the consent and wishes of the individual with a disability; and

WHEREAS, the procedural protections should include notice, the appointment of a curator or supported decision-maker, and appointed counsel; and

WHEREAS, the law should require specific timelines in the case of a legal proceeding seeking authorization for abortion; and

WHEREAS, the law should enumerate specific requirements of proof, allocate the burden of proof, and set the standard to which each fact must be proven; and

WHEREAS, the law should be written so as not to interfere with necessary medical care.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana urges and requests the Louisiana State Law Institute to study provisions of law relative to the consent of a curator to an abortion or sterilization of an interdict, and to report its findings to the House of Representatives no later than February 1, 2022.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to include representatives of Disability Rights Louisiana and Louisiana Right to Life, to the extent not already included in the study group.

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

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

August 24, 2023

To: Representative Clay Schexnayder
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 109 OF THE 2021 REGULAR SESSION**

House Resolution No. 109 of the 2021 Regular Session requested that the Louisiana State Law Institute study provisions of law relative to consent of a curator to an abortion or sterilization of an interdict. Specifically, the resolution noted that current law in Louisiana establishes no process, legal standard, or burden of proof for sterilization or abortion procedures and provides inadequate legal protections for a person with a disability who is faced with the possibility of a forced sterilization or forced abortion. The resolution also asked that representatives of Disability Rights Louisiana and Louisiana Right to Life be included in the Law Institute's study. In response to this request, the Law Institute assigned the resolution to the Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter.

The Marriage-Persons Committee convened to discuss this resolution on multiple occasions beginning in 2021. Louisiana Right to Life provided background information and had representatives in attendance at those discussions. Additionally, Disability Rights Louisiana actively participated in every meeting discussing this resolution and shared client stories. The Committee was persuaded that Louisiana law provides inadequate safeguards against forced sterilization and abortion. Accordingly, after conducting research in all fifty states and reviewing model language in an effort to improve Louisiana law, the Committee found Michigan's law, in particular, instructive. In consultation with medical professionals brought to the Committee by Disability Rights Louisiana, the Committee began drafting new Louisiana law with the purpose of adding due process protections for interdicts facing these forced procedures. At the time of the 2022 Regular Session, the Committee had a draft bill that was not yet fully developed; further meetings were to take place to refine and improve the bill, accounting for all issues and attempting to achieve a balance between protecting the health of an interdict and safeguarding the interdict's individual rights and freedoms.

Although the Marriage-Persons Committee's draft was inchoate and the Law Institute process not complete, the language of the draft was used as the basis of House Bill No. 146 of the 2022 Regular Session. The bill was met with heavy resistance at the Committee level, primarily from parents of interdicts, who noted that the impact of the bill would be to greatly increase costs for them, in part because of additional procedures the bill recommended in order to increase due process for the interdicted individual. The bill was ultimately defeated on the House floor.

After the 2022 Regular Session, the Marriage-Persons Committee reflected upon the objections to House Bill No. 146, current developments in federal and state law relating to abortion (effectively prohibiting it in a way that had not been the law at the time of the Committee's draft),

and Louisiana's Supported Decisionmaking Agreement Act, which was passed in 2020 and aims to give interdicts greater involvement in decisions affecting their health and well-being. Although the Committee recognizes that Louisiana interdiction law is not perfect, it recommends no change to Louisiana law given the legal, political, and economic climate at this time.