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January 6, 2025

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 192 OF THE 2024 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to adoption proceedings.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/mcw

Enclosure

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

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CHILDREN'S CODE COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE
TO HR NO. 192 OF THE 2024 REGULAR SESSION**

Relative to adoption proceedings

Prepared for the
Louisiana Legislature on

January 6, 2025

Baton Rouge, Louisiana

LOUISIANA STATE LAW INSTITUTE CHILDREN'S CODE COMMITTEE

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Richard M. Pittman, Reporter
Jessica G. Braun, Staff Attorney

2024 Regular Session

HOUSE RESOLUTION NO. 192

BY REPRESENTATIVE BERAULT

A RESOLUTION

To authorize and direct the Louisiana State Law Institute to study adoption proceedings relative to surrendering a child and to report its findings to the legislature no later than January 6, 2025.

WHEREAS, the Children's Code refers to surrendering a child for purposes of placing a child for adoption; and

WHEREAS, in order to have a more positive association with adoption proceedings, the Children's Code, and all other provisions of law, should substitute language on surrendering a child for adoption to placing a child for adoption; and

WHEREAS, according to Civil Code Article 1918, unemancipated minors do not have the capacity to contract, and any contract with a minor may be declared null by a court; and

WHEREAS, Children's Code Article 1113 provides that a minor may surrender the minor's child to an agency without the consent of the parents or the tutor of the minor; and

WHEREAS, the parents of the minor should be involved in the decisionmaking process for all adoptions, including agency adoptions and intra-family adoptions; and

WHEREAS, the Act of Surrender under Children's Code Article 1122 recites that the Act of Surrender is not being executed earlier than the third day following the birth of the child if it is an agency adoption or the fifth day following the birth of the child if the adoption is a private adoption; and

WHEREAS, in the best interests of the mental and physical health of the surrendering mother, the Act of Surrender should be executed at the same time regardless of whether the adoption is conducted by an agency or is a private adoption; and

WHEREAS, the Act of Surrender under Children's Code Article 1122 should recite that the surrendering parent is aware that, upon execution, the adoption is irrevocable; however, under Children's Code Article 1148, the surrendering parent has ninety days to revoke the surrender if the surrendering parent is a victim of fraud or duress; and

WHEREAS, the Act of Surrender under Children's Code Article 1122 should declare if the child being placed for adoption is an "Indian Child" as defined by Children's Code Article 116 and if the parent is on active duty with any branch of the military as of the date of surrender; and

WHEREAS, the fifteen-day period that an alleged father has to oppose the adoption of his alleged child under Children's Code Article 1137 does not allow for proper discovery and is likely to be more effective if the time period is extended; and

WHEREAS, in order to protect an alleged father, there should be additional measures under Children's Code Article 1135 to support the surrendering mother's allegations that the father is unknown and that the mother has made a diligent effort to identify him; and

WHEREAS, the court should establish a standard that the mother is required to meet in order to prove that the father is unknown and that the mother has made a diligent effort to identify him; and

WHEREAS, Children's Code Article 1137 provides for the notice of opposition to the adoption for an alleged or adjudicated father; and

WHEREAS, a presumed father is not afforded the same notice under Children's Code Article 1137, because the adoption proceedings are governed by Children's Code Articles 1004 and 1015; and

WHEREAS, in the interest of judicial proceedings, both presumed and alleged fathers should be afforded adequate notice; and

WHEREAS, under Children's Code Article 1138, if the alleged or adjudicated father has established his parental rights, the court may order the alleged or adjudicated father to pay the adoption agency for costs incurred while caring for the child; and

WHEREAS, the court should consider ordering the alleged or adjudicated father to pay a sum of financial support to an independent adoptive family who keeps the child for the duration of the opposition; and

WHEREAS, under Children's Code Article 1138, proof of the father's substantial commitment to parental responsibilities should be focused on his efforts as a father as opposed to efforts of his family members; and

WHEREAS, a child could bond with the prospective adoptive family if the child has lived with the prospective adoptive family for a significant period of time; and

WHEREAS, the court should consider the recommendations of a child custody expert when ordering reunification of a child with the parent; and

WHEREAS, Children's Code Article 1175 should be used only in cases where completing a home study is not practicable; and

WHEREAS, Children's Code Article 1175 is an available avenue for prospective adoptive parents to place a child in their home without completing a home study; and

WHEREAS, Children's Code Article 1200 provides for permissible reimbursements of expenses to a surrendering parent; and

WHEREAS, Children's Code Article 1200 should only allow for retroactive expenses to a surrendering parent if special conditions exist, which should be clearly disclosed and approved by the court prior to disbursement; and

WHEREAS, Children's Code Article 1209 provides that intervention in agency adoption proceedings shall be limited to persons having a substantial caretaking relationship with the child or any other party in interest; and

WHEREAS, in Children's Code Article 1209, the phrase "any other person that the court finds to be a party in interest" should be removed as it is overly broad, and language authorizing intervention by an individual who shows substantial evidence that the adoption is not in the best interest of the child should be included; and

WHEREAS, Children's Code Article 1223 allows for permissible reimbursement of expenses to a birth mother, but also should prohibit a birth mother from accepting payment from more than one potential adoption petitioner or agent; and

WHEREAS, while Children's Code Article 1245 provides for cases in which parental consent is not necessary for an adoption, the grounds for termination of parental rights under Children's Code Article 1015(1) through (4) also should be taken into consideration; and

WHEREAS, in the Children's Code, the authority of the Department of Children and Family Services is not clearly outlined, and there should be specific rules and guidelines outlining the authority of the department in adoption proceedings.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to study adoption proceedings relative to surrendering a child and to report its findings to the legislature no later than January 6, 2025.

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

January 6, 2025

To: Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HR NO. 192 OF THE 2024 REGULAR SESSION**

House Resolution No. 192 of the 2024 Regular Session authorizes and directs the Louisiana State Law Institute “to study adoption proceedings relative to surrendering a child and to report its findings to the legislature.” In fulfillment of this request, the Law Institute assigned the project to its Children's Code Committee, which operates under the direction of Professor Richard M. Pittman as Reporter.

From the language of the resolution and in reviewing House Bill No. 855 by Representative Berault, the Committee identified three main areas of concern. The first area involves the rights of fathers, as it appears in the law that fathers have fewer rights than mothers and issues arise when a mother refuses to identify the father. The Committee also discussed the actions that constitute diligent efforts to identify fathers and noted possible gaps in notice of the adoption to certain types of fathers. The second issue identified by the Committee involves the timing of the surrender and revocation options. Initial discussion revolved around whether Louisiana has created a more attractive environment for adoptions by paying for expenses and removing any revocation period. The third and final issue immediately identified by the Committee is the need for uniform judicial standards in adoption proceedings.

The Committee agreed to conduct extensive research related to the identified issues and continue discussions of best practices and possible amendments at their upcoming meetings. A final report will be submitted to the Legislature after the Committee receives approval of any recommendations from the Law Institute's Council.