



# **Louisiana's Justice Reinvestment Reforms**

## **Practitioners' Guide**

**August 1, 2017**

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## Introduction

This Practitioners' Guide provides in-depth descriptions of how Louisiana's Justice Reinvestment reforms—Senate Bills [16](#), [139](#), [220](#), and [221](#) and House Bills [116](#), [249](#), [489](#), [519](#), [680](#), and [681](#) of 2017—change state laws. The Louisiana Department of Corrections offers it as a resource to courtroom attorneys, corrections and law enforcement practitioners, and individuals affected by the state's criminal justice system. For each change in state law, this guide identifies the relevant bill, the statutes affected, the changes from prior law, the effective date of the changes, and whether the changes apply prospectively or retroactively.

### ***Background***

- ***Creation of the Louisiana Justice Reinvestment Task Force***

Aiming to control prison population growth and recalibrate the state's correctional investments to ensure the best possible public safety returns, the Louisiana State Legislature in 2015 passed [House Concurrent Resolution 82](#), establishing the inter-branch Louisiana Justice Reinvestment Task Force. A bipartisan expert panel of lawmakers, courtroom practitioners, law enforcement officials, and community members, chaired by Department of Public Safety & Corrections Secretary Jimmy LeBlanc, the task force examined the state's criminal justice system and recommended strategic statutory changes to get more public safety for each dollar spent.

- ***Findings that Shaped the Task Force's Recommendations for Reform***

In their [March 16, 2017 final report](#), the task force found that, with the highest imprisonment rate in the United States, annual corrections spending at two-thirds of a billion dollars, and high recidivism rates, Louisiana taxpayers were not getting a good public safety return on investment. A chief reason Louisiana leads the nation in imprisonment is that it admits people to prison for nonviolent offenses at a rate far higher than other states. The task force found that Louisiana sent people to prison for drug, property, and other nonviolent crimes at twice the rate of South Carolina and three times the rate of Florida, even though the states had nearly identical crime rates.

More than half of those sent to prison in 2015 had failed on community supervision. Among the rest—those sentenced directly to prison rather than probation—the top 10 crimes were all nonviolent, the most common by far being drug possession. Courts sent one in three people convicted of felonies to prison in 2015, a substantial increase from 10 years prior. The task force found that prison alternatives like probation and drug courts were limited by funding and restrictions in state law.

Lengthy prison terms also drove up the number of people behind bars. By the end of 2015, nearly 20 percent of those in Louisiana's prisons had been there longer than 10 years. Prison sentences for common nonviolent crimes had gotten longer, and the committee on parole was hearing fewer cases, partly due to dozens of new parole restrictions passed by the Legislature.

Referencing the best research in the field, the task force found that successful probationers and parolees were supervised in the community well past the point when they were most likely to reoffend. Average probation officer caseloads were too large to manage. Rewards for those who comply with supervision rules and programming were un-motivating, and sanctions for violating conditions were inconsistently applied and often more disruptive than necessary to job and family responsibilities.

State budgetary decisions were disconnected from the research. Spending on prisons dwarfed investments in effective prison alternatives, programs that reduce recidivism, and services that support crime victims. The task force also found that the justice system was often inaccessible for victims and created too many barriers for those convicted of crimes, undermining both public safety and trust in the system.

### ***The Justice Reinvestment Legislation***

Six Republicans, two Democrats, and one Independent sponsored the Justice Reinvestment package of ten bills, which earned endorsements from the state District Attorneys association, business and faith leaders, and diverse coalitions of practitioners, advocates, and community members. The bills passed with large majorities in the House and Senate, and were signed into law by Governor Edwards on June 15, 2017.

The bipartisan reform package is designed to steer people convicted of less serious crimes away from prison, strengthen alternatives to incarceration, reduce prison terms for those who can be safely supervised in the community, and remove barriers to successful reentry. The task force and Department of Corrections project that the bills will reduce the prison and community supervision populations by 10 and 12 percent, respectively, by 2027. Assuming Division of Probation & Parole staffing levels remain constant, the drop in community supervision population would reduce average caseload sizes from 139 to 119 cases per officer.

The decline in the number of prisoners would save Louisiana taxpayers an estimated \$262 million over the next ten years. The legislation designates seventy percent of the savings as a bona fide obligation of the state to carry over into the next fiscal year budget to reinvest in programs and services that reduce recidivism and support victims of crime.

Specifically, Louisiana's Justice Reinvestment bills do the following (described in more detail throughout this Practitioners' Guide):

**SB 16** by Senator Dan Claitor (R) permits most people sentenced to life as juveniles to be considered for parole after 25 years in prison.

**SB 139** by Senator Danny Martiny (R) moves up the eligibility dates for parole and good time release and extends eligibility to certain inmates; authorizes administrative parole release without a hearing for those convicted of nonviolent crimes; authorizes increased credits for time off of prison terms for participation in recidivism reduction and employment programs; creates a medical furlough so certain inmates can receive intensive hospital or community-based care; expands eligibility for probation and other prison alternatives; reduces the maximum probation term from five to three years; creates earned compliance credits that can reduce supervision terms by up to half for those who fulfill their conditions; caps jail time as a sanction for supervision violations at 15, 30, and 45 days for first, second, and subsequent sanctions, respectively; and expands the list of violations eligible for those shorter sanctions.

**SB 220** by Senate President John Alario (R) tailors sentences for drug offenses by weight, trimming penalties for possession or sale of small amounts; reduces penalties for some theft offenses; raises the felony theft threshold from \$500 or \$750, depending on the offense, to \$1,000; simplifies theft and burglary crimes; eliminates mandatory minimum sentences and reduces maximum sentences for several nonviolent offenses; and creates a task force to study the creation of a new felony class system.

**SB 221** by Senate President Alario reduces habitual offender penalties, considered far out of step with other states, by lowering mandatory minimum sentences for those on their second or third felony convictions and eliminating life sentences for fourth and subsequent nonviolent offenses.

**HB 116** by Representative Stephen Dwight (R) streamlines registration for victim notification and ensures that victims can request certain safety measures as a condition of the prisoner's release.

**HB 249** by Representative Tanner Magee (R) tailors criminal justice fines and fees to a defendant's ability to pay; creates a payment plan for those facing financial hardship; and creates debt forgiveness for those who pay on time for 12 months or half their supervision term, whichever is longer.

**HB 489** by Representative Walt Leger (D) mandates the collection of data to monitor the reforms and requires that the state redirect 70 percent of savings into community-based prison alternatives, victim services, and recidivism-reduction programs in the state prisons and parish jails.

**HB 519** by Representative Julie Emerson (R) simplifies the process for those with criminal convictions to apply for and receive occupational licenses.

**HB 680** by Representative Joe Marino (I) temporarily suspends child support obligations for inmates incarcerated for more than six months.

**HB 681** by Representative Helena Moreno (D) lifts the ban on public assistance benefits for people with drug convictions.

## Felony Sentencing

To focus prison beds more on an inmate population who pose a serious threat to public safety, the Legislature reduced sentences for certain felony offenses, removed less serious crimes from the violent crimes list, tailored drug offenses according to weight, raised the threshold marking the dollar value when theft and property damage become a felony, eliminated specialty property crimes, and created a task force to study the concept of adopting a felony classification system.

### **Reducing Minimum and Maximum Sentences for Specified Crimes**

*Senate Bill 220 amending La. R.S. 14:52, 54.1, 62.2, 62.8, 68, 68.4, 82, 95.1, and 230*

*Effective August 1, 2017—not retroactive*

SB 220 alters criminal penalties for the following offenses:

<b>Offense</b>	<b>Prior Law</b>	<b>Current Law</b>
Simple arson, damage more than \$500	2 – 15 years	0 – 15 years
Communicating false info of planned arson	0 – 20 years	0 – 15 years
Simple burglary of an inhabited dwelling	<u>1</u> – 12 years	1 – 12 years
Home invasion	0 – 25 years	1 – 30 years
Home invasion, armed with a dangerous weapon	<u>5</u> – 30 years	
Home invasion, vulnerable victim	<u>10</u> – 25 years	
Unauthorized use of a movable, value > \$1,000	0 – 5 years	0 – 2 years
Unauthorized use of a motor vehicle	0 – 10 years	0 – 2 years
Prostitution, third and subsequent conviction	2 – 4 years	0 – 4 years
Possession of a firearm by a felon	<u>10</u> – 20 years	<u>5</u> – 20 years
Money laundering, value more than 100,000	5 – 99 years	2 – 50 years

*Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.*

### **Removing Less Serious Offenses from the Violent Crimes List**

*Senate Bill 220 amending La. R.S. 14:2(B)*

*Effective August 1, 2017—not retroactive*

SB 220 removes the following offenses from the violent crimes list: mingling harmful substances, extortion, and illegal use of weapons or dangerous instrumentalities.

### **Raising the Felony Theft Threshold to \$1,000 and Consolidating Penalties across Theft Offenses**

*Senate Bill 220 amending La. R.S. 14:67, 67.25, 67.26, 68.7, 69, 70, 70.2, 71, and 202.1*

*Effective August 1, 2017—not retroactive*

SB 220 raises the dollar value at which theft or property damage is considered a felony from \$500 or \$750, depending on the offense, to \$1,000, for most property crimes. It also consolidates and simplifies criminal penalties for the following theft crimes:

Offense	Prior Law		Current Law	
	Value of property	Sentence	Value of property	Sentence
Theft	More than \$25,000	5 – 20 years	More than \$25,000	0 – 20 years
	5,000 to \$25,000	0 – 10 years	\$5,000 to \$25,000	0 – 10 years
	\$750 to \$5,000	0 – 5 years	\$1,000 to \$5,000	0 – 5 years
	Less than \$750	0 – 6 months	Less than \$1,000	0 – 6 months
	Less than \$750, 3 <sup>rd</sup> and subsequent	0 – 2 years	Less than \$1,000, 3 <sup>rd</sup> and subsequent	0 – 2 years
Organized retail theft	More than \$500	0 – 10 years	<i>Same as theft (penalties and ranges above)</i>	
	Less than \$500	0 – 2 years		
Theft of a motor vehicle	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
Receipts and universal product code labels; unlawful acts	More than \$1,500	0 - 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
	Less than \$500, 3 <sup>rd</sup> and subsequent	0 – 2 years		
Illegal possession of stolen things	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
	Less than \$500, 3 <sup>rd</sup> and subsequent	0 – 2 years		
Refund / access device application fraud <i>(penalty for refund fraud in (C)(1) unaffected)</i>	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
	Less than \$500, 3 <sup>rd</sup> and subsequent	0 – 2 years		
Access device fraud	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
	Third and subsequent conviction, any value	0 – 10 years		
Issuing worthless checks	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		
	Less than \$500, 3 <sup>rd</sup> and subsequent	0 – 2 years		
Residential contractor fraud	More than \$1,500	0 – 10 years		
	\$500 to \$1,500	0 – 5 years		
	Less than \$500	0 – 6 months		



### ***Eliminating Specialty Property Offenses***

*Senate Bill 220 repealing La. R.S. 14:56.1, 56.2, 56.3, 62.1, 62.6, 62.9, 67.1-67.3, 67.6 – 67.10, 67.18, 67.20, 67.21, 67.24, 67.28, 67.30, 68.5, and 211*

*Effective August 1, 2017—not retroactive*

SB 220 eliminates the following specialty crimes that are duplicative of other theft, property damage, and burglary offenses: criminal damage to coin-operated devices; criminal damage of a pipeline facility; criminal damage to genetically engineered crops, genetically engineered crop facilities, or genetically engineered crop information; simple burglary of a pharmacy; simple burglary of a religious building; simple burglary of a law enforcement or emergency vehicle; theft of livestock; theft of timber; unauthorized use of “access card” as theft; theft of utility service; theft of petroleum products; theft of oilfield geological survey, seismograph, and production maps; theft of oil and gas equipment; theft of goods; cheating and swindling; theft of a business record; theft of assets of a person who is aged or a person with a disability; theft of utility product; theft of copper or other materials; theft of animals; unauthorized removal of property from governor’s mansion and the state capitol complex; and sale of forest products.

### ***Creating a Louisiana Felony Class System Task Force***

*Senate Bill 220 enacting La. R.S. 40:601*

*Effective August 1, 2017—not retroactive*

SB 220 establishes the Legislature’s intent that it is in the best interest of the public to have a felony class system, whereby nearly every felony falls into a class, ensuring consistency across crimes of similar severity and greater transparency for victims, defendants, and criminal justice practitioners. Accordingly, the Legislature created the Louisiana Felony Class System Task Force and charged the body with developing recommendations for the adoption of a felony class system. The task force must hold its first meeting on or before September 15, 2017, have a minimum of six meetings before February 1, 2018, and present recommendations for consideration before the 2018 legislative session.

### ***Tailoring Sentences for Drug Offenses According to Weight***

*Senate Bill 220 amending La. R.S. 40:966 – 970*

*Effective August 1, 2017—not retroactive*

SB 220 tailors Louisiana’s drug possession and commercial drug penalties according to the weight of the controlled substance involved in the offense. It does this in two ways: first, by carving out low-weight possession offenses and limiting their maximum terms of incarceration, and, second, by tiering sentences for commercial offenses (manufacture, sale, and possession with intent to distribute) according to weight. A high-level summary of the final drug sentences is below, and a detailed comparison of Louisiana’s current and prior drug laws is included on pages 11 through 16.

*Overview of new criminal penalties for controlled substances*

<b>Drug Schedule</b>	<b>Weight</b>	<b>Possession Offenses</b>	<b>Commercial Offenses</b>
<b>Schedule I</b> Marijuana and synthetic marijuana	0 – 2.5kg	<i>Unchanged</i>	1 – 10 years
	2.5kg+	1 – 20 years	
<b>Schedule I</b> Substances other than marijuana and synthetic marijuana	0 – 2g	Heroin: 2 – 4 years Other: 0 – 2 years	Heroin: 5 – 40 years Other: 1 – 10 years
	2g – 28g	1 – 10 years	
	28g+	Heroin: 5 – 40 years Other: 1 – 20 years	
<b>Schedule II</b>	0 – 2g	0 – 2 years	1 – 10 years
	2g – 28g	1 – 5 years	
	28g+	1 – 20 years	
<b>Schedule III</b>	Any	1 – 5 years	1 – 10 years
<b>Schedule IV</b>	Any	Flunitrazepam: 1 – 10 years Other: 1 – 5 years	Flunitrazepam: 1 – 20 years 1 – 10 years
<b>Schedule V</b>	Any	1 – 5 years	1 – 10 years

*Possession of certain controlled substances in large quantities is treated as a commercial offense under the new law.*

**Schedule I: Marijuana and synthetic marijuana—possession offenses**

Senate Bill 220 amending La. R.S. 40:966

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Marijuana</b>			
0 – 2.5 lbs	1 <sup>st</sup> <14g: 0 – 15 days 1 <sup>st</sup> >14g: 0 – 5 years 2 <sup>nd</sup> : 0 – 6 months 3 <sup>rd</sup> : 0 – 2 years Subsequent: 0 – 8 years	<i>Unchanged</i>	
2.5 – 60 lbs	<u>2</u> – 10 years	2.5+ lbs	1 – 20 years ( <i>treated as a commercial offense—see below</i> )
60 – 2,000 lbs	<u>5</u> – 30 years		
2,000 – 10,000 lbs	<u>10</u> – 40 years		
10,000+ lbs	<u>25</u> – 40 years		
<b>Synthetic marijuana</b>			
0 – 2.5 lbs	1 <sup>st</sup> : 0 – 6 months 2 <sup>nd</sup> : 0 – 5 years 3 <sup>rd</sup> : 0 – 20 years	<i>Unchanged</i>	
2.5 – 60 lbs	<u>2</u> – 10 years	2.5+ lbs	1 – 20 years ( <i>treated as a commercial offense—see below</i> )
60 – 2,000 lbs	<u>5</u> – 30 years		
2,000 – 10,000 lbs	<u>10</u> – 40 years		
10,000+ lbs	<u>25</u> – 40 years		

*Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.*

**Schedule I: Marijuana and synthetic marijuana—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:966

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Marijuana and synthetic marijuana</b>			
Any Amount	5 – 30 years	0 – 2.5 lbs	1 – 10 years
		2.5+ lbs	1 – 20 years

**Schedule I: Substances other than marijuana and synthetic marijuana—possession offenses**

Senate Bill 220 amending La. R.S. 40:966

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule I narcotics, excluding heroin and fentanyl</b>			
<28g	4 – 10 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 10 years
28g - <200g	<u>5</u> – 30 years	28g+	1 – 20 years ( <i>treated as a commercial offense— see below</i> )
200 - <400g	<u>10</u> – 30 years		
400g+	<u>15</u> – 30 years		
<b>Schedule I non-narcotics</b>			
Any amount	0 – 10 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 10 years
		28g+	1 – 20 years ( <i>treated as a commercial offense— see below</i> )
<b>Heroin and fentanyl</b>			
0 – 28g	4 – 10 years	0 – 2g	2 – 4 years
		2 – 28g	2 – 10 years
28 – 200g	<u>5</u> – 30 years	28g+	5 – 40 years ( <i>treated as a commercial offense— see below</i> )
200 – 400g	<u>10</u> – 30 years		
400g+	<u>15</u> – 30 years		

Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.

**Schedule I: All substances other than marijuana and synthetic marijuana—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:966

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule I narcotics, excluding heroin and fentanyl</b>			
Any amount	<u>10</u> – 50 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
<b>Schedule I non-narcotics</b>			
Any amount	<u>5</u> – 30 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
<b>Heroin and fentanyl</b>			
Any amount	1 <sup>st</sup> : <u>10</u> – 50 years Subsequent: <u>10</u> – 99 years	Any amount	5 – 40 years

Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.

**Schedule II: Amphetamine, methamphetamine, cocaine, oxycodone, and methadone—possession offenses**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Amphetamine, methamphetamine, and cocaine</b>			
0 – 28g	0 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
28 – 200g	<u>5</u> – 30 years	28g+	1 – 20 years ( <i>treated as a commercial offense—see below</i> )
200 – 400g	<u>10</u> – 30 years		
400g+	<u>15</u> – 30 years		
<b>Oxycodone and methadone</b>			
Any amount	0 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
		28g+	1 – 20 years ( <i>treated as a commercial offense—see below</i> )

Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.

**Schedule II: Amphetamine, methamphetamine, cocaine, oxycodone, and methadone—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Amphetamine, methamphetamine, and cocaine</b>			
Any amount	Cocaine: <u>2</u> – 30 years Other: 2 – 30 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
Production of amphetamine and meth / Production or manufacture of cocaine	<u>10</u> – 30 years	<i>Unchanged</i>	
Production of meth in front of a minor <12	<u>15</u> – 30 years	<i>Unchanged</i>	
<b>Oxycodone and methadone</b>			
Any amount	<u>2</u> – 30 years  Production or manufacture: <u>10</u> – 30 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years

Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.

**Schedule II: GHB, pentazocine, and phencyclidine—possession offenses**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Gamma Hydroxybutyric Acid (GHB)</b>			
0 – 28g	0 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
28 – 200g	<u>5</u> – 30 years	28g+	1 – 20 years (treated as a commercial offense—see below)
200 – 400g	<u>10</u> – 30 years		
400g+	<u>15</u> – 30 years		
<b>Pentazocine</b>			
Any amount	2 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
		28g+	1 – 20 years (treated as a commercial offense—see below)
<b>Phencyclidine*</b>			
Any amount	5 – 20 years	Any amount	1 – 20 years

*Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.*

*\*Prior to the 2017 Regular Session, phencyclidine was a Schedule V controlled substance.*

**Schedule II: GHB, pentazocine, and phencyclidine—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Gamma Hydroxybutyric Acid (GHB)</b>			
Any amount	0 – 10 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
<b>Pentazocine</b>			
Any amount	<u>2</u> – 10 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
<b>Phencyclidine*</b>			
Any amount	<u>5</u> – 30 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years

*Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.*

*\*Prior to the 2017 Regular Session, phencyclidine was a Schedule V controlled substance.*

**Schedule II: All other Schedule II controlled substances—possession offenses**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule II narcotics, excluding oxycodone and methadone</b>			
Any amount	0 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
		28g+	1 – 20 years ( <i>treated as a commercial offense—see below</i> )
<b>Schedule II non-narcotics, excluding amphetamine, methamphetamine, cocaine, GHB, pentazocine, and phencyclidine</b>			
Any amount	0 – 5 years	0 – 2g	0 – 2 years
		2 – 28g	1 – 5 years
		28g+	1 – 20 years ( <i>treated as a commercial offense—see below</i> )

**Schedule II: All other Schedule II controlled substances—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:967

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule II narcotics, excluding oxycodone and methadone</b>			
Any amount	2 – 30 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years
<b>Schedule II non-narcotics, excluding amphetamine, methamphetamine, cocaine, GHB, pentazocine, and phencyclidine</b>			
Any amount	0 – 10 years	0 – 28g	1 – 10 years
		28g+	1 – 20 years

**Schedule III, IV, and V controlled substances—possession offenses**

Senate Bill 220 amending La. R.S. 40:968 – 970

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule III controlled substances</b>			
Any amount	0 – 5 years	Any amount	1 – 5 years
<b>Schedule IV controlled substances, excluding Flunitrazepam</b>			
Any amount	0 – 5 years	Any amount	1 – 5 years
<b>Schedule IV: Flunitrazepam</b>			
Any amount	0 – 10 years	Any amount	1 – 10 years
<b>Schedule V controlled substances</b>			
Any amount	0 – 5 years	Any amount	1 – 5 years

**Schedule III, IV, and V controlled substances—commercial offenses (sale, distribution, manufacture, and possession with intent to distribute)**

Senate Bill 220 amending La. R.S. 40:968 – 970

Prior Law		Current Law	
Weight Threshold	Sentence	Weight Threshold	Sentence
<b>Schedule III controlled substances</b>			
Any amount	0 – 10 years	Any amount	1 – 10 years
<b>Schedule IV controlled substances, excluding Flunitrazepam</b>			
Any amount	0 – 10 years	Any amount	1 – 10 years
<b>Schedule IV: Flunitrazepam</b>			
Any amount	5 – 30 years	Any amount	1 – 20 years
<b>Schedule V controlled substances</b>			
Any amount	0 – 5 years	Any amount	1 – 5 years



### **Expanded Eligibility for Probation**

*Senate Bill 139 amending La. CCrP Article 893*

*Effective November 1, 2017—not retroactive*

Prior to the passage of SB 139, people convicted of felony offenses were eligible for probation on their first and second nonviolent convictions.<sup>1</sup> SB 139 expands probation eligibility to those convicted of a third nonviolent felony. It also extends probation eligibility to those convicted of their first violent felony offense if the maximum prison term available as a penalty for the crime is ten years or less, and if the crime was not committed against a family or household member, or dating partner.

### **Expanded Eligibility for Treatment-Focused Prison Alternatives**

*Senate Bill 139 amending La. R.S. 13:5304 and La. CCrP Article 903.1*

*Effective November 1, 2017—not retroactive*

SB 139 expands the eligibility criteria for Substance Abuse Probation to match the criteria for Drug Courts—rather than limiting eligibility to those convicted of drug possession or possession with intent to distribute, Substance Abuse Probation is now open to people convicted of other offenses if there is a significant relationship between the crime and drug or alcohol abuse. SB 139 also extends eligibility for both Substance Abuse Probation and Drug Courts to include those convicted of violent crimes if the maximum prison term available as a penalty for the crime is ten years or less, and if the crime was not committed against a family or household member or dating partner.

### **Probation Sentence Length**

*Senate Bill 139 amending La. CCrP Article 893*

*Effective November 1, 2017—not retroactive*

Before the passage of SB 139, Louisiana statutes authorized probation sentences between one and five years. SB 139 eliminated the minimum of one year for all probation sentences and reduced the maximum probation term for nonviolent crimes<sup>2</sup> from five to three years. The new law maintains the exception in prior law, authorizing courts to extend probation up to eight years if needed to complete a specialty court program.<sup>3</sup>

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<sup>1</sup> With the exception of convictions for computer fraud (La. R.S. 14:73.5), pornography involving juveniles (La. R.S. 14:81.1, and molestation of a juvenile or person with a physical or mental disability (La. R.S. 14:81.2), which were, and which continue to be, authorized for probation only on a first felony conviction.

<sup>2</sup> With the exception of pornography involving juveniles (La. R.S. 14:81.1) and molestation of a juvenile or person with a physical or mental disability (La. R.S. 14:81.2).

<sup>3</sup> Specialty courts include a drug division program, a driving while intoxicated court, mental health court, veterans' court, reentry court, or swift and certain probation program.

## Habitual Offender Statute

The Legislature made the following changes to better tailor habitual offender penalties to the severity of the crime: reducing mandatory minimum sentences for most second and third offenses, eliminating the possibility of life sentences on fourth convictions when the instant and all previous convictions are nonviolent, differentiating cleansing periods according to whether the prior offense was violent or nonviolent, and codifying judicial discretion to depart below the mandatory minimum sentence when it is constitutionally excessive.

### ***Cleansing Periods***

*Senate Bill 221 amending La. R.S. 15:529.1*

*Effective November 1, 2017—not retroactive*

For the purposes of the habitual offender statute, the “cleansing period” is the period of time that must pass prior to a felony being “cleansed” from the person’s record. Once cleansed, it cannot be used under the statute to enhance the sentence of a subsequent felony offense. SB 221 makes two policy changes to habitual offender cleansing periods. First, SB 221 reduces the cleansing period for nonviolent offenses from 10 to 5 years, maintaining the existing 10-year cleansing period for sex and violent offenses. Second, SB 221 modifies the method by which the cleansing period is calculated so that it begins upon the termination of the person’s supervision period or the term of imprisonment if the person is not placed on supervision following imprisonment. Prior to the enactment of SB 221, habitual offender cleansing periods began only upon the termination of the maximum possible sentence, including the maximum probation sentence as well as the maximum period of incarceration.

### ***Judicial Discretion in Amending Constitutionally Excessive Sentences***

*Senate Bill 221 amending La. R.S. 15:529.1*

*Effective November 1, 2017—not retroactive*

SB 221 codifies the conclusion in *State v. Dorthey*, 623 So. 2d 1276 (La. 1993) that judges have the duty to depart below a mandatory minimum sentence required by the habitual offender statute if it is constitutionally excessive.<sup>4</sup> A court making this finding must state the reasoning on the record and impose the most severe sentence that is not constitutionally excessive.

### ***Lowering Mandatory Minimum Sentences and Excluding Repeat Nonviolent Offenses from Eligibility for Life Sentences***

*Senate Bill 221 amending La. R.S. 15:529.1*

*Effective November 1, 2017—not retroactive*

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<sup>4</sup> “A punishment is constitutionally excessive if it makes no measureable contribution to acceptable goals of punishment and is nothing more than the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime.” *State v. Dorthey*, 623 So. 2d 1276, 1280 (La. 1993).

SB 221 lowers the minimum sentence for most second convictions under the habitual offender statute from 1/2 of the maximum penalty to 1/3 of the maximum penalty, and lowers the minimum sentence for most third convictions under the habitual offender statute from 2/3<sup>rd</sup>s of the maximum penalty to 1/2 of the maximum penalty. Additionally, SB 221 eliminates the possibility of receiving life sentences under the habitual offender statute when all the convictions are nonviolent.

	<b>Penalty formula</b>	<b>Example: If max penalty for 1<sup>st</sup> offense is 10 years</b>
<b>1<sup>st</sup> felony</b>	Max penalty = Z	0 – 10 years
<b>2<sup>nd</sup> felony</b>		
Prior law	Min penalty = ½ Z — Max penalty = 2x Z	<u>5</u> – 20 years
	Min penalty = 2/3 Z — Max penalty = 3x Z <i>If both current and prior felony are sex offenses</i>	<u>6.7</u> – 30 years
	Life without parole <i>If both current and prior felony are sex offenses with victim &lt;13</i>	<u>Life</u>
Current law	Min penalty = 1/3 Z — Max penalty = 2x Z	<u>3.3</u> – 20 years
	Min penalty = 2/3 Z — Max penalty = 3x Z <i>If both current and prior felony are sex crimes</i>	<u>6.7</u> – 30 years
	Life without parole <i>If both current and prior felony are sex offenses with victim &lt;13</i>	<u>Life</u>
<b>3<sup>rd</sup> felony</b>		
Prior law	Min penalty = 2/3 Z — Max penalty = 2x Z	<u>6.7</u> – 20 years
	Life without parole <i>If both current and prior felonies are crimes of violence, sex offenses with victim under 18, drug crime with max sentence of 10 years or more, or any crime with a max sentence of 12 years or more</i>	<u>Life</u>
Current law	Min penalty = ½ Z — Max penalty = 2x Z	<u>5</u> – 20 years
	Life without parole <i>If both current and prior felonies are crimes of violence or sex offenses with victim under 18</i>	<u>Life</u>
<b>4<sup>th</sup> felony</b>		
Prior law	Min penalty = 20 years — Max penalty = Life without parole	<u>20</u> - Life
	Life without parole <i>If two of three prior felonies are crimes of violence, sex offenses with victim under 18, drug crime with max sentence of 10 years or more, or any crime with a max sentence of 12 years or more</i>	<u>Life</u>
Current law	Min penalty = 20 years — Max penalty = Life without parole	<u>20</u> – Life
	Min penalty = 20 years — Max penalty = 2x Z <i>If current and previous felonies are all nonviolent, non-sex</i>	<u>20</u> – 20 years
	Life without parole <i>If current and two of three prior felonies are crimes of violence or sex offenses with victim under 18</i>	<u>Life</u>

Underlined sentences indicate that the minimum term is mandatory and cannot be suspended.

## Release Mechanisms

The Legislature adopted a number of policies to increase opportunities for release through parole and sentence credits—comprised of good time as well as Certified Treatment and Rehabilitation Program (CTRP) credits. Additionally, the Legislature created a specialty temporary release valve—medical treatment furlough—to allow for the temporary release of inmates with significant medical costs to receive health care in the community.

Throughout this section, the following definitions apply:

- **Violent offenses:** Convictions for offenses that fall on the violent crimes list pursuant to La. R.S. 14:2(B).
- **Sex offenses:** Convictions for offenses that fall on the sex offense list pursuant to La. R.S. 15:541(24) (when crimes fall on the sex offense list and the violent offense list, the sex offense list takes precedent).
- **Nonviolent offenses:** Convictions for offenses that do not fall on the sex offense list or the violent crime list.
- **Serious priors:** Prior convictions for violent or sex offenses.

### ***Sentence Credits***

Sentence credits, comprised of both good time and Certified Treatment and Rehabilitation Program (CTRP) credits, allow inmates who are sentenced to a fixed number of years in prison to incrementally earn time off their prison term. When an inmate's time in actual custody and good time/CTRP credits add up to his or her total prison term, then the inmate is released by the Department of Corrections to finish the remainder of his or her original sentence on community supervision. There are some limited exceptions to these automatic releases, including additional requirements for early release for those convicted of sex offenses.<sup>5</sup>

### ***Eligibility and Accrual of Good Time***

*Senate Bill 139 amending La. R.S. 15:571.3*

Eligible inmates accrue good time for each month in which they refuse incentive wages and exhibit good behavior.

- ***Good Time Accruals for Nonviolent Offenses***  
*Effective November 1, 2017—retroactive*

SB 139 increases the amount of good time that people convicted of nonviolent offenses can earn from one and a half days for every one day spent in custody (earliest possible release

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<sup>5</sup> See La. R.S. 15:574.4.3.

on good time after serving 40 percent of sentence) to thirteen days for every seven spent in custody (earliest possible release on good time after serving 35 percent of sentence).

People convicted of nonviolent offenses and sentenced under the habitual offender statute remain ineligible to earn good time.<sup>6</sup>

- ***Good Time Accruals for Violent Offenses***  
*Effective November 1, 2017—not retroactive*

SB 139 increases the amount of good time that people convicted of violent offenses can earn from three days for every seventeen spent in custody (earliest possible release on good time after serving 85 percent of sentence) to one day for every three days spent in custody (earliest possible release on good time after serving 75 percent of sentence).

People convicted of violent offenses with prior violent offense convictions, and people convicted of violent offenses and sentenced under the habitual offender statute, remain ineligible to earn good time.<sup>7</sup>

- ***Good Time Accruals for Sex Offenses***  
*Effective November 1, 2017—not retroactive*

The good time statute prior to the passage of SB 139 included an ad hoc list of sex offenses that were ineligible to receive good time. SB 139 replaced this list with the definition of sex offense set forth in La. R.S. 15:541 (used in determining eligibility for parole, habitual offender enhancements, and other sentencing provisions). In utilizing this universal definition instead of the ad hoc list, those convicted after November 1<sup>st</sup> of the offenses set forth on page 27 will not be eligible to earn good time off of their prison terms.

### ***Eligibility and Accrual of CTRP Credits***

*Senate Bill 139 amending La. R.S. 15:828*

*Effective November 1, 2017—not retroactive*

Eligible inmates accrue CTRP credits for participating in programs related to the overall goal of reducing recidivism. CTRP programs include, but are not limited to, treatment programs, educational and vocational programs, and programs aimed at the personal development of the inmate.<sup>8</sup> With the exception of the policy change for inmates participating in the Workforce Development Work Release Program, inmates can earn up to 360 days of CTRP credits.

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<sup>6</sup> La. R.S. 15:571.3(C)(1).

<sup>7</sup> La. R.S. 15:571.3(C)(1).

<sup>8</sup> See Louisiana Department of Public Safety and Corrections Regulation No. B-04-003.

SB 139 does not alter earned time policies for people convicted of nonviolent offenses. All people convicted of nonviolent offenses, including those sentenced under the habitual offender statute, are already eligible to earn CTRP credit.

Prior to the passage of SB 139, people convicted of violent offenses were eligible to earn CTRP credit unless they fell into one or both of the following categories: those with a prior conviction for a violent offense and those convicted under the habitual offender statute. SB 139 expands this group to include all people convicted of violent offenses, including those convicted under the habitual offender statute, unless they have more than one prior conviction for a violent or sex crime.

With the passage of SB 139, people convicted after November 1<sup>st</sup> of the sex offenses set forth on page 27 will not be able to earn CTRP time. These crimes are listed as sex offenses under La. R.S. 15:541, but are were not previously excluded from receiving good time according to La. R.S. 15:571.3.

***Additional CTRP Available to Workforce Development Work Release Program Participants***

*Senate Bill 139 amending La. R.S. 15:828*

*Effective November 1, 2017—not retroactive*

SB 139 increases the amount of CTRP time that inmates can earn off of their prison term for participation in the Workforce Development Work Release Program by 180 days (for a total of 540 possible days). The Workforce Development Work Release Program is an intensive program that trains and places inmates in high-skilled jobs as licensed craftsman.<sup>9</sup>

***Lifting the Statutory 90-Day Limit on CTRP credit for Individual Programs***

*Senate Bill 139 amending La. R.S. 15:828*

*Effective November 1, 2017—not retroactive*

SB 139 lifts the statutory 90-day limit on how much CTRP credit an inmate can earn for an individual program, allowing the Department of Corrections to reward completion of time-intensive programs with increased credits.

***Parole***

Unlike sentence credits, which are earned incrementally by prisoners and overseen by the Department of Corrections, consideration for release on parole does not become possible until a certain percentage of the person's overall sentence has been served, and release is determined by the Louisiana Board of Pardons and Parole.

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<sup>9</sup> See Louisiana Department of Public Safety and Corrections Standard Operating Procedure A-04-002, Transitional Work Programs, Chapter 24.

## **Eligibility and Time Served Requirements for Parole**

*Senate Bill 139 amending La. R.S. 15:574.4*

- ***Parole for Instant Nonviolent, Nonsex Offenses***

*Effective November 1, 2017—retroactive*

Prior to the passage of SB 139, eligibility for parole for people convicted of nonviolent offenses was contingent on criminal history: an inmate without prior felony convictions was eligible for parole consideration upon serving 25 percent of the sentence; an inmate with one prior felony conviction was eligible for parole consideration upon serving 33 percent of the sentence; and an inmate with two or more prior felony convictions was not eligible for parole consideration at all.

SB 139 eliminates these criminal history tiers, making all people convicted of nonviolent, non-sex offenses who are otherwise eligible for parole, including those sentenced under the habitual offender statute, eligible for parole consideration after serving 25 percent of their sentences.

- ***Parole for Instant Violent Offenses***

*Effective November 1, 2017—not retroactive*

Prior to the passage of SB 139, people convicted of violent crimes were eligible for parole at 75 percent of their sentence served if they had one or fewer prior felony convictions. If they had two or more prior felony convictions, they were not eligible for parole consideration.

SB 139 institutes three tiers of eligibility for parole for people convicted of instant violent offenses. Those who do not have a prior felony conviction for a crime of violence or a sex offense (though they may have priors for nonviolent offenses) are eligible for parole upon serving 65 percent of their sentence. Those who have one prior conviction for a violent offense or sex offense are eligible for parole upon serving 75 percent of their sentence. Finally, those who have two or more priors for violent or sex offenses are not eligible for parole consideration.

- ***Parole for Instant Sex Offenses***

*Effective November 1, 2017—not retroactive*

Prior to the passage of SB 139, parole eligibility for people convicted of sex offenses was determined by two factors: whether the sex offense fell on the violent crimes list, and whether the inmate had prior felony convictions. *See table on next page.*

*Prior Law Parole Eligibility for Sex Offenses*

<b>Prior Law</b>	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
Sex Offenses <i>that fall</i> on the Violent Crimes List	Eligible after serving 75% of sentence	Eligible after serving 75% of sentence	<i>Not eligible</i>
Sex Offenses <i>that do not fall</i> on the Violent Crimes List	Eligible after serving 33.3% of sentence	Eligible after serving 50% of sentence	<i>Not eligible</i>

SB 139 consolidates parole eligibility for all offenses that fall on the sex offense list: Upon a first or second conviction for a sex offense after November 1<sup>st</sup>, 2017, an inmate is eligible for parole upon serving 75 percent of his or her sentence. Inmates convicted of a sex offense with two prior convictions are not eligible for parole consideration. The list of sex offenses which see increased time served requirements for parole consideration under this policy change are listed on pages 27-28.

**Administrative Parole**

*Senate Bill 139 amending La. R.S. 15:574.2 and 827*

*Effective November 1, 2017—not retroactive*

In addition to changes around eligibility for parole, SB 139 also implements administrative parole for a subset of parole-eligible inmates. Administrative parole authorizes release on an inmate’s earliest parole eligibility date without a hearing before the committee on parole if the following criteria are met:

- The person was convicted of a nonviolent crime and was not sentenced to a reentry court program or sentenced under the habitual offender statute;
- The inmate has not committed any major prison disciplinary offenses in the 12 consecutive months prior to the administrative parole eligibility date;
- The inmate has agreed to the conditions of parole;
- If the charge or amended charge on the bill of information was a crime of violence or a sex offense, and the person pled down to a nonviolent offense, the victim and the district attorney have been notified of the inmate’s administrative parole eligibility date and have not requested a parole hearing; and
- The inmate has completed the elements of a written case plan (more details provided below).
  - For offenses committed on or after November 1, 2017 and prior to January 1, 2021, this requirement only takes hold if the Department has prepared a case



plan for the inmate. For offenses committed after January 1, 2021, the inmate must complete the case plan to be eligible for administrative parole release.

As an element of administrative parole, the Department of Corrections is required to provide for each person who is sentenced to one hundred eighty days or more in the custody of the Department a written case plan that is based on the results of an assessment of the person's risks and needs and that is reasonably achievable prior to the person's parole eligibility date. The Department must notify the committee on parole in writing about the individual's compliance or noncompliance with the case plan not less than 60 days before their parole eligibility date.

### ***Restoring Parole Eligibility for Certain Prisoners Convicted of Second Degree Murder***

*Senate Bill 139 amending La. R.S. 15:574.4*

*Effective November 1, 2017—retroactive*

SB 139 creates a parole eligibility valve for people serving a life sentence for second degree murder who were convicted for an offense committed after July 2, 1973 and before June 29, 1979 if they have served at least 40 years in prison. During this period in the 1970's, people sentenced to life for second degree murder were eligible for parole; only subsequently was parole eligibility eliminated for this cohort. To be released under this valve, the committee on parole must have a unanimous vote of those present.

### ***Release Options for Juveniles Sentenced to Life without Parole***

*Senate Bill 16 amending La. R.S. 15:574.4 and La. CCrP Article 878.1*

*Effective August 1, 2017—retroactive*

SB 16 makes retroactive and prospective changes to the law affecting eligibility for parole consideration for people sentenced to life without parole for crimes committed under the age of 18. All parole eligibility provisions in the new laws have additional conditions related to programming and institutional disciplinary records that must also be met.

- ***Prospective changes: For those indicted after Aug. 1, 2017***

Parole eligible after serving 25 years if:

- Convicted of second degree murder; or
- Convicted of 1<sup>st</sup> degree murder and:
  - District Attorney does not request a hearing to determine parole eligibility within 180 days; or
  - District Attorney requests a hearing within 180 days, and the court determines that the person is parole eligible.<sup>10</sup>

If the person does not meet these criteria, he or she is ineligible for parole consideration.

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<sup>10</sup> Life without parole sentences for juveniles should be rare and reserved for "the worst offenders and the worst cases." La. CCrP Article 878.1.

○ ***Retroactive changes: For those indicted before Aug. 1, 2017***

Parole eligible after serving 25 years if:

- Convicted of non-homicide crime and serving life (previously parole eligible after serving 30 years).
- Convicted of 1<sup>st</sup> or 2<sup>nd</sup> degree murder and:
  - A prior parole eligibility hearing was held and the court determined the person was eligible for parole consideration;
  - No prior parole eligibility hearing was held and the District Attorney does not request one within 90 days of August 1<sup>st</sup> (by October 30, 2017); or
  - No prior parole eligibility hearing was held, the District Attorney requests a hearing within 90 days of August 1<sup>st</sup> (by October 30, 2017), and the court determines that the person is eligible for parole consideration.<sup>11</sup>

If the person does not meet these criteria, he or she remains ineligible for parole consideration.

### ***Medical Treatment Furlough***

*Senate Bill 139 amending La. R.S. 15:574.20*

*Effective November 1, 2017—retroactive*

SB 139 institutes a specialty release valve for prisoners with significant health issues, whereby eligible inmates may be released at the discretion of the committee on parole to an off-site medical facility to receive treatment. Medical treatment furlough is only available to those not otherwise eligible for medical parole, and is not available to those with death sentences. The Department of Corrections must also determine that the person has limited mobility.

The committee on parole may authorize the temporary release of an eligible prisoner if the following conditions are met:

- Placement is secured in an appropriate medical facility;
- All monitoring, security, and supervision requirements that the committee on parole deems necessary are secured by the Department's Division of Probation and Parole; and
- The committee on parole determines that the prisoner does not present a substantial flight risk.

The parole term for an inmate released under the medical treatment furlough valve is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. If it is determined that the

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<sup>11</sup> Life without parole sentences for juveniles should be rare and reserved for "the worst offenders and the worst cases." La. CCRP Article 878.1.

condition of an inmate released through the medical treatment furlough valve has improved significantly, then the committee on parole may order that the inmate be returned to the custody of the Department to resume serving the balance of the sentence, with credit given for the duration of the furlough.

***Under SB 139, the below sex offenses will no longer receive sentence credits (good time and CTRP credits) (see brief discussion above at pp. 21-22):***

- Conviction for the *perpetration or attempted perpetration, or conspiracy to commit* one of the following offenses: obscenity, victim unmarried and under 17: La. R.S. 14:106.A(5); video voyeurism: La. R.S. 14:283; voyeurism, second or subsequent offense: La. R.S. 14:283.1; human trafficking for commercial sexual activity: La. R.S. 14:46.2; trafficking children for sexual purposes: La. R.S. 14:46.3; indecent behavior with juveniles: La. R.S. 14:81; prohibited sexual conduct between educator and student: La. R.S. 14:81.4; prostitution, if under age 18: La. R.S. 14:82.1; purchase of commercial sexual activity, persons under age 18 or victim of human trafficking: La. R.S. 14:82.2(C)(4)-(5); crime against nature by solicitation, if person solicited under 17: La. R.S. 14:89.2(B)(3); contributing to the delinquency of juveniles, perform a sexually immoral act: La. R.S. 14:92(A)(7).
- Conviction for the *attempted perpetration or conspiracy to commit* one of the following offenses: aggravated rape/first degree rape: La. R.S. 14:42; second degree rape/forcible rape: La. R.S. 14:42.1; simple rape/third degree rape: La. R.S. 14:43; sexual battery: La. R.S. 14:43.1; second degree sexual battery: La. R.S. 14:43.2; oral sexual battery: La. R.S. 14:43.3; intentional exposure to AIDS: La. R.S. 14:43.5; human trafficking, commercial sexual activity: La. R.S. 14:46.2(B)(2); trafficking of children for sexual purposes: La. R.S. 14:46.3; possession of pornography involving juveniles: La. R.S. 14:81.1; computer-aided solicitation of a minor: La. R.S. 14:81.3; prohibited sexual battery of the infirm: La. 14:93.5.

*These crimes are listed as sex offenses under La. R.S. 15:541 but were not previously excluded from receiving good time according to La. R.S. 15:571.3.*

***Under SB 139, the below sex offenses will have increased time served requirements for parole consideration (see brief discussion above at pp. 23-24):***

- Conviction for the *perpetration or attempted perpetration* of the following offenses: obscenity, victim unmarried and under age 17: La. R.S. 14:106(A)(5); video voyeurism; La. R.S. 14:283; voyeurism, second or subsequent offense: La. R.S. 14:283.1; indecent behavior with a juvenile: La. R.S. 14:81; felony carnal knowledge of a juvenile: La. R.S. 14:80; pornography involving juveniles: La. R.S. 14:81.1; molestation of a juvenile: La. R.S. 14:81.2; computer-aided solicitation of a minor: La. R.S. 14:81.3; prohibited sexual conduct between educator and student: La. R.S. 14:81.4; prostitution, if under age 18: La. R.S. 14:82.1 crime against nature: La. R.S. 14:89; crime against nature by solicitation, if person solicited under age 18: La. R.S. 14:89.2; contributing to the delinquency of juveniles, perform a sexually immoral act: La. R.S. 14:92(A)(7); purchase of

commercial sexual activity: La. R.S. 14:82.2(C)(4)-(5); sexual battery of the infirmed: La. R.S. 14:93.5.

*These crimes are listed as sex offenses under La. R.S. 15:541 but are not on the violent crimes list pursuant to La. R.S. 14:2(B).*

## Community Supervision

### ***Earned Compliance Credits***

*Senate Bill 139 enacting La. R.S. 15:574.6.1 and La. CCrP 895.6*

*Effective November 1, 2017—retroactive (no re-calculation of the sentence already served, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

For those supervised in the community on probation or parole for a nonviolent / non-sex crime, SB 139 establishes earned compliance credits, a diminution of sentence policy that awards 30 days off of the person’s supervision term for every full calendar month in compliance with their conditions. This allows people who comply with their supervision conditions to reduce their supervision term by up to half. When a person’s time served on supervision plus the time credited for compliance satisfies their full probation or parole term, they will be terminated from supervision.

In practice, earned compliance credits will be part of the division of Probation & Parole’s administrative sanctions grid. Credits will be awarded upfront as an incentive for compliance with supervision conditions—similar to “good time” for those in prison—and 30 days can be rescinded each month as a sanction for supervision violations. The Department of Public Safety and Corrections is required to develop policies for administering and rescinding earned compliance credits, and to collect data related to implementation of the new law.

### ***Sanctions for Violations of Supervision Conditions***

*Senate Bill 139 amending La. R.S. 15:574.7, and 574.9, and La. CCrP Articles 899.1 and 900, and enacting La. CCrP Article 899.2*

*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

SB 139 makes significant changes to probation and parole practices used to sanction violations of supervision conditions. The sanctions range in severity from less punitive administrative sanctions and intermediate Act 402 / Act 299 jail sanctions to full revocations of supervision and return to prison.

- ***Expanding Eligibility for Administrative Sanctions***

*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

SB 139 authorizes the use of administrative sanctions for all individuals supervised on probation or parole for nonviolent / non-sex offenses. For *parolees* convicted of violent or sex offenses, the committee on parole has issued a blanket authorization for use of administrative sanctions. For *probationers* convicted of violent or sex offenses, judges retain the discretion they had under the prior law to authorize probation officers to impose administrative sanctions.

- **Expanding Alternatives to Revocation for New Charges and Misdemeanor Convictions**  
*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

Under prior law, a person on supervision who was arrested or charged with a new crime was ineligible for an administrative sanction or an Act 402 / Act 299 sanction. The only sanction authorized was full revocation of supervision and return to prison. For those on supervision for nonviolent, non-sex crimes, SB 139 authorizes the use of administrative sanctions for most new charges and arrests<sup>12</sup> and for misdemeanor convictions.<sup>13</sup> It authorizes the use of Act 402 / Act 299 sanctions for all new charges and arrests and for most misdemeanor convictions.<sup>14</sup> And it authorizes the use of administrative or Act 402 / Act 299 sanctions for less serious absconding violations that do not involve leaving the state without prior approval.

	<b>Supervisee convicted of violent or sex offense</b>	<b>Supervisee convicted of nonviolent / non-sex offense</b>
<b>Administrative sanctions</b>	<p><i>Parolees:</i> Any violation but:</p> <ul style="list-style-type: none"> <li>• A felony conviction, charge, or arrest</li> <li>• A misdemeanor conviction, charge, arrest, or attempt</li> <li>• Possession of a firearm</li> <li>• Absconding</li> </ul> <p><i>Probationers:</i> Any violations but:</p> <ul style="list-style-type: none"> <li>• A felony conviction, charge, or arrest</li> <li>• A misdemeanor conviction, charge, or arrest (except marijuana / synthetic possession)</li> </ul>	<p><i>Parolees and Probationers</i></p> <p>Any violation but:</p> <ul style="list-style-type: none"> <li>• A conviction for: a felony, or intentional misdemeanor against a person</li> <li>• A charge / arrest for: violent or sex offense, domestic abuse battery, or protective order violation against family / household member or dating partner</li> <li>• Possession of a firearm</li> <li>• Absconding by leaving the state without approval</li> </ul>
<b>Act 402 / Act 299 sanctions</b>	<i>Not eligible.</i>	<p><i>Parolees and Probationers</i></p> <p>Any violation but:</p> <ul style="list-style-type: none"> <li>• A conviction for: a felony, intentional misdemeanor against a person, protective order violation against family / household member or dating partner</li> <li>• Possession of a firearm</li> <li>• Absconding by leaving the state without prior approval</li> </ul>

<sup>12</sup> With the exception of new charges or arrests for violent or sex offenses, domestic abuse battery, or a violation of a protective order issued to protect a family or household member or dating partner.

<sup>13</sup> With the exception of intentional misdemeanors affecting the person.

<sup>14</sup> With the exception of intentional misdemeanors affecting the person or convictions for violations of protective orders issued to protect a family or household member or dating partner.

- **Limiting the Use of Administrative Jail Sanctions**  
*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

Administrative sanctions are tailored to the number and severity of violations and include a range of penalties, enhanced supervision conditions, and short jail stays. Historically, the Division of Probation and Parole has included short jail stays as an option even for the lowest level violations. SB 139 prohibits the use of jail as a sanction for first and second low-level violations.<sup>15</sup>

- **Making Intermediate Jail Sanctions More Proportional (Act 402 / Act 299 sanctions)**  
*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

Under prior law, Act 402 / Act 299 intermediate jail sanctions were capped at 90 days for a first sanction (probation or parole), and at 120 and 180 days for a second or subsequent sanction, respectively (parole only). SB 139 authorizes an unlimited number of Act 402 / Act 299 intermediate jail sanctions for both probationers and parolees, and caps the length of the jail stay at 15 days, 30 days, and 45 days for the first, second, and subsequent sanctions, respectively. In cases where the court is ordering the person to participate in custodial substance abuse treatment, the sanction can last up to 90 days.

Act 402 / Act 299 sanctions	Prior law		Current law	
	Probationers	Parolees	Probationers	Parolees
1 <sup>st</sup> sanction	90 days	90 days	15 days	
2 <sup>nd</sup> sanction	<i>Not eligible</i>	120 days	30 days	
Subsequent sanction	<i>Not eligible</i>	180 days	45 days	

- **Release on Bond for Parolees Arrested on New Charges**  
*Effective November 1, 2017—retroactive (no re-calculation of sanctions already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

SB 139 streamlines the process for parolees to be released on bond, back to community supervision, pending trial on a new charge. (Court-ordered release on bond is simpler for

<sup>15</sup> Low level violations here refers to “Tier 1 violations” including associating with known felons or persons involved in criminal activity, changing a residence without permission, failure to report as instructed or report initially upon the beginning of a supervision term (though, if a contradictory hearing finds this violation was willful, jail may be used), failure to pay restitution up to three months, traveling without permission, unemployment and failure to seek employment within three months, alcohol use and admission (except for those convicted of operating a vehicle while intoxicated, domestic abuse battery, battery of a dating partner, or violation of a protective order for a family or household member or dating partner), and one positive drug test (a second positive drug test would count as a Tier 2 violation, and would therefore be eligible for a jail sanction).

those on probation, because they are not under the committee on parole’s jurisdiction.) Following the passage of SB 139, a court that orders a parolee’s release on bond pending trial on a new charge must notify the committee on parole and the Department of Corrections Division of Probation and Parole. Any detainer that prevents the parolee’s release on bond will expire within ten days, allowing the parolee to post bond and be released back to community supervision pending trial, unless the Division of Probation and Parole seeks to maintain the detainer.

- **Credit for Time Served Awaiting a Sanction or Revocation Hearing**  
*Effective November 1, 2017—retroactive (no re-calculation of sanctions or revocation sentence already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

SB 139 requires that all parolees and probationers who are detained pending a hearing for an Act 402 / Act 299 sanction are credited for time served while awaiting their hearings. Prior law mandated this for probationers, but not parolees.

SB 139 also requires that probationers convicted of nonviolent non-sex offenses and all parolees are credited for time served while awaiting a revocation hearing. See the table below.

		Prior Law	Current Law
Credit for time served awaiting an Act 402 / Act 299 sanction hearing	Probationers	Yes	Yes
	Parolees	No	Yes
Credit for time served awaiting a revocation hearing	Probationers	No	Yes for nonviolent / non-sex No for violent / sex
	Parolees	Yes	Yes

- **Credit Toward Revocation Sentence for Time Successfully Completed on Probation**  
*Effective November 1, 2017—retroactive (no re-calculation of revocation sentence already ordered, but this policy will apply to those on supervision on or after November 1<sup>st</sup>)*

SB 139 requires that probationers convicted of nonviolent, non-sex offenses receive credit toward a suspended prison sentence that is imposed upon revocation for the amount of time they successfully spent supervised in the community on probation. Prior law mandated credit for time successfully served in the community for parolees who are revoked, but not for probationers.



## **Victims' Rights**

### ***Reentry Statement***

*House Bill 116 amending La. R.S. 46:1844*

*Effective August 1, 2018—not retroactive*

HB 116 gives registered crime victims a right to submit a “reentry statement” to the committee on parole with requested proximity or contact restrictions for the victim’s protection. This right only applies to cases in which the committee on parole will hold a discretionary parole hearing to determine release and release conditions. The committee on parole may consider the statement when determining release conditions, but not for the purpose of deciding whether to grant or deny parole.

### ***Electronic Victim Registration and Notification***

*House Bill 116 amending La. R.S. 46:1844*

*Effective August 1, 2018—not retroactive*

HB 116 requires the Louisiana Commission on Law Enforcement, to the extent that funding is available, to develop and provide an electronic victim registration and notification system by August 1<sup>st</sup>, 2018.

## **Criminal Justice Fines and Fees in Felony Cases**

The Legislature adopted several measures to tailor criminal justice fines, fees, and restitution in felony cases to a criminal defendant's ability to pay, and to modify penalties in order to distinguish inability to pay from willful refusal to pay these obligations.

### ***Legislative Intent***

*House Bill 249 enacting La. CCrP Article 875.1*

*Effective August 1, 2018—not retroactive*

HB 249 establishes the Legislature's intent that 1) criminal justice financial obligations should not create barriers to successful reentry, 2) financial obligations that cause undue hardship on the defendant should be waived, modified, or forgiven, and 3) defendants should be rewarded for good faith efforts to fulfill their financial obligations.

### ***Determining Ability to Pay***

*House Bill 249 enacting La. CCrP Article 875.1 and amending La. CCrP Article 895.1*

*Effective August 1, 2018—not retroactive*

HB 249 requires courts to determine a defendant's ability to pay criminal justice fines, fees, and restitution before ordering or enforcing them. The defendant may not waive the ability-to-pay determination or stipulate to it in a plea agreement. If the court finds that payment in full of the aggregate amount of financial obligations associated with the person's felony conviction would cause the person or his or her dependents substantial financial hardship,<sup>16</sup> the court must either waive the obligations or place the person on a payment plan.

### ***Payment Plans***

*House Bill 249 enacting La. CCrP Article 875.1*

*Effective August 1, 2018—not retroactive*

Prior law contains little guidance on the creation of payment plans for criminal justice financial obligations. HB 249 ensures that the sting of monthly payments is equitable for defendants who make different amounts of money, by setting monthly payments at one day's pay (the defendant's average gross daily income for an eight-hour work day). If the court has ordered restitution to a victim, half of the defendant's monthly payment must go toward that restitution obligation. During any periods of unemployment, homelessness, or other circumstances in which the defendant can't make the monthly payment, HB 249 authorizes the court and the person's probation or parole officer to impose a payment alternative like job training or community service. The court may recalculate the monthly payment amount or modify the total obligation if the defendant's circumstances and ability to pay change over time.

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<sup>16</sup> See La. R.S. 15:175 for a definition of "substantial financial hardship."

### ***Debt Forgiveness Incentive***

*House Bill 249 enacting La. CCrP Article 875.1*

*Effective August 1, 2018—not retroactive*

HB 249 creates a debt forgiveness incentive for felony defendants who are placed on a payment plan. If the person makes consistent monthly payments for twelve months or half of his or her supervision term, whichever is longer, the rest of their outstanding debt associated with that conviction will be forgiven and considered paid in full.

### ***Prohibiting Incarceration and Driver’s License Suspension for Those Unable to Pay***

*House Bill 249 amending La. CCrP Articles 884, 885.1, and 895.5*

*Effective August 1, 2018—not retroactive*

Prior law authorized incarceration and driver’s license suspension as a penalty for failure to pay criminal justice fines, fees, and restitution. HB 249 restricts these penalties to apply only when the person is able to pay but willfully refuses to do so.<sup>17</sup> If a defendant fails to make a payment under a payment plan, the court may not issue an arrest warrant as an initial response. The court must instead give the defendant a date to make the payment or appear in court, and must provide notice that incarceration is only an option if the defendant had the ability to pay, but willfully refused to do so. The notice must also inform the defendant that he or she will have a meaningful opportunity to explain why they have not paid, will have the right to counsel, and will have the ability to request a payment alternative if they cannot afford the monthly payment.

### ***Uncollected Debts***

*House Bill 249 amending La. R.S. 47:1676 and La. CCrP Article 894.4*

*Effective August 1, 2018—not retroactive*

To avoid extended supervision for the sole purpose of collecting criminal justice financial obligations, HB 249 allows courts to refer uncollected fines, fees, and restitution to the Louisiana Office of Debt Recovery, the state entity authorized to collect debt owed to state agencies through offset claims against tax returns and other means. It also eliminated the court’s authority to extend a person’s probationary period for the purpose of collecting unpaid financial obligations, with one narrow exception: If the court finds on the record by clear and convincing evidence that its temporary ongoing monitoring would be more effective at collecting unpaid restitution than referral to the Office of Debt Recovery, converting the unpaid restitution to a civil money judgment, or any other enforcement mechanism authorized by law, the court may extend probation a single six-month period for the sole purpose of collecting victim restitution. All other conditions of probation during the six month extension would be terminated.

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<sup>17</sup> HB 249 restricts driver’s license suspension to willful refusal to pay only in felony cases.

## Barriers to Reentry

### ***Suspending Child Support during Incarceration***

*House Bill 680 enacting La. R.S. 9:311.1 and amending La. R.S. 9:311, 315.11, and 315.27, 13:4611, 46:236.6, and 236.7, and Children’s Code Article 1353  
Effective January 1, 2019—not retroactive*

In order to increase the likelihood of long-term financial stability after a jail or prison term and help ensure consistent payment of child support over time, HB 680 requires child support orders to be suspended<sup>18</sup> when an obligor is incarcerated for 180 consecutive days or more. Exceptions to this mandate include when the obligor has the means to pay support while incarcerated, or is incarcerated for failure to pay child support or for an offense against the custodial party or child. A suspended child support order will go back into effect on the first day of the second full month after the person is released. HB 680 also authorizes courts to extend a child support order beyond the normal termination date for the period of time that the order was suspended.

A person’s incarceration may be used as a defense to a contempt of court charge for failure to pay child support during the period he or she was in jail or prison, and the court may not consider periods of incarceration for 180 consecutive days or longer to be “voluntary unemployment.”

The changes in law also include various notification requirements for the court, sheriffs, Department of Child and Family Services, and Department of Public Safety and Corrections.

### ***Professional Licenses***

*House Bill 519 amending La. R.S. 37:31–36  
Effective August 1, 2017—not retroactive*

Prior to the enactment of HB 519, the law created several hurdles for people with criminal convictions seeking a professional license. Professional licensing boards were authorized to impose waiting periods, grant limited provisional licenses, and revoke a license for any new crime or probation or parole revocation. HB 519 eliminates the waiting periods and provisional licenses, and requires these entities to issue professional licenses to otherwise qualified applicants. It also maintains the restriction on the causes for license revocation to new felony convictions or violations of laws or rules governing the field of work.

Under both the prior law and HB 519, people are excluded from the licensure requirements if they have been convicted of violent crimes, sex offenses, fraud offenses (for those professions with fiduciary duties to clients), or offenses directly related to the profession. Both the prior law and HB 519 also authorize exceptions for specific licensing entities.

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<sup>18</sup> “Suspension” is defined in La. R.S. 9:311.1 as the temporary modification of a child support order to zero dollars.

**Public Assistance Programs**

*House Bill 681 enacting La. R.S. 46:233.3 and repealing R.S. 46:233.2 and 237(D)*

*Effective October 1, 2017—not retroactive*

HB 681 lifts restrictions that previously prevented those with drug-related convictions from getting public assistance through the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families program (TANF).

## Reinvestment and Data Collection

### Reinvestment

*House Bill 489 enacting La. R.S. 15:827.3*

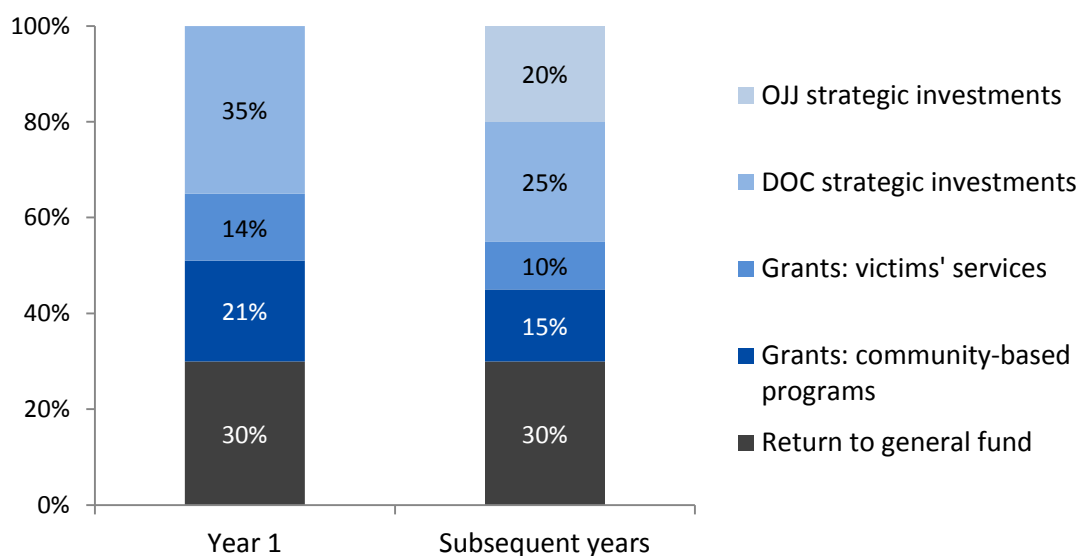
*Savings calculated and reinvested at the end of each fiscal year*

As the prison population declines, the Department of Corrections will calculate the surplus dollars budgeted for housing of state inmates at the end of each fiscal year and report it to the Joint Legislative Budget Committee and the Commissioner of Administration. Seventy percent of that surplus budget will become a bona fide fiscal obligation of the state to carry over into the next fiscal year budget to reinvest in specified categories of programs and services. These reinvestment categories include:

- Incentive grants administered by the Department to parishes, judicial districts, and nonprofit community partner organizations to expand evidence-backed prison alternatives and reduce admissions to the state prison population.
- Competitive grants administered by the Louisiana Commission on Law Enforcement for victims' services, treatment, transitional housing, and victim-focused training for justice system professionals.
- Targeted investments in community supervision and recidivism reduction programming and treatment in prisons, jails, and work release facilities.
- Targeted investments in juvenile justice initiatives and programs.

See the graphic below for the percentages allocated to each category in the first year of reinvestment and in subsequent years.

*Yearly Reinvestment Distribution*



**Data Collection**

*House Bill 489 enacting La. R.S. 15:827.2*

*Reporting required June 30, 2018 and annually thereafter*

HB 489 requires the Department of Corrections and the Louisiana Commission on Law Enforcement to collect and analyze certain data and report it to the Joint Legislative Budget Committee, the Commissioner of Administration, and the public at the end of each fiscal year. The data capture various measures of the impact of changes to sentencing and release laws, community supervision policies, reentry and work release practices, and the dollar savings from reductions in the prison population.