

**Louisiana State Bar Association Specialty Bars Conference: “Changing the Profession from Within”
“Preparing for the Future: Louisiana Justice Reinvestment”**

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- District Attorneys are ministers of justice and the advocates of public safety in the courtroom.
- Louisiana DA’s generally support efforts to responsibly reduce Louisiana’s rate of incarceration and the number of individuals incarcerated within the State.
- The initial goal of the Justice Reinvestment Task Force as created pursuant to HCR 82 of 2015 was “reducing correctional populations and associated criminal justice spending by focusing prison space on serious and violent criminals.” Thus, reforms should focus on non-violent offenders.
- Victims of violent crime deserve protection from offenders and past victims deserve the justice that they were guaranteed at sentencing.
- The reinvestment of savings to improve Louisiana’s criminal justice system by taking measures to address issues such as illiteracy, poverty, drug and alcohol addiction, mental health services, family deterioration and alternatives to incarceration is imperative to truly effect change in our criminal justice system.
- A higher incarceration rate does not do anything to address or help crime on the street.
- Prior to the sentencing changes that became effective August 1, 2017, first time violent offenders served 85% of their sentence and now based on revisions 65% of the sentence will likely be served.
- The overall impact and effect of the justice reinvestment is yet to be seen although reform measures provide for calculations and reinvestments of savings.
- *Legislative Report* Published by the LDAA, Volume 43, Number 18; dated July 27 2017 (Attached), provides for the (5) main Justice Reinvestment Legislative enactments passed that affect sentencing in Louisiana.

Legislative report



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THE MISSION of the LDAA is as follows:

To improve Louisiana's justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's district attorneys and their staffs through education, legislative involvement, liaison and information sharing.

THE CORE VALUES of LDAA members include:

We believe that the Louisiana Constitution requires, and Louisiana citizens favor, locally-elected, independent prosecutors. We believe that prosecutor discretion must be protected from interference through manipulative funding or legislative restrictions. Finally, we believe that prosecutors are the best and most trustworthy resource for legislative improvements to the criminal justice system.

SENTENCING REFORM IN 2017

This Legislative Report will focus on the five (5) main Justice Reinvestment Legislative enactments passed this session that affect sentencing in Louisiana. Unless otherwise indicated, these changes become effective on Tuesday, August 1, 2017.

THE LDAA'S INVOLVEMENT IN JUSTICE REINVESTMENT LEGISLATION

The LDAA's mission is "to improve the justice system in Louisiana." Our prosecutors consider themselves as ministers and champions of justice. As such, we were compelled to assist in efforts to responsibly reduce our incarceration rate and make our criminal justice system better.

From the start of this reform project, we insisted that the principle drivers of crime and our high incarceration rate include Louisiana's extraordinary rates of poverty, illiteracy, joblessness, and family deterioration. We also noted that Louisiana has lacked sufficiently-funded programs for mental health, drug and alcohol addiction, and alternatives to incarceration. The

few existing programs have suffered drastic funding cuts over the past eight years. From this base, we participated in the Justice Reinvestment (JRTF) effort, understanding that our sentencing practices should be fair game for review.

The LDAA supported the creation of the JRTF in HCR 82. In that enabling document, the principle goal listed for the Task Force was: “Reducing correctional populations and associated criminal justice spending by focusing prison space on serious and violent criminals.” Indeed, virtually all of the initial data presented by Pew concerned our treatment of non-violent offenders. According to Pew and others, our state incarcerates non-violent offenders at a much higher rate than other states in the region. Accordingly, each of our member-prosecutors analyzed the data and discovered that most of these offenders had pled or been revoked from violent offenses. Even so, we remained engaged with JRTF to develop responsible strategies to lower Louisiana’s incarceration rates for non-violent offenders.

LDAA members determined early on that we would not support wholesale reduction of sentences nor increased benefits for violent offenders. Victims of violent crime deserve protection from offenders and past victims deserve the justice that they were guaranteed at sentencing.

When the JRTF voted to include changes affecting violent offenders, the LDAA could have opposed the entire package, but instead elected to amend those portions from the bills. We chose to fix rather than kill the legislation because we believed that some of the changes were in keeping with our mission to improve the justice system in Louisiana. We had pledged to the Legislature that we would work hard to develop some changes that would responsibly reduce our incarceration rate. In the end, we kept that promise.

The final legislation contains some provisions that concern us. Reduced maximum probation terms, early parole eligibility for some violent offenders, drug offense amendments, and other changes may require a second look. The proposed “felony class system” was a non-starter from the beginning. The proposal was drafted with little or no input from practitioners and was, in our view, a solution in search of a problem. The proposed scheme was a method to accomplish a massive reduction in sentences instead of focusing on individual non-violent offenses. We intend to participate in the upcoming felony class system study, but will support a proposal only if such a change would improve our sentencing scheme. First, we must have objective and accurate data on the effects of these enacted reforms, particularly with respect to recidivism.

The fundamental premise of this entire exercise is the “R” in JRTF: Reinvestment. As stated earlier, Louisiana’s principle drivers of crime and incarceration are unaddressed by the task force or the recently-passed legislation. Unless the Legislature takes meaningful and effective steps to adequately address poverty, illiteracy, family deterioration, and to provide adequate funding for drug and alcohol addiction, mental health services, and alternatives to incarceration, the JRTF package will ultimately be deemed a failure. Reform advocates, including the Governor, have pledged to reinvest savings to improve Louisiana’s criminal justice system. They must keep that promise.

Listed below are the major changes affecting Louisiana’s sentencing structure.

SENTENCE REDUCTIONS (ACT 281)

The following chart outlines the major sentencing changes contained in Act 281. The Act targeted sentence reductions and benefit restrictions for a list of non-violent offenses; removed the crimes of “mingling harmful substances,” “extortion,” and “illegal use of weapons or dangerous instrumentalities” from the list of violent offenses and appertaining sentencing restrictions; and consolidated various “theft” statutes and raised the felony threshold to \$1,000. The following chart shows the significant changes in Act 281.

Affected Statute	Charge	Old Law	New Law
La. R.S. 14:52	Simple Arson	2-15 yrs	0-15 yrs
La. R.S. 14:54.1	Communicating False Information of Planned Arson	0-20 yrs	0-15 yrs
La. R.S. 14:56	Simple Crim. Damage to Property	> \$500 - felony	> \$1000 - felony
La. R.S. 14:62.2	Simple Burglary of an Inhabited Dwelling	1-12 without benefit of parole, probation, or suspension of sentence	1-12 with benefit of parole, probation, suspension of sentence
La. R.S. 14:62.8	Home Invasion	0-25 yrs; aggravating factors "dangerous weapon" and "person < 12 or > 65"	1-30 yrs; removed aggravating factors "dangerous weapon" and "person < 12 or > 65"
La. R.S. 14:67	Theft	≥ \$25,000 = 5-20 yrs, \$50,000 fine; 6 pack; \$5,000-\$24,999.99 = 0-10 yrs, \$10,000 fine, 6 pack; \$750-\$4,999.99 = 0-5 yrs, \$3000 fine, 6 pack; < \$750 = 0-6 mos, ≤ \$1000	≥ \$25,000= 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9= 0-5 yrs, 6 pack; < \$1000 = 0-6 mos; if 2 or more prior theft convictions - 0-2 yrs

Affected Statute	Charge	Old Law	New Law
La. R.S. 14:67.25	Organized Retail Theft	< \$500 = 0-2 yrs; > \$500 = 0-10 yrs	≥ \$25,000 = 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9 = 0-5 yrs, 6 pack; < \$1000 = 0-6 mos; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:67.26	Theft of Motor Vehicle	< \$500 = 0-6 mos; \$500- \$1,499.99 = 0-5 yrs; ≥ \$1500 = 0-10 yrs	≥ \$25,000 = 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9 = 0-5 yrs, 6 pack; < \$1000 = 0-6 mos; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:68	Unauthorized Use of a Movable	≤ \$500 = 0-6 mos; > \$500 = 0-5 yrs	≤ \$1000 = 0 - 6 mos; > \$1000 = 0-2 yrs
La. R.S. 14:68.4	Unauthorized use of a Motor Vehicle	0-10 years	0-2 years
La. R.S. 14:68.7	Receipts and Universal Product Code labels	≥ \$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; < \$500 = 0-6 mos	≥ \$25,000 = 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9 = 0-5 yrs, 6 pack; < \$1000 = 0-6 mos, < \$500 fine; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:69	Illegal Poss. Of Stolen Things	≥ \$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; < \$500 = 0-6 mos	≥ \$25,000 = 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9 = 0-5 yrs, 6 pack; < \$1000 = 0-6 mos; if 2 or more prior theft convictions - 0-2 yrs

Affected Statute	Charge	Old Law	New Law
La. R.S. 14:70.2	Refund or access device application fraud	≥\$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; <\$500= 0-6 mos	≥\$25,000=- 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9= 0-5 yrs, 6 pack; < \$1000 = 0-6 mos, <\$500 fine; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:70.4	Access device fraud	≥\$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; <\$500= 0-6 mos	≥\$25,000=- 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9= 0-5 yrs, 6 pack; < \$1000 = 0-6 mos, <\$500 fine; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:71	Issuing worthless checks	≥\$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; <\$500= 0-6 mos	≥\$25,000=- 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9= 0-5 yrs, 6 pack; < \$1000 = 0-6 mos, <\$500 fine; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:82	Prostitution	2-4 yrs	0-4 yrs
La. R.S. 14:95.1	Poss. Of F/A or Carrying Concealed Weapon by Convicted Felon	10-20 yrs	5-20 yrs
La. R.S. 14:202.1	Residential contractor fraud	≥\$1500 = 0-10 yrs; \$500- \$1499.99 = 0-5 yrs; <\$500= 0-6 mos	≥\$25,000=- 0-20 yrs, 12 pack; \$5,000 - \$24,999.99 = 0-10 yrs, 6 pack; \$1000 - \$4,999.9= 0-5 yrs, 6 pack; < \$1000 = 0-6 mos, <\$2000 fine; if 2 or more prior theft convictions - 0-2 yrs
La. R.S. 14:230	Money laundering	≥\$100,000 = 5-90 yrs	≥\$100,000 = 2 - 50 yrs

Affected Statute	Charge	Old Law	New Law
La. R.S. 40:966	Penalty for Distribution/PWID/ Manuf Of Sch. I	See La. R.S. 40:966(B)	Less than 28 grams = 1-10 yrs with benefit, 6 pack; 28 grams or more = 1-20 yrs with benefit, 12 pack. Marijuana = less than 2.5 lbs- 1-10 yrs, 6 pack; 2.5 lbs or more = 1-20 yrs, 12 pack, ; Heroin or fentanyl or mixture - 5-40 yrs with benefit, 12 pack.
La. R.S. 40:966	Penalty for Possession Of Sch. I	See La. R.S. 40:966(C)-(E)	Less than 2 grams - 0-2 yrs , 6 pack; 2-27.999 grams - 1-10 yrs , six pack; greater than 28 grams - treat as Subsection A; Heroin or fentanyl or mixture - less than 2 grams - 2-4 yrs , six pack; 2-27.999 grams - 2-10 yrs , six pack; more than 28 grams - treat as Subsection A. Marijuana = no change; over 2.5 lb's - violation of Subsection A.
La. R.S. 40:966	Tx for heroin or fentanyl as condition of probation		Upon conviction of distr. or poss. of heroin/fentanyl, court may suspend sentence if court: gets PSI indicating substance abuse, make condition of probation complete SA Tx, if does not complete program, ct. may revoke probation, see 40:966(G) for other requirements.

Affected Statute	Charge	Old Law	New Law
La. R.S. 40:967	Penalty for Distribution/PWID/Manuf Of Sch. II	See La. R.S. 40:967(B)	Less than 28 grams - 1-10 yrs, 6 pack; 28 grams or more - 1-20 yrs, 12 pack; Manu. of cocaine/ methamphetamine was 12 pack, now 6 pack.
La. R.S. 40:967	Penalty for Possession Of Sch. II	See La. R.S. 40:967(C)-(G)	Less than 2 grams - 0-2 yrs, pack; 2-27.999 grams - 1-5 yrs , 6 pack; more than 28 grams = treat as Subsection A; phenylcyclidine - less than 28 grams - 1-20 yrs , 12 pack; greater than 28 grams = treat as Subsection A.
La. R.S. 40:968	Penalty for Distribtion/ PWID/Manuf. of Sch. III	0-10 yrs, 12 pack	1-10 yrs, 6 pack
La. R.S. 40:968	Penalty for Poss. Sch. III	0-5 yrs	1-5 yrs
La. R.S. 40:969	Penalty for Distribution/PWID/Manuf. of Sch. IV	flunitrazepam = 5-30 yrs, 12 pack; All other Sch. IV = 0-10 yrs, 12 pack	flunitrazepam = 1-20 yrs, 12 pack; All other Sch. IV = 1-10 yrs, 6 pack
La. R.S. 40:969	Penalty for Possession of Sch. IV	flunitrazepam = 0-10 yrs, 12 pack; All other Sch. IV = 0-5 yrs, 6 pack	flunitrazepam = 1-10 yrs, 6 pack; All other Sch. IV = 1-5 yrs, 6 pack
La. R.S. 40:970	Penalty for Distribution of Sch. V	0-5 yrs, 12 pack	1-5 yrs, 6 pack
La. R.S. 40:970	Penalty for Poss. Of Sch. V	0-5 yrs, 6 pack	1-5 yrs, 6 pack

The Act also created the Felony Class System Task Force to study creation of a class system method to effect penalty changes to all felony offenses. The LDAA representatives on the Felony Class System Task Force are: Rob Vines (16th J.D.), Suzanne M. Williams (1st J.D.), and Kathleen Barrios (19th J.D.).

PROBATION AND PAROLE (ACT 280)

This Act made substantial changes to the law concerning benefit restrictions, probation and parole, “good-time,” and medical furlough, including:

- Court may suspend sentence for a non-capital 3rd felony conviction with a maximum probation of 3 years;
- Court may suspend sentence for non-domestic 1st offense violent conviction punishable by 10 years or less;
- With DA consent, allows suspension of sentence and specialty Court assignment for 3rd and 4th convictions. Allows probation extension up to 8 years;
- Authorizes 1 for 1, “earned compliance credits” for non-violent, non-sex offenders;
- Prides new administrative sanctions and technical violations for non-violent, non-sex offenders;
- Includes 1st time non-domestic violent offenders punishable by 10 years or less as eligible for substance abuse probation and Drug Court;
- Expands “Good-Time” credits for non-violent, non-sex offenders to 13 days for every 7 days served;
- Expands “Good-Time” credits for 1st time violent and sex offenders to 1 day for every 3 days served (11/1/17);
- Authorizes “Administrative Parole” without a hearing for non-violent, non-sex offenders who complete a case plan and receive no disciplinary violations (11/1/17);
- Authorizes parole eligibility after serving 25% of sentence for non-violent, non-sex offenders (11/1/17);
- Provides parole eligibility after serving 65% of sentence for offenders convicted 1st time for a violent offense (11/1/17);
- Provides parole eligibility after serving 75% for offenders convicted for 2nd time violent or 1st time sex offense (11/1/17);
- Provides parole eligibility for offenders serving a life sentence for 2nd degree murder if the offense was committed after July 2, 1973, and before June 29, 1979; and if the offender has served at least 40 years of the sentence imposed; and if the committee on parole grants parole with a unanimous vote;
- Authorizes the Committee on Parole to establish a medical treatment furlough program and eligibility requirements and conditions;
- Provides that the medical treatment program can include release to outside treatment facilities on medical parole or furlough;
- Provides that the program cannot include offenders awaiting execution.

JUVENILE LIFE (ACT 277)

This Act struck a balance between abolishing juvenile life without parole and having sentencing hearings on every juvenile murder case. It provides:

- The results of hearings had to determine parole eligibility on “*Montgomery*” cases prior to August 1, 2017, will stand;
- DAs will have until November 1, 2017, to file notice for such hearings in each of the remaining “*Montgomery*” cases;
- Failure to file such a notice will trigger parole eligibility for those defendants under the statute (25 years with conditions);
- Hearings pursuant to the notice will focus on the issue of parole eligibility only;
- The Court may sentence the offender to life without parole upon a finding that the offender is among “the worst of the worst”;
- For 1st degree murder juvenile cases indicted after August 1, 2017, the DAs will have 180 days from indictment to file the notice to seek JLWOP;
- Failure to file such a notice will trigger parole eligibility for the defendants under the statute (25 years with conditions);
- Hearings pursuant to the notice will focus on the issue of parole eligibility only. The Court will sentence the offender to life without parole upon a finding that the offender is among “the worst of the worst”;
- 2nd degree murder cases indicted after August 1, 2017, will be punishable by life with parole eligibility after serving 25 years with conditions pursuant to the statute.

HABITUAL OFFENDERS (ACT 282)

This Act was a compromise that reduced some mandatory minimums for habitual offenders yet retained our tool for dealing with dangerous and career offenders. It included:

- Reduction of the mandatory minimum sentence for 2nd offenders from $\frac{1}{2}$ to $\frac{1}{3}$ of the maximum term for a 1st conviction;
- Reduction of the mandatory minimum sentence for 3rd offenders from $\frac{2}{3}$ to $\frac{1}{2}$ of the maximum term for a 1st conviction;
- Removes drug offenses and non-violent, non-sex offenses from the “3-strikes” and “4-strikes” mandatory life sentence provisions;
- Provides that the mandatory minimum for 4th offenders with no violent or sex offenses will be twice the maximum sentence for a 1st conviction;
- Provides that, if the maximum sentence for a 1st conviction is less than 20 years, the sentence shall be 20 years;
- Provides for a 5-year “cleansing” period for non-violent offenses to be used in this statute;

- Codifies State vs. Dorthey [623 So.2d 1276 (La. 1993)], which affords the sentencing Judge authority to reduce the sentence for constitutional considerations.

FINANCIAL OBLIGATIONS (ACT 260)

This Act may have the most substantial impact of the entire package. Although limited to felonies only, the provisions below offer giant loopholes for those who do not want to pay court costs, fines, fees, or restitution. The new law:

- Requires that judges waive all or a portion of financial obligations (court costs, fines, fees, restitution, etc.) or order a payment plan if the aggregate amount would create a “substantial financial hardship” on the defendant or his dependents;
- Provides that defendants cannot waive substantial financial hardship;
- Limits monthly financial obligations to the equivalent of one 8-hour day’s pay;
- Provides that during any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to pay, the Court or Probation & Parole is authorized to impose substance abuse treatment, education, job training, or community service as a “payment alternative”;
- Provides that, if the defendant makes consistent 6 monthly payments for 12 consecutive months or for half of the term of supervision (whichever is longer), the remaining obligations may be forgiven;
- Except for restitution, prohibits extension of probation for the purpose of collecting financial obligations;
- Allows a one-time, six-month extension of probation for the purpose of collecting restitution under certain circumstances;
- Limits Court’s ability to order surrender of driver’s license to felony offenders who willfully refuse to pay;
- The provisions of this Act are limited to felonies.

CONCLUSION

The enactment of these sweeping changes to our system were promised to yield massive savings in corrections costs and to pose no threat to public safety. Proponents insisted that these “smart” reforms would produce a reduction of recidivism and an increase public safety. After reviewing these changes, it is doubtful that many practitioners would agree with these predictions.

In a separate package instrument, Act 261 purports to mandate the “reinvestment” of 70% of the first year’s savings, and 20% of each following year’s savings, to grants and recidivism reduction programs. Interestingly, even the proponents agree that any significant realized

savings may be years to come and that there exists no effective legal mechanisms to enforce these mandates.

The next and future Legislative sessions will afford opportunities to continue debate on these and other “reform” proposals. Indeed, only time will tell if the product of “Justice Reinvestment” will have any connection to either “Justice” or “Reinvestment.”