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## 2021 TRUE BLUE DREW BOOK

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NOTES
CHAPTER I. • INTRO TO THE BASICS

2021 TRUE BLUE DREW BOOK

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B. ACKNOWLEDGEMENTS

We express heartfelt thanks to these lawyers and judges who helped put this 2021 edition together. Each contributor is brilliant, and we are fortunate to have these friends, each of whom contributed in more ways that we can say. In alphabetical order:

Attorney Blake Arcuri, former NOLA ADA; appeals Judge Jeff Cox;
Tammy Jump, A. D. A., 2ND JDC; appeals Judge Jay McCallum;
Atty. Laura C. Rodrigue, former NOLA ADA; Richard B. Stricks, Public Defender.

Words cannot express our appreciation to Cathy B. Stone and Michelle Roppolo for their assistance in editing, formatting, printing, and assembling this labor of love.

C. DEFINITIONS / ABBREVIATIONS

2nd++ Second and subsequent offenses
AADP Aggravated Assault Upon a Dating Partner
AGG. Aggravated [Usually signals DW involved &/or Human life endangered]
BDP Battery of a Dating Partner

INFORMATION, Bill of A charging document signed by the DA, with no Grand Jury action.
Contrast with True Bill of Indictment, which is a charge rendered by a Grand Jury.
BRD  Beyond a Reasonable Doubt – Required to convict - We say a 95% probability.
CC   Indicates a Concurrent Sentence
CS   Indicates a Consecutive Sentence
CV   Crime of Violence
DAB  Domestic Abuse Battery
DAAA Domestic Abuse Aggravated Assault
DPSC Department of Public Safety and Corrections [Still often referenced as “DOC”]
DL   Driver's License
DV   Domestic Violence
DW   Dangerous Weapon
EF   Enumerated Felony [Same 15 for Fel. Murder 01, Fel. Murder 02, & Fel. Feticide]
Et.seq. Latin for “and what follows.”
FELONY A crime carrying a possible hard labor (HL) sentence, which means a possible sentence
to be served in the state penitentiary system (“DPS&C” or “DOC”).
HL   Hard Labor (means the defendant could potentially be sentenced to DPSC/DOC).
INFRA Afterwards in this book.
JURIES: Civil [9/12] – a dispute between persons;
                Grand [9/12] – must render an Indictment for the DA to prosecute Life/Death cases;
                Petit [6/6 or 12/12] – decides whether or not someone is guilty of a crime. All petit
                jury trials now require a unanimous verdict.
JTM  Jury Trial Misdemeanor - Even with no possible HL, a defendant still has a right to a
        jury trial, if his exposure exceeds 06 months in jail &/or exceeds a $1,000 fine. The
        actual sentence ultimately imposed is not a factor as to the right to a jury trial.
LASC Louisiana Supreme Court, the highest state court. LASC has jurisdiction to review
        judgments of all lower state courts, in both civil and criminal cases. In civil cases,
        jurisdiction extends to law & facts. In criminal matters, jurisdiction is limited to LEGAL
        questions.
LEO  Law Enforcement Officer
LPOR Louisiana Protective Order Registry [www.lpor.org – Invaluable list of DV laws/info]
LWOP Life sentence at Hard Labor (HL) without benefit of Parole.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>MM</td>
<td>Misdemeanor – No chance of HL; Tried by a judge alone, unless the crime carries a cap of more than six months in jail &amp;/or more than a $1,000 fine [JTM].</td>
</tr>
<tr>
<td>MF</td>
<td>Mandatory Felony - Any sentence must be served at HL; Alternatively: A real jerk.</td>
</tr>
<tr>
<td>MV</td>
<td>Motor Vehicle</td>
</tr>
<tr>
<td>PC</td>
<td>Probable Cause - Burden required to arrest/search/seize - A fair probability. We say 50% likelihood of criminality. Others disagree.</td>
</tr>
<tr>
<td>RF</td>
<td>Relative Felony - Defendant has exposure for a sentence with or without HL.</td>
</tr>
<tr>
<td>ROR</td>
<td>Release on Recognizance - A defendant is allowed to be his own bondsman.</td>
</tr>
<tr>
<td>R.S.</td>
<td>Revised Statutes - Made up of 56 Titles and several Codes.</td>
</tr>
<tr>
<td>RS</td>
<td>Reasonable Suspicion - We say 25% -30% chance of criminality. Others disagree.</td>
</tr>
<tr>
<td>SBI</td>
<td>Serious Bodily Injury – <strong>S.R. 14:2 (C)</strong>, eff. 08/01/19, provides that all crimes in Title 14 allow proof of SBI the same 05 ways. <strong>R.S.14:403</strong> also has a 6th way to prove SBI.</td>
</tr>
<tr>
<td>SCOTUS</td>
<td>United States Supreme Court, the highest court in the nation for all cases and controversies arising under the Constitution or U.S. laws. SCOTUS ensures the American people due process (“fundamental fairness”) and equal justice under the law and functions as the ultimate interpreter of the U. S. Constitution.</td>
</tr>
<tr>
<td>SITA</td>
<td>Acronym for &quot;Search Incident to Arrest.&quot;</td>
</tr>
<tr>
<td>SOS</td>
<td>See other Source. We suggest: <a href="http://www.drewlawbooks.com">www.drewlawbooks.com</a> or <a href="http://www.legis.la.gov">www.legis.la.gov</a>.</td>
</tr>
<tr>
<td>SUPRA</td>
<td>Before in this book.</td>
</tr>
<tr>
<td>TBDB</td>
<td>TRUE BLUE DREW BOOK</td>
</tr>
<tr>
<td>TITLE</td>
<td>One of 56 groupings of Louisiana statutes. There are also several Codes.</td>
</tr>
<tr>
<td>TRUE BILL OF INDICTMENT</td>
<td>A charge brought by a grand jury; required for life/death cases W/out Bens. No eligibility for suspension of sentence, probation, or parole.</td>
</tr>
<tr>
<td>****</td>
<td>Signals a point at which less-needed laws are omitted. By October 01 each Fall, all changes in every Title can be found at the La Legislative website: <a href="http://www.legis.la.gov">www.legis.la.gov</a>.</td>
</tr>
</tbody>
</table>

New statutes are usually effective on 01 August each year. Because of the quarantine, this year may be different. By August 01, we have every word of the current Title 14 on our website: [www.drewlawbooks.com](http://www.drewlawbooks.com). We display R.S. 14 in one long and searchable PDF:

1. Hit Ctrl/F;
2. A box drops down;
3. Type in needed words; &
4. hit Enter. There’s the statute you need. If not, hit “Enter” again.

All new amendments to Title 14 are highlighted on our website in green.
D. COURT SYSTEMS & COURT CASES

DUAL COURT SYSTEMS

“Jurisdiction” means a court’s power to adjudicate a particular/certain type of dispute.

For LEOs, “jurisdiction” can also mean: the geographical area where a LEO usually exercises police powers. “Venue” means where the trial is held; usually in the governmental subdivision where a crime occurred.

STATE COURT SYSTEM

La. Supreme Court [07 Justices on LASC]

LASC sits en banc on every case, meaning all the judges on that court sit together and decide each case. There is a Right of Appeal to the LASC in only 02 cases: death penalty cases & laws that are held unconstitutional [Courts of Appeal are skipped]. Other parties can apply for “writs.”

Five State Circuit Courts of Appeal.

Circuits 1-5.

54 state appellate judges in state. Each circuit has from 08 to 13 judges. Most decisions are made in panels of 03.

District Courts – General Jurisdiction

Trial Court

Jury trials are only heard in District Courts.

LA’s 64 Parishes form 42 state Jud. Districts.

City and Parish Courts – limited jurisdiction.

All of the above judges must be lawyers.

City/Parish courts have limited jurisdiction in civil matters & in criminal cases (Example: No felonies can be tried in city/parish courts).

Unless there is a local juvenile court, city courts have concurrent juv. jurisdiction w) Dist. Courts.

Justice of the Peace Courts and Mayor’s Courts – Very limited jurisdiction. These magistrates do not have to be lawyers. Out of courtesy, you should, however, address them as “judge.”

FEDERAL COURT SYSTEM

SCOTUS – U.S. Supreme Court – 09 Justices

SCOTUS decides what to hear by “Rule of Four.”

This court sits en banc on every case.

En banc means “the entire bench-all justices”.

13 Federal (“U.S.”) Circuit Courts of Appeal

Appeals from TX/LA/MS Federal Districts Courts are heard by Federal 5th circuit in NOLA. Usually 18 judges (six from each state), w) panels of 03.

District Courts – General Jurisdiction

Trial Court

Jury trials are only heard in District Courts.

LA: 64 Parishes / 03 JDCs: Western / Middle / Eastern.

All Federal Judges must be lawyers.

Magistrate Courts

Magistrates report to District Judges.

All Federal magistrates must be lawyers.

Specialty/Administrative Courts - Examples

Bureau of Land Management Courts

Tax Courts.

Bill of Rights Emphasis: Amends 1, 4, 5, 6, 8.

See TBDB Chapter One, Supra.

Court cases -

> Stare decisis

> Jurisprudence

> Binding Precedent.
E.  TRUE BLUE TIPS FOR LEOS,
    BY TAMMY G. JUMP, FELONY PROSECUTOR, 2ND JDC

(1) BEFORE COURT

(a) Good report writing is the key.

Write your reports so that anyone can read them and know exactly what happened. Details matter. If possible, have someone who was not on scene read over your report. If you are asked to read over another LEO’s report, be honest with the person about any corrections that need to be made. Use correct grammar and correct spelling.

If you have ready access to your video while preparing your report, double check yourself for accuracy. Your report will be closely reviewed by many in the court system. For all witnesses, include full name, DOB, street address, & telephone number (preferably a land line), for later contact. This is true in both adult and juvenile cases.

Take photos of injuries and evidence. Fill out a victim registration form on all violent crimes. See the reference list on the back of the victim registration form.

(b) Videos

Avoid profanity and inappropriate comments/actions. A jury does not want to hear and see LEOs cursing at or flirting with someone. A judge &/or jury may watch your video.

(c) Subpoenas

If you receive a subpoena and cannot be in court, or would like to be placed on call, telephone the prosecutor as soon as possible. If at all possible, don’t wait until the day before or day of court. If you have a question about a hearing or any issues with the case, contact your prosecutor before court – the earlier, the better.

(2) IN COURT

(a) What to do and what not to do

i. Be truthful and accurate-admit if you made a mistake. Remember that “winning” testimony is that which a jury believes. That’s it. Don’t try to help the prosecutor get a conviction. That’s their job. Your job is to tell the TRUTH. If you do so, the jury will believe you. If you try to help the ADA, you will appear biased — an appearance that could cause the jury to distrust you and discount your testimony.

ii. Be prepared - read over your report several times before court.

iii. Be respectful-don’t treat the defense attorney any differently than you treat the prosecutor. Professionalism and preparedness can overcome a lot.
iv. You are an impartial & conscientious public servant whose job is fact-finding. Be professional, courteous, forthright, and fair on the stand and jurors will trust you and your testimony.

v. Don’t chew gum on the witness stand and keep your hand away from your mouth.

vi. Don’t use foul language without permission - ask the judge if you can repeat exactly what the defendant or witness said.

vii. Don’t use terms that average citizens won’t understand.

viii. Listen to the question, pause, then look at the jury, and answer truthfully.

ix. Do not lose your temper on the witness stand – this will only help the defendant.

(b) Types of hearings for which you may be subpoenaed

i. **Grand Jury** – For the DA to prosecute any case with exposure for life imprisonment or the death penalty, (examples: 1st & 2nd degree murder, First degree rape, and Aggravated kidnapping), the Grand jury must first return an indictment. The DA may also present other cases to the Grand Jury. Grand jury sessions are secret and are usually very informal, but in general the very basic rules of evidence still apply. Only the prosecutor is allowed to put on evidence at the Grand Jury.

ii. **Bail Reduction** – Still often called “Bond Reduction.” Since hearsay is allowed at this hearing, often only one officer is subpoenaed.

iii. **Preliminary Exam, aka Preliminary Hearing** – This proceeding requires the state to make a showing of PC to hold the defendant in jail (or under a bail obligation). Hearsay is allowed. Often only one LEO testifies. If the judge finds no PC, the defendant is released on his own recognizance (“ROR”), but DA can still prosecute.

iv. **Motion to Suppress** - If evidence is suppressed, the case will probably be dismissed. Contact your ADA in advance & ask to see a copy of the motion so you will know what the defendant alleges what you did wrong.

v. **Sequestration** - Witnesses may be placed under Sequestration, meaning that you cannot be in the courtroom when others testify. Nor can you discuss the case with any other person except the involved lawyers in the case. This rule is designed to make sure that each witness testifies only as to his/her own recollection.

(c) Types of Trials – The DA has to prove all cases beyond a reasonable doubt.

i. **Traffic and other misdemeanor trials** – the judge is usually the trier of fact.
ii. There are a few **Jury Trial Misdemeanors**, crimes that carry a possible criminal exposure of over six months in jail or over a $1,000 fine. Requires a six-person jury.

iii. **Felony trials** – usually felony trials are in front of a jury unless the defendant waives his right to a jury trial and asks to be tried by a judge.

iv. **Relative felonies** require six-person petit juries; **Mandatory felonies** require 12-person juries. All petit jury verdicts must now be **unanimous**.

(d) **Types of Testimony**

i. **Direct Examination** - These questions will be asked by the ADA, and the form of the questions will depend on the type of hearing/trial. Examples of direct examination questions- who, what, when, where, how, and why. A witness can only testify as to his own personal knowledge in a trial. You cannot volunteer at trial information as to the defendant’s prior arrests or convictions. If the defendant takes the stand, the ADA may ask him about any priors.

ii. **Cross Examination** - Defense tactics include leading, baiting, creating evasiveness, impeachment of one witness by another, with questions like: “if you were going to do a good job, wouldn’t you have done this or that”. You will be asked what other LEOs did or didn’t do. Or what they should or shouldn’t have done.

iii. The **defense attorney** has a job to do. So do you. Stay focused on calmly providing the truth to the court. Don’t take it personally when the defense attorney tries to do his/her job. If you lose your temper, the prosecution is taking a hit. Stay professional. And above all: The TRUTH is the TRUTH.

(e) **Hearsay** is something said out of court, offered for the truth of the words. The problem is that this leave the defendant with no way to confront/cross-examine the person who said the words. Hearsay is often allowed during the hearing of pre-trial motions and post-trial matters, but very seldom is it allowable during the trial itself. If an objection is made (on account of hearsay, or anything else), do not answer until the judge rules on the objection. If the judge says “over-ruled” then you can answer; if the judge says “sustained” then you cannot answer that question.

(3) **AFTER COURT**

After testimony ends, ask your ADA to clear it with the judge for you to re-enter the courtroom to hear arguments of counsel and the ruling. This will help you understand why the case went as it did. Mistakes will be made. Learn from yours. Own them & do better next time. Speak with you ADA on ways you can improve your courtroom testimony.
F. (1) TEXT OF THE BILL OF RIGHTS

The first 10 Amendments to the US Constitution (the “Bill of Rights”) were ratified in 1791.

➤ First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

➤ Second Amendment

A well-regulated Militia, being necessary to the security of a Free State, the right of the people to keep and bear Arms, shall not be infringed.

➤ Third Amendment

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

➤ Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. ▲ Compare: La. Const. Article I, Sec. 5.

➤ Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.


Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. **All petit jury verdicts must be unanimous, per Ramos v La, 140 S. Ct. 1390 (04.20.20).**

Seventh Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The prohibition against excessive forfeitures was applied to state courts by **Timbs v Indiana, 139 S. Ct. 682 (2019).**

Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

F. (2) DREW & DREW CADET MEMORY DEVICES FOR THE BILL OF RIGHTS

First Amendment: Freedoms: Speech, Press, Petition, Assembly, Religion. → SPPAR.

Second Amendment: Keep & Bear Arms. Sim. to La. Const Art I, Sec 11. → 2 Armed bears.

Third Amendment: Freedom from Quartering Troops During Peacetime. → 3rd Quarter.

Fourth Amendment: See Chapter Four of this 2021 True Blue Drew Book.

Fifth Amendment: See Chapter Five of this 2021 True Blue Drew Book.

→ That’s just SIDD, coming in Fifth. Just Compensation if the government takes your property, No Compulsory* Self-incrimination, Indictments Required for Serious Offenses (Life or Death Sentences in Louisiana), No Double Jeopardy by the same government, and Due Process required in Federal Courts.


Sixth Amendment: See Chapter Six of this 2021 TRUE BLUE DREW BOOKSou.

→ VI. Speedy CPAs Venue, Information, Right to a Speedy & Public Trial, and now, with a unanimous verdict per Ramos v La, 140 S. Ct. 1390 (2020); Rights of Confrontation, Process [Subpoenas], Right to Lawyer.

Seventh Amendment: Right to Civil Jury Trial → Seven Silver Jewels

Eighth Amendment: No excessive fines/forfeitures/cruel & unusual punishment & Right to reasonable bail. → FIND an 8-BALL in the CUP. Two huge 8th Amendment cases, both applied to state courts through the due process clause of the 14th Amendment:

(1) Gregg v GA, 428 US 153 (1976) – The death penalty is not automatically cruel and unusual, but the jury must be unanimous on guilt & then unanimous on the death penalty. This is known as a bifurcated jury trial. Otherwise, the defendant gets life.

(2) Timbs v Indiana, 139 S. Ct. 682 (2019). No excessive fines or forfeitures.

Ninth Amendment: This Listing of Rights Is Not Exclusive. → You Don’t Wear a 9-X Shoe.

Tenth Amendment: All Powers Not Delegated to the Federal Government Are Reserved to the States, or the People. → Only the Tenth Power to the Feds

G. HOW TO USE THIS BOOK

This is the 31st Annual TRUE BLUE DREW BOOK. It is merely a teaching tool, not an exhaustive, detailed recitation of all statutes.

The Title 14 laws printed in Chapter 02 include 97.4% of all laws (that we believe) La. LEOs will need in order to enforce criminal laws in the Fall of 2020 and the first 07 months of 2021.
As always, sentencing is a low priority in any TBDB, because LEOs aren’t in the sentencing business. We abbreviate sentences:

- **M** for a bench-trial misdemeanor;
- **JTM** for a jury-trial misdemeanor;
- **RF** for a relative felony (with or without HL exposure); and
- **MF** for a mandatory felony, for which a HL sentence is required.

- The names of court cases are printed in **boldface & italicized**.
- We **boldface** definitions, comments, paraphrases, summaries and emphasized text.

**H. RESOURCES**

Early every June, you should attend the world’s most practical Louisiana legal seminar at **Nuts and Bolts Seminar** in Destin, Florida. [www.lanutsandbolts.com](http://www.lanutsandbolts.com). The very down-to-earth program is designed for anyone who works in any part of the Louisiana court system. 2021 dates are June 7-11. Venue: Embassy Suites Destin at Miramar Beach. This seminar is a classic.

The legislative website is superb. There you can find every La. law at [www.legis.la.gov](http://www.legis.la.gov). All new statutes from every Title should be there each year, not later than 01 October.

For help on DV matters, we suggest you go to an invaluable part of the LASC website. Click on [https://www.lasc.org/LPOR-Laws](https://www.lasc.org/LPOR-Laws) [La. Protective Order Registry ("LPOR")]. There you will find the most current DV Laws & Forms. Please tell your agency’s DV LEOs about this.

Lt. Valerie Martinez-Jordan, L.P.S.O., is the point person who began the trail-blazing **Firearm Divestiture Program** of LaFourche Parish, with the blessing of Sheriff Craig Webre. The program is now state-wide. Other Firearm Divestiture experts: ADA Sunny Funk, Jefferson Parish DA’s Office, NOLA Attorney Kim Sport, and Chief Tommy Clark of the Grambling Police Dept.

We will post upcoming classes at [www.drewlawbooks.com](http://www.drewlawbooks.com) – we are honored to teach LEOs state-wide. As soon as in-person classes get the all clear, we **will** be teaching in your area. You are welcome to attend, where you will receive the latest TRUE BLUE DREW BOOK. Until then, we will electronically teach Criminal Law Update Classes via **ZOOM** and other platforms. Either way, LEOs will be allowed POST legal credits from our classes. To register for a class, simply go to our website or [squareup.com/store/DrewLawBooks](http://squareup.com/store/DrewLawBooks).

**01.TOC & Chap I - Intro cbs 081620**
CHAPTER II. • ELEMENTS OF CRIMINAL CONDUCT: TITLE 14

2021 TRUE BLUE DREW BOOK

Selected Laws from the La. Criminal Code (RS 14:1-143). For full text of Title 14, see www.drewlawbooks.com or www.legis.la.gov. For DV-related laws, see Chapter 06, infra.

“Raise the Age” became fully effective on 01 July 2020. See La. Ch. C. Art 814. This means that any suspects (17 and below) who are to be maintained in custody, shall be initially housed in a juvenile detention center. For certain serious crimes listed in La. Ch. C. Arts 305 & 857, there are procedures available for subsequent transfer of a case to adult court.

R.S. 14:1 Method of citation

This Chapter shall be known as the Louisiana Criminal Code. The provisions hereunder may be referred to or cited either as Articles of the Criminal Code or as Sections of the Revised Statutes. Thus Article 30 of Louisiana Criminal Code may also be referred to or cited as R.S. 14:30.

Whenever reference is made herein to an Article of the Criminal Code, the same shall also relate to the corresponding Section of the Revised Statutes.

R.S. 14:2 Definitions

A. In this Code the terms enumerated shall have the designated meanings:

(1) "Another" refers to any other person or legal entity, including the state of Louisiana or any subdivision thereof.

(2) "Anything of value" must be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private, and including transportation, telephone and telegraph services, or any other service available for hire. It must be construed in the broad popular sense of the phrase, not necessarily as synonymous with the traditional legal term "property." In all cases involving shoplifting the term "value" is the actual retail price of the property at the time of the offense.

(3) "Dangerous weapon" includes any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

(4) "Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

(5) "Foreseeable" refers to that which ordinarily would be anticipated by a human being of average reasonable intelligence and perception.

(6) "Misdemeanor" is any crime other than a felony.
(7) "Person" includes a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not.

(8) "Property" refers to both public and private property, movable and immovable, and corporeal and incorporeal property.

(9) "Public officer", "public office", "public employee", or "position of public authority" means and applies to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state of Louisiana or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department, or institution of said state, parish, municipality, district, or other political subdivision.

(10) "State" means the state of Louisiana, or any parish, municipality, district, or other political subdivision thereof, or any agency, board, commission, department, or institution of said state, parish, municipality, district, or other political subdivision.

(11) "Unborn child" means any individual of the human species from fertilization and implantation until birth.

(12) "Whoever" in a penalty clause refers only to natural persons insofar as death or imprisonment is provided, but insofar as a fine may be imposed "whoever" in a penalty clause refers to any person.

B. In this Code, "crime of violence" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.

The following enumerated offenses and attempts to commit any of them are included as "crimes of violence":

- Solicitation for murder.
- First degree murder.
- Second degree murder.
- Manslaughter.
- Aggravated battery.
- Second degree battery.
- Aggravated assault.
- Repealed
- Aggravated or first degree rape.
- Forcible or second degree rape.
- Simple or third degree rape.
- Sexual battery.
- Second degree sexual battery.
- Intentional exposure to AIDS virus.
- Aggravated kidnapping.
- Second degree kidnapping.
- Simple kidnapping.
- Aggravated arson.
- Aggravated criminal damage to property.
- Aggravated burglary.
- Armed robbery.
- First degree robbery.
- Simple robbery.
- Purse snatching.
- Repealed
(26) Assault by drive-by shooting. 
(27) Aggravated crime against nature. 
(28) Carjacking. 
(29) **Repealed** 
(30) Terrorism. 
(31) Aggravated second degree battery. 
(32) Aggravated assault upon a peace officer. 
(33) Aggravated assault with a firearm. 
(34) Armed robbery; use of firearm; additional penalty. 
(35) Second degree robbery. 
(36) Disarming of a peace officer. 
(37) Stalking. 
(38) Second degree cruelty to juveniles. 
(39) Aggravated flight from an officer. 
(40) **Repealed** 
(41) Battery of a police officer. 
(42) Trafficking of children for sexual purposes. 
(43) Human trafficking. 
(44) Home invasion. 
(45) Domestic abuse aggravated assault. 

(46) Vehicular homicide, when the operator's blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood. 
(47) Aggravated assault upon a dating partner. 
(48) Domestic abuse battery punishable under R.S. 14:35.3(L), M (2), (N), (O), or (P). 
(49) Battery of a dating partner punishable under R.S. 14:34.9(L), (M)(2), (N), (O) or (P). 
(50) Violation of a protective order if the violation involves a battery or any crime of violence as defined by this Subsection against the person for whose benefit the protective order is in effect. 
(51) Criminal abortion. 
(52) First degree feticide. 
(53) Second degree feticide. 
(54) Third degree feticide. 
(55) Aggravated criminal abortion by dismemberment. 

C. For purposes of this Title, "**serious bodily injury**" means bodily injury which involves unconsciousness; extreme physical pain; protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or a substantial risk of death. For purposes of R.S. 14:403, "serious bodily injury" shall also include injury resulting from starvation or malnutrition. **Universal definition for all of Title 14.** ***

**R.S. 14:4** Conduct made criminal under several articles; how prosecuted

Prosecution may proceed under either provision, in the discretion of the district attorney, whenever an offender's conduct is:

(1) Criminal according to a general article of this Code or Section of this Chapter of the Revised Statutes and also according to a special article of this Code or Section of this Chapter of the Revised Statutes; or

(2) Criminal according to an article of the Code or Section of this Chapter of the Revised Statutes and also according to some other provision of the Revised Statutes, some special statute, or some constitutional provision.
R.S. 14:5    Lesser and included offenses

An offender who commits an offense which includes all the elements of other lesser offenses, may be prosecuted for and convicted of either the greater offense or one of the lesser and included offenses.

In such case, where the offender is prosecuted for the greater offense, he may be convicted of any one of the lesser and included offenses.

R.S. 14:6    Civil remedies not affected

Nothing in this Code shall affect any civil remedy provided by the law pertaining to civil matters, or any legal power to inflict penalties for contempt.

R.S. 14:7    Crime defined

A crime is that conduct which is defined as criminal in this Code, or in other acts of the legislature, or in the constitution of this state.

R.S. 14:8    Criminal conduct

Criminal conduct consists of:

(1) An act or a failure to act that produces criminal consequences, and which is combined with criminal intent; or

(2) A mere act or failure to act that produces criminal consequences, where there is no requirement of criminal intent; or

(3) Criminal negligence that produces criminal consequences.

R.S. 14:9    Criminal consequences

Criminal consequences are any set of consequences prescribed in the various articles of this Code or in the other acts of the legislature of this state as necessary to constitute any of the various crimes defined therein.

R.S. 14:10   Criminal intent

Criminal intent may be specific or general:

(1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.

(2) General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.
R.S. 14:11    Criminal intent; how expressed

The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms "intent" and "intentional" have reference to "general criminal intent."

R.S. 14:12    Criminal negligence

Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.

CULPABILITY FACTORS    “I-I-I just made 02 mistakes.”

R.S. 14:13    Infancy

Those who have not reached the age of ten years are exempt from criminal responsibility. However, nothing in this article shall affect the jurisdiction of juvenile courts as established by the constitution and statutes of this state.

R.S. 14:14    Insanity

If the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility.

R.S. 14:15    Intoxication

The fact of an intoxicated or drugged condition of the offender at the time of the commission of the crime is immaterial, except as follows:

(1) Where the production of the intoxicated or drugged condition has been involuntary, and the circumstances indicate this condition is the direct cause of the commission of the crime, the offender is exempt from criminal responsibility.

(2) Where the circumstances indicate that an intoxicated or drugged condition has precluded the presence of a specific criminal intent or of special knowledge required in a particular crime, this fact constitutes a defense to a prosecution for that crime.

R.S. 14:16    Mistake of fact

Unless there is a provision to the contrary in the definition of a crime, reasonable ignorance of fact or mistake of fact which precludes the presence of any mental element required in that crime is a defense to any prosecution for that crime.
R.S. 14:17  Mistake of law

Ignorance of the provision of this Code or of any criminal statute is not a defense to any criminal prosecution. However, mistake of law which results in the lack of an intention that consequences which are criminal shall follow, is a defense to a criminal prosecution under the following circumstances:

(1) Where the offender reasonably relied on the act of the legislature in repealing an existing criminal provision, or in otherwise purporting to make the offender's conduct lawful; or

(2) Where the offender reasonably relied on a final judgment of a competent court of last resort that a provision making the conduct in question criminal was unconstitutional.

R.S. 14:18  Justification; general provisions

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:

(1) When the offender's conduct is an apparently authorized and reasonable fulfillment of any duties of public office; or

(2) When the offender's conduct is a reasonable accomplishment of an arrest which is lawful under the Code of Criminal Procedure; or

(3) When for any reason the offender's conduct is authorized by law; or

(4) When the offender's conduct is reasonable discipline of minors by their parents, tutors or teachers; or

(5) When the crime consists of a failure to perform an affirmative duty and the failure to perform is caused by physical impossibility; or

(6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed; or

(7) When the offender's conduct is in defense of persons or of property under any of the circumstances described in Articles 19 through 22.

R.S. 14:19  Use of force or violence in defense

A. (1) The use of force or violence upon the person of another is justifiable under either of the following circumstances:

(a) When committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful
possession, provided that the force or violence used must be reasonable and apparently necessary to prevent such offense.

(b) (i) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person using the force or violence reasonably believes that the use of force or violence is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(ii) The provisions of this Paragraph shall not apply when the person using the force or violence is engaged, at the time of the use of force or violence in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

(2) The provisions of Paragraph (1) of this Section shall not apply where the force or violence results in a homicide.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of force or violence was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the premises or motor vehicle, if both of the following occur:

(1) The person against whom the force or violence was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used force or violence knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using force or violence as provided for in this Section and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used force or violence in defense of his person or property had a reasonable belief that force or violence was reasonable and apparently necessary to prevent a forcible offense or to prevent the unlawful entry.

R.S. 14:20 Justifiable homicide

A. A homicide is justifiable:
(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

(3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle.

(4) (a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(b) The provisions of this Paragraph shall not apply when the person committing the homicide is engaged, at the time of the homicide, in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the dwelling, place of business, or motor vehicle when the conflict began, if both of the following occur:

(1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.
C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

R.S. 14:20.1 Investigation of death due to violence or suspicious circumstances when claim of self-defense is raised

Whenever a death results from violence or under suspicious circumstances and a claim of self-defense is raised, the appropriate law enforcement agency and coroner shall expeditiously conduct a full investigation of the death. All evidence of such investigation shall be preserved.

R.S. 14:21 Aggressor cannot claim self defense

A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

R.S. 14:22 Defense of others

It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person.

**PARTIES TO CRIMES - THE “PA” IS THE MEMORY DEVICE.**

R.S. 14:23 Parties classified

The parties to crimes are classified as:

(1) Principals; and ....................................................(2) Accessories after the fact.

R.S. 14:24 Principals

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. *St v McGhee*, 223 So. 3d 1136 (La. 2017) has a good discussion about principal vs bystander.

R.S. 14:25 Accessories after the fact

An accessory after the fact is any person who, after the commission of a felony, shall harbor, conceal, or aid the offender, knowing or having reasonable ground to believe that he has
committed the felony, and with the intent that he may avoid or escape from arrest, trial, conviction, or punishment.

An accessory after the fact may be tried and punished, notwithstanding the fact that the principal felon may not have been arrested, tried, convicted, or amenable to justice.

Whoever becomes an accessory after the fact shall be fined not more than five hundred dollars, or imprisoned, with or without hard labor, for not more than five years, or both; provided that in no case shall his punishment be greater than one-half of the maximum provided by law for a principal offender...RF.

FOUR INCHOATE OFFENSES – “CA IS Inchoate.”

R.S. 14:26  Criminal conspiracy

A. Criminal conspiracy is the agreement or combination of two or more persons for the specific purpose of committing any crime; provided that an agreement or combination to commit a crime shall not amount to a criminal conspiracy unless, in addition to such agreement or combination, one or more of such parties does an act in furtherance of the object of the agreement or combination.

B. If the intended basic crime has been consummated, the conspirators may be tried for either the conspiracy or the completed offense, and a conviction for one shall not bar prosecution for the other.

C. Whoever is a party to a criminal conspiracy to commit any crime shall be fined or imprisoned, or both, in the same manner as for the offense contemplated by the conspirators; provided, however, whoever is a party to a criminal conspiracy to commit a crime punishable by death or life imprisonment shall be imprisoned - MF up to 30 years.

D. Whoever is a party to a criminal conspiracy to commit any other crime shall be fined or imprisoned, or both, ... up to ½ of largest fine and/or up to ½ largest sentence of the contemplated offense.

R.S. 14:27  Attempt; penalties; attempt on peace officer; enhanced penalties

A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

B. (1) Mere preparation to commit a crime shall not be sufficient to constitute an attempt; but lying in wait with a dangerous weapon with the intent to commit a crime, or searching for the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended.
(2) Further, the placing of any combustible or explosive substance in or near any structure, watercraft, movable, or forestland, with the specific intent eventually to set fire to or to damage by explosive substance such structure, watercraft, movable, or forestland, shall be sufficient to constitute an attempt to commit the crime of arson as defined in R.S. 14:51 - 53.

C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.

D. Whoever attempts to commit any crime shall be punished as follows:

(1) (a) If the offense so attempted is punishable by death or life imprisonment, he shall be imprisoned at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence.

MF, without benefits.

(b) If the offense so attempted is punishable by death or life imprisonment and is attempted against an individual who is a peace officer engaged in the performance of his lawful duty, he shall be imprisoned at hard labor for not less than twenty nor more than fifty years without benefit of parole, probation, or suspension of sentence.

MF, without benefits.

The next few lines speak of receiving stolen things, a crime that no longer exists. This crime is now “possession of stolen things.”

(2) (a) If the offense so attempted is theft or receiving stolen things and is punished as a misdemeanor...M.

(b) If the offense so attempted is receiving stolen things and is punishable as a felony...JTM.

(c) (i) If the offense so attempted is theft of an amount not less than seven hundred fifty dollars nor more than twenty-five thousand dollars...JTM.

(ii) If the offense so attempted is theft of an amount over $25,000...RF.

(3) In all other cases he shall be fined or imprisoned or both, in the same manner as for the offense attempted; such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment prescribed for the offense so attempted, or both.

E. For the purposes of Subsection D of this Section, the term "peace officer" means any peace officer, as defined in R.S. 40:2402.
R.S. 14:28  Inciting a felony

A. Inciting a felony is the endeavor by one or more persons to incite or procure another person to commit a felony.

B. Usual Sentence: RF up to two years (with or without HL).

C. If an offender over the age of seventeen years commits the crime of inciting a felony by endeavoring to incite or procure a person under the age of seventeen years to commit a felony, the offender shall be fined not more than one thousand dollars and imprisoned at hard labor for not more than five years. MF.

R.S. 14:28.1  Solicitation for murder

A. Solicitation for murder is the intentional solicitation by one person of another to commit or cause to be committed a first or second degree murder.

B. Whoever commits the crime of solicitation for murder shall be imprisoned at hard labor for not less than five years nor more than twenty years...MF.

R.S. 14:29  Homicide

Homicide is the killing of a human being by the act, procurement, or culpable omission of another. Criminal homicide is of five grades:

(1) First degree murder ..........(2) Second degree murder ..........(3) Manslaughter.

(4) Negligent homicide ..........(5) Vehicular homicide.

R.S. 14:30  First degree murder

A. First degree murder is the killing of a human being:

"Fee-Figh-Fo"

(1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated or first degree rape, forcible or second degree rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles. 15 enumerated felonies

(2) When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, peace officer, or civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory engaged in the performance of his lawful duties, or when the specific intent to kill or to inflict great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee [of crime lab]. See B (1), infra.

(3) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person. Focus on more than one “person.”
“CADDD”

(4) When the offender has specific intent to kill or inflict great bodily harm and has offered, has been offered, has given, or has received anything of value for the killing.

Contract

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older. Age of victim

(6) When the offender has the specific intent to kill or to inflict great bodily harm while engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedules I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

“ROR”

(7) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the activities prohibited by R.S. 14:107.1(C)(1). Ritualistic ceremony

(8) When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide. Killing after service of TRO/Prot. Order

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a victim who was a witness to a crime or was a member of the immediate family of a witness to a crime committed on a prior occasion and: Killing to prevent/punish testimony

(a) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's prior testimony. See B (2) & (3), infra.

“Taxi the Cereal to the Jail Employee.”

(10) When the offender has a specific intent to kill or to inflict great bodily harm upon a taxicab driver who is in the course and scope of his employment. For purposes of this Paragraph, "taxicab" means a motor vehicle for hire, carrying six passengers or less, including the driver thereof, that is subject to call from a garage, office, taxi stand, or otherwise.
(11) When the offender has a specific intent to kill or inflict great bodily harm and the offender has previously acted with a specific intent to kill or inflict great bodily harm that resulted in the killing of one or more persons. **Serial killer.**

(12) When the offender has a specific intent to kill or to inflict great bodily harm upon a **correctional facility employee** who is in the **course and scope** of his employment. **See B (4), infra.**

B.  (1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means any peace officer, as defined in R.S. 40:2402, and includes any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator, coroner, deputy coroner, or coroner investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "**member of the immediate family**" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "**witness**" means any person who has testified or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

(4) For purposes of Paragraph (A)(12) of this Section, the term "**correctional facility employee**" means any employee of any jail, prison, or correctional facility who is not a peace officer as defined by the provisions of Paragraph (1) of this Subsection.

C. **See** [www.drewlawbooks.com](http://www.drewlawbooks.com) or [www.legis.la.gov](http://www.legis.la.gov).

Subsection C contains procedural instructions to the DA relative to whether he/she seeks a capital verdict or a life sentence.

**R.S. 14:30.1 Second degree murder**  Life sentence w/out benefits.

A. **Second degree murder is the killing of a human being:**

(1) When the offender has a **specific intent to kill or to inflict great bodily harm**; or

(2) When the offender is engaged in the **perpetration** or **attempted perpetration** of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to inflict great bodily harm. **Second degree felony murder. No SIK/IGBH.**
(3) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.

▲ We call this: 1st generation drug transfer.

(4) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

▲ We call this a “2nd generation drug transfer.”

R.S. 14:31 Manslaughter

A. Manslaughter is:

(1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or

(2) A homicide committed, without any intent to cause death or great bodily harm.

(a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 or 30.1, or of any intentional misdemeanor directly affecting the person; or

(b) When the offender is resisting lawful arrest by means, or in a manner, not inherently dangerous, and the circumstances are such that the killing would not be murder under Article 30 or 30.1.

(3) When the offender commits or attempts to commit any crime of violence as defined by R.S. 14:2(B), which is part of a continuous sequence of events resulting in the death of a human being where it was foreseeable that the offender's conduct during the commission of the crime could result in death or great bodily harm to a human being, even if the offender has no intent to kill or to inflict great bodily harm. For purposes of this Paragraph, it shall be immaterial whether or not the person who performed the direct act resulting in the death was acting in concert with the offender. Added per Act #105, eff. 8.1.20. ▲ This amendment was apparently intended to apply to this scenario:
Shooter fires into a crowd. Someone fires back, missing the original shooter, but inadvertently killing a by-stander. Original shooter has committed manslaughter.

B. MF up to 40 years MF. If victim <10, from 10 - 40 years MF, without benefits.

R.S. 14:32 Negligent homicide

A. Negligent homicide is either of the following:
   (1) The killing of a human being by criminal negligence.
   (2) The killing of a human being by a dog or other animal when the owner is reckless and criminally negligent in confining or restraining the dog or other animal.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence.

C. *** Up to 05 years RF, unless victim is under 10, then MF w/out bens.

D. *** Exclusions. See other source.

E. *** Definitions. See other source.

R.S. 14:32.1 Vehicular homicide

A. Vehicular homicide is the killing of a human being caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance, whether or not the offender had the intent to cause death or great bodily harm, whenever any of the following conditions exists and such condition was a contributing factor to the killing: [07 types]
   (1) The operator is under the influence of alcoholic beverages as determined by chemical tests administered under the provisions of R.S. 32:662.
   (2) The operator’s blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.
   (3) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.
   (4) The operator is under the influence of alcoholic beverages.
   (5) (a) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.
       (b) It shall be an affirmative defense to any charge under this Paragraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer’s package of the drug does not contain a warning against combining the medication with alcohol.
(6) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

(7) The operator's blood has any detectable amount of ***CDS Sch I - IV.

B. UP to 30 years RF. Depending upon driving record, some without bens.

C. CV is BAC of 0.20 or higher.

D. *** If 02 deaths: separate sentences. For this law, a human being includes an unborn child.

Concerning Implied Consent, you should look at “Katie Bug’s Law” which was amended effective June 20, 2019, as applicable to traffic fatalities when there is no obvious indicia of impairment. This law is discussed in more detail in Chapter Three, Question 06, page 124.

R.S. 14:32.5 Feticide defined; exceptions

A. Feticide is the killing of an unborn child by the act, procurement, or culpable omission of a person other than the mother of the unborn child. The offense of feticide shall not include acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman or her legal guardian has consented or which was performed in an emergency as defined in R.S. 40:1061.23. Nor shall the offense of feticide include acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

B. Criminal feticide is of three grades:

1. First degree feticide.
2. Second degree feticide.
3. Third degree feticide.

R.S. 14:32.6 First degree feticide [Wording taken from first ½ of second degree murder]

A. First degree feticide is:

1. The killing of an unborn child when the offender has a specific intent to kill or to inflict great bodily harm.

2. The killing of an unborn child when the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, assault by drive-by shooting, aggravated escape, armed robbery, first degree robbery, second degree robbery, cruelty to juveniles, second degree cruelty to juveniles,
terrorism, or simple robbery, even though he has no intent to kill or inflict great bodily harm.

B. MF up to 15 years.

R.S. 14:32.7 Second degree feticide [Wording taken from manslaughter]

A. Second degree feticide is:

(1) The killing of an unborn child which would be first degree feticide, but the offense is committed in sudden passion or heat of blood immediately caused by provocation of the mother of the unborn child sufficient to deprive an average person of his self control and cool reflection. Provocation shall not reduce a first degree feticide to second degree feticide if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed.

(2) A feticide committed without any intent to cause death or great bodily harm:

(a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 32.6 (first degree feticide), or of any intentional misdemeanor directly affecting the person; or

(b) When the offender is resisting lawful arrest by means, or in a manner, not inherently dangerous, and the circumstances are such that the killing would not be first degree feticide under Article 32.6. ................. B. *** MF up to 10 years.

R.S. 14:32.8 Third degree feticide

Subs. A.(1) uses wording from neg. homicide; Subs. A.(2) uses wording from vehicular homicide.

A. Third degree feticide is:

(1) The killing of an unborn child by criminal negligence. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence.

(2) NOTE: R.S. 14:32.8 A (2) can be a predicate offense for higher grades of DWI.

The killing of an unborn child caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, vessel, or other means of conveyance whether or not the offender had the intent to cause death or great bodily harm whenever any of the following conditions exist and such condition was a contributing factor to the killing:

(a) The offender is under the influence of alcoholic beverages as determined by chemical tests administered under the provisions of R.S. 32:662.

(b) The offender's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.
(c) The offender is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(d) The offender is under the influence of alcoholic beverages.

(e) (i) The offender is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(f) The offender is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the offender's knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

(g) The operator's blood has any detectable amount of any controlled dangerous substance listed in Schedule I, II, III, or IV as set forth in R.S. 40:964, or a metabolite of such controlled dangerous substance, that has not been medically ordered or prescribed for the individual.

B. *** Fine “not less than” $2,500; and RF of not more than 05 years.

Note: The old abortion statute was held unconstitutional in the E.D. of La. many years ago. The statute was later amended to require that the abortionist have nearby hospital privileges, and it was held unconstitutional in 2020 by SCOTUS. Accordingly, before making arrests on the following four statutes, you need a sit-down with your DA.

- R.S. 14:32.9 Criminal abortion [See other source (“SOS”)]
- R.S. 14:32.9.1 Aggravated criminal abortion by dismemberment (SOS.)
- R.S. 14:32.10 Partial birth abortion (SOS.) – Same name. ▼
- R.S. 14:32.11 Partial birth abortion (SOS.) – Same name. ▲

R.S. 14:32.12 Criminal assistance to suicide SOS.

Has been in the law for 25 years and never used, to our knowledge.

R.S. 14:33 Battery defined

Battery is the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.
R.S. 14:34  Aggravated battery

A. Aggravated battery is a battery committed with a dangerous weapon.

B. ***Fine up to $5K; RF up to 10 years. At least one year of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence if the offender knew or should have known that the victim is an active member of the United States Armed Forces or is a disabled veteran and the aggravated battery was committed because of that status.

C. For purposes of this Section, the following words shall have the following meanings:

   (1) "Active member of the United States Armed Forces" shall mean an active member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard.

   (2) "Disabled veteran" shall mean a veteran member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard who is disabled as determined by the United States Department of Veteran Affairs.

R.S. 14:34.1  Second degree battery

A. Second degree battery is a battery when the offender intentionally inflicts serious bodily injury; however, this provision shall not apply to a medical provider who has obtained the consent of a patient.

B. For purposes of this Section, the following words shall have the following meanings:

   (1) "Active member of the United States Armed Forces" shall mean an active member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard.

   (2) "Disabled veteran" shall mean a veteran member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard who is disabled as determined by the United States Department of Veteran Affairs.

   (3) Repealed in 2019. SBI is now universally defined for Title 14 at R.S. 14:2(C).

C. *** Up to $2K fine; RF up to 08 years. At least 18 months of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence if the offender knew or should have known that the victim is an active member of the U.S. Armed Forces or is a disabled veteran and the second degree battery was committed because of that status.

R.S. 14:34.2  Battery of a police officer

A. (1) (a) Battery of a police officer is a battery committed *** when the offender believes the victim is a police officer acting in the performance of his duty.
(2) For purposes of this Section, "police officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, federal law enforcement officers, constables, wildlife enforcement agents, state park wardens, and probation and parole officers.

(3) For purposes of this Section, "battery of a police officer" includes the use of force or violence upon the person of the police officer by throwing water or any other liquid, feces, urine, blood, saliva, or any form of human waste by an offender while the offender is incarcerated by a court of law and is being detained in any jail, prison, correctional facility, juvenile institution, temporary holding center, halfway house, or detention facility.

B. *** (1) (a) Up to $500; 15 days to 06 months w/o benefit of suspension of sentence.

(b) Whoever commits a second or subsequent offense of battery of a police officer shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than one year nor more than three years. At least fifteen days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(2) *** If the offender is under the jurisdiction and legal custody of the DPS & C, or is being detained in any jail, prison, correctional facility, juvenile institution, temporary holding center, halfway house, or detention facility, *** fine of up to $1,000 and RF from 1-5 years w/o benefits. Sentence must be consecutive.

(3) (a) ***If injury requires medical attention, up to $1,000 and RF from one to five years. At least thirty days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Act #64, eff. 8.1.2020.

(b) If the battery produces an injury that requires medical attention, and the offense is a second or subsequent violation of the provisions of this Section, the offender shall be fined not more than two thousand dollars and shall be imprisoned with or without hard labor for not less than two years nor more than five years. At least sixty days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

C. The definition of a "police officer" as provided in Paragraph (A)(2) of this Section shall be strictly construed solely for the purposes of this Section and shall not be construed as granting the authority to any agency not defined as a "peace officer" pursuant to the provisions of R.S. 40:2402 to make arrests, perform search and seizures, execute criminal warrants, prevent and detect crime, and enforce the laws of this state.

See other source for these next four statutes: www.drewlawbooks.com or www.legis.la.gov.

R.S. 14:34.3 Battery of a school teacher
R.S. 14:34.4 Battery of a school or recreation athletic contest official
R.S. 14:34.5   Battery of a correctional facility employee
R.S. 14:34.5.1 Battery of a bus operator

R.S. 14:34.6   Disarming of a peace officer

A. Disarming of a peace officer is committed when an offender, through use of force or threat of force, and without the consent of the peace officer, takes possession of any law enforcement equipment from the person of a peace officer or from an area within the peace officer’s immediate control, when the offender has reasonable grounds to believe that the victim is a peace officer acting in the performance of his duty.

B. For purposes of this Section:

(1) "Law enforcement equipment" shall include any firearms, weapons, restraints, ballistics shields, forced entry tools, defense technology equipment, self-defense batons, self-defense sprays, chemical weapons, or electro shock weapons used by the peace officer in the course and scope of his law enforcement duties and approved for such use by the peace officer's law enforcement agency. Your agency needs a policy on this.

(2) "Peace officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, park wardens, livestock brand inspectors, forestry officers, and probation and parole officers.

C.*** Up to five years, MF.

R.S. 14:34.7   Aggravated second degree battery

A. Aggravated second degree battery is a battery committed with a dangerous weapon when the offender intentionally inflicts serious bodily injury.

B. For purposes of this Section, the following words shall have the following meanings:

(1) "Active member of the United States Armed Forces" shall mean an active member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard.

(2) "Disabled veteran" shall mean a veteran member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard who is disabled as determined by the United States Department of Veteran Affairs.

(3) Repealed. SBI is now universally defined for Title 14. See R.S. 14:2 (C), supra.

C. *** Sentence up to $10,000 and RF up to 15 years. At least one year without bens if the offender knew or should have known that the victim is an active member of the U.S. Armed Forces or is a disabled veteran and the crime was committed because of that status.
R.S. 14:34.8 Battery of emergency room personnel, emergency services personnel, or a healthcare professional

A. (1) Battery of emergency room personnel, emergency services personnel, or a healthcare professional is battery committed without the consent of the victim when the offender has reasonable grounds to believe that the victim is emergency room personnel, emergency services personnel, or a healthcare professional acting in the performance of his employment duties.

(2) The use of force of violence upon the person of emergency room personnel, emergency services personnel, or a healthcare professional by throwing feces, urine, blood, saliva, or any form of human waste by an offender while the offender is transported to or from a medical facility or while being evaluated or treated in a medical facility shall also constitute battery of emergency room personnel, emergency services personnel, or a healthcare professional.

B. For purposes of this Section:

(1) "Emergency room personnel" includes a person in a hospital emergency department who, in the course and scope of his employment or as a volunteer, provides services or medical care, or who assists in the providing of services or medical care, for the benefit of the general public during emergency situations.

"Emergency room personnel" shall include but not be limited to any healthcare professional, emergency department clerk, emergency department technician, student, and emergency department volunteer working in the hospital emergency department.

(2) "Emergency services personnel" means any "emergency medical services personnel" as defined by R.S. 40:1075.3 or any "EMS practitioners" as defined by R.S. 40:1131.

(3) "Healthcare professional" means a person licensed or certified by this state to provide healthcare or professional services as a physician, physician assistant, dentist, registered or licensed practical nurse or certified nurse assistant, advanced practice registered nurse, certified emergency medical technician, paramedic, certified registered nurse anesthetist, nurse practitioner, respiratory therapist, clinical nurse specialist, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, licensed radiologic technologist, licensed clinical laboratory scientist, licensed professional counselor, certified social worker, or psychologist.

C. (1) *** Sentence: M.

(2) *** If injury requires medical attention, up to $5,000 and RF from one - five years, with at least five days without bens.
DOMESTIC VIOLENCE LAWS

Many Title 14 laws relate to DV. See our website www.drewlawbooks.com, & following:

R.S. 14:34.9 Battery of a dating partner [BDP] ........................................... On this page (below)
R.S. 14:34.9.1 Aggravated assault of a dating partner ........................................... Page 40
R.S. 14:35.3 Domestic abuse battery ................................................................. Page 40
R.S. 14:37.7 Domestic abuse aggravated assault ................................................ Page 43
R.S. 14:40.2 Stalking Page 46
R.S. 14:40.3 Cyberstalking Page 46
R.S. 14:62.8 Home invasion Page 63
R.S. 14:79 Violation of protective orders .......................................................... Page 72
R.S. 14:95.1.4 Illegal transfer to prohibited possessor .......................................... Page 86
R.S. 14:95.10 Poss. of a firearm or CCW by a person convicted of
DAB and certain offenses of BDP ................................................................. Page 88
R.S. 14:285 Unlawful communications; telephones and
telecommunications devices; Improper language ..................... Page 108
R.S. 14:403.3 Reports of missing children ......................................................... Page 115
Also R.S. 46:2140 Law enforcement officers; duties ....................................... Page 184

See www.legis.la.gov, for La. Code of Crim. Procedure articles involving DV, including:

La. C. Cr. P. art 313 GWEN’S LAW; bail hearings; detention w/o bail – NOTE: These hearings
are no longer mandatory; Up to the judge.

See Chapter VI. DOMESTIC VIOLENCE PREVENTION FIREARM TRANSFER ARTICLES
La. C. Cr. P. art 1001 – 1004 Seven Articles all laid out on pages #178 – 185 (infra).

R.S. 14:34.9 Battery of a dating partner

A. Battery of a dating partner is the intentional use of force or violence committed by
one dating partner upon the person of another dating partner.

B. For purposes of this Section:

(1) "Burning" means an injury to flesh or skin caused by heat, electricity, friction, radiation, or any other chemical or thermal reaction.

(2) "Court-monitored domestic abuse intervention program" means a program, comprised of a minimum of twenty-six in-person sessions occurring over a minimum of twenty-six weeks, that follows a model designed specifically for perpetrators of domestic abuse. The offender’s progress in the program shall be monitored by the court. The provider of the program shall have all of the following:

(a) Experience in working directly with perpetrators and victims of domestic abuse.

(b) Experience in facilitating batterer intervention groups.
(c) Training in the causes and dynamics of domestic violence, characteristics of batterers, victim safety, and sensitivity to victims.

(3) "Dating partner" means any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender.

"Dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context. We are not sure what this means.

(4) Repealed. For universal Title 14 definition of SBI, See R.S. 14:2(C), supra.

(5) "Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim. SOS for the sentencing possibilities.

C. Subs. C provides for various possible sentences for first offense - M.
D. Subs. D provides for various possible sentences for second offense - RF.
E. Subs. E provides for various possible sentences for third offense - RF.
F. Subs. F provides for various possible sentences for fourth offense – MF.
G. Subs. G Determination of prior convictions - 10 year cleansing period.
H. Subs. H Offender must pay costs of intervention program, unless unable to pay.
I. Subs. I relates to Child Endangerment - if child <13 was present, add 03 years HL.
J. Any felony crime of violence, as defined by R.S. 14:2(B), against a person committed by one dating partner against another dating partner, shall be designated as an act of domestic abuse for consideration in any civil or criminal proceeding.

▲ Act #101, eff 8.1.20.

K. Subs. J adds 03 years HL if the victim is PG, and the perpetrator knew it.
L. Subs K adds 03 years if the crime involves strangulation.
M. (1) Same with burning. .................... (2) If burning and SBI, from 05-50 years HL.
N. Amended in 2020: If SBI, but not burning, up to 08 years at HL (MF).
O. New in 2020: If a DW, add up to 10 years HL (MF).

R.S. 14:34.9.1 Aggravated assault upon a dating partner

A. Aggravated assault upon a dating partner is an assault with a dangerous weapon committed by one dating partner upon another dating partner.

B. For purposes of this Section, "dating partner" means any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the
expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender. "Dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context. Still a little confused about what casual means.

C. 1-5 years at HL + fine of up to five thousand dollars.

D. Child Endangerment – if a minor child thirteen years of age or younger was present at the scene at the time of the commission of the offense, the mandatory minimum of two years at hard labor without benefits.

R.S. 14:35 Simple battery

Simple battery is a battery committed without the consent of the victim. M.

These four batteries can be used for any victim class:

R.S. 14:34.7 Agg. 2ND degree battery – Up to 15 years, RF
R.S. 14:34 Aggravated battery – Up to 10 years, RF.
R.S. 14:34.1 Second degree battery – Up to 08 years, RF.
R.S. 14:35 Simple battery – M. ......................... Two Other “Specialty” Batteries - SOS
R.S. 14:35.1 Battery of a child welfare or adult protective service worker
R.S. 14:35.2 Simple battery of persons with infirmities
R.S. 14:35.3 Domestic abuse battery

A. Domestic abuse battery is the intentional use of force or violence committed by one household member or family member upon the person of another HHM or FM.

B. For purposes of this Section:

(1) "Burning" means an injury to flesh or skin caused by heat, electricity, friction, radiation, or any other chemical or thermal reaction.

(2) "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

(3) "Court-monitored domestic abuse intervention program" - defined.

(4) "Family member" means spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, foster children, and other ascendants, and other descendants. "Family member" also means the other parent or foster parent of any child or foster child of the offender. Amended by Act #101, eff. 8.1.20. This Act also added these revised definitions to R.S. 46:2132 (4). See www.legis.la.gov.

(5) "Household member" means any person presently or formerly living in the same residence with the offender and who is involved or has been involved in a sexual or intimate relationship with the offender, or any child presently or formerly living in the same
residence with the offender, or any child of the offender regardless of where the child resides.


(7) "Strangulation" - intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim. **SOS for sentencing.**

C. Subs. C provides for various possible sentences for first offense - M.
D. Subs. D provides for various possible sentences for second offense - RF.
E. Subs. E provides for various possible sentences for third offense - RF.
F. Subs. F provides for various possible sentences for fourth offense – MF.
G. Subs. G provides how to determine prior convictions - 10 year cleansing period, not counting jail time.
H. Subs. H directs that the offender must pay the cost for completion of a court-monitored domestic abuse intervention program, unless unable to pay.
I. Subs. I relates to **Child Endangerment** - if child <13 was present, add 03 years HL.
J. Subs. J adds 03 years HL if the victim is pg, and the perpetrator knew it.
K. Subs K adds 03 years if the crime involves strangulation.
L. Same with burning. If burning and SBI, from 05-50 years HL.
M. If SBI, but not burning, up to 08 years at HL.
N. – P. Harsher sentencing adopted in 2020. Same as R.S. 14:34.9 (N), (O), & (P).

**R.S. 14:36 Assault defined**

**Assault** is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery.

**Note:** Almost always, the assault is committed by the victim’s reasonable apprehension of a battery.

There is no such crime as “attempted battery” – That offense would be labeled “assault.”

**R.S. 14:37 Aggravated assault**

A. **Aggravated assault** is an assault committed with a dangerous weapon.

B. **M.** Note: This is the only misdemeanor with “Aggravated” in its name.

C. If the offense is committed upon a store's or merchant's employee while the offender is engaged in the perpetration or attempted perpetration of theft of goods, the offender shall be imprisoned from ***120 days – 6 months without suspension of sentence. Fine up to one thousand dollars. **Note:** To us, this misdemeanor [ M ] sounds a lot like an armed robbery.**
R.S. 14:37.1  Assault by drive-by shooting  
A.  Assault by drive-by shooting is an assault committed with a firearm when an offender uses a motor vehicle to facilitate the assault.  
B.  1-5 years RF with no suspension allowed.  This crime is an EF.  
C.  As used in this Section and in R.S. 14:30(A)(1) and 30.1(A)(2), the term "drive-by shooting" means the discharge of a firearm from a motor vehicle on a public street or highway with the intent either to kill, cause harm to, or frighten another person.  Compare with R.S. 14:94.E.

R.S. 14:37.2  Aggravated assault upon a peace officer  
A.  Aggravated assault upon a peace officer is an assault committed upon a peace officer who is acting in the course and scope of his duties.  Note: No mention of a dangerous weapon.  
B.  RF for 01-10 years + fine of up to $5,000.

R.S. 14:37.3  Unlawful use of a laser on a police officer  
A.  Unlawful use of a laser on a police officer is the intentional projection of a laser on or at a police officer without consent of the officer when the offender has reasonable grounds to believe the officer is a police officer acting in the performance of his duty and that the officer will be injured, intimidated, or placed in fear of bodily harm.  
B.  For purposes of this Section the following terms have the following meanings:  
   (1)  "Laser" means any device that projects a beam or point of light by means of light amplification by stimulated emission of radiation or any device that emits light which simulates the appearance of a laser.  
   (2)  "Police officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.  
C.  M.

R.S. 14:37.4  Aggravated assault with a firearm  
A.  Aggravated assault with a firearm is an assault committed with a firearm.  
B.  For the purposes of this Section, "firearm" is defined as an instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it.  
C.  Up to 10 grand and/or up to 10 years, RF.

R.S. 14:37.5  Aggravated assault upon a utility service employee with a firearm  
This 10 year RF is an unneeded leftover from Hurricane Katrina.  SOS.

R.S. 14:37.6  Aggravated assault with a motor vehicle upon a peace officer
Note: This statute is apparently a response to the difficulty of proving attempted murder, which requires proof of the Specific Intent to Kill.

A. Aggravated assault with a motor vehicle upon a peace officer is an assault committed with a motor vehicle upon a peace officer acting in the course and scope of his duties.

B. For the purposes of this Section:
   
   (1) "Motor vehicle" shall include any motor vehicle, aircraft, watercraft, or other means of conveyance.
   
   (2) "Peace officer" shall have the same meaning as defined in R.S. 40:2402.

C. Up to 10 grand; and/or from 1-5 years RF.

R.S. 14:37.7 Domestic abuse aggravated assault

A. Domestic abuse aggravated assault is an assault with a DW committed by one household member or family member upon another household member or family member.

B. For purposes of this Section:
   
   (1) "Family member" [“FM”] means spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, & foster children and other ascendants and descendants. "FM" also means the other parent or foster parent of any child or foster child of the offender.
   
   (2) "Household member" means any person presently or formerly living in the same residence with the offender & who is involved or has been involved in a sexual or intimate relationship with the offender, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.

C. Sentence: 1-5 years MF and up to $5,000 fine.

D. Child endangerment - If child 13 or less present: min. of 02 years HL w/out bens.

R.S. 14:38 Simple assault

A. Simple assault is an assault committed without a dangerous weapon.

B. *** Sentence: M up to $200 fine &/or up to 90 days.

R.S. 14:38.1 Mingling harmful substances Note: Similar to next statute.

A. Mingling harmful substances is the intentional mingling of any harmful substance or matter with any food, drink, or medicine with intent that the same shall be taken by any human being to his injury.......................... B. Sentence: RF up to 02 years and/or fine of $1,000.

▼ Compare these 02 statutes. ▲
R.S. 14:38.1.1 Adulterating a food product  
[Added by Act #171 of 2020]

A. Adulterating a food product is the intentional contamination of a food product by adding to the product, or mingling with the product, any feces, urine, blood, saliva, semen, any form of human or animal waste, or other bodily substance with the intent that the product be provided to or consumed by another person who has no knowledge of nor consents to the contamination.


Three “Designer” Assaults – SOS
R.S. 14:38.2 Assault on a school teacher ................. If by student: JTM. If by other: RF.
R.S. 14:38.3 Assault on a child welfare worker ............................................................... M.
R.S. 14:38.4 Harassment of a school or recreation athletic contest official M.

R.S. 14:39 Negligent injuring

A. Negligent injuring is either of the following:

(1) The inflicting of any injury upon the person of another by criminal negligence.

(2) The inflicting of any injury upon the person of another by a dog or other animal when the owner of the dog or other animal is reckless and criminally negligent in confining or restraining the dog or other animal.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence.

C. M. .........................D. N/A to (police animals; service dogs; livestock). SOS.

E. Contains definitions:

(1) "Harboring or keeping" .......... (2) "Livestock" ........ (3) “Owner” SOS

R.S. 14:39.1 Vehicular negligent injuring

A. Vehicular negligent injuring is the inflicting of any injury upon the person of a human being when caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance whenever any of the following conditions exists:

(1) The offender is under the influence of alcoholic beverages.

(2) The offender’s blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) The offender is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(4) (a) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.
(b) It shall be an affirmative defense to any charge under this Paragraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer’s package of the drug does not contain a warning against combining the medication with alcohol.

(5) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug. ▲ Same 05 types as DWI.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of negligence as set forth in Subsection A. .................................C.  M.

R.S. 14:39.2 First degree vehicular negligent injuring

A. First degree vehicular negligent injuring is the inflicting of serious bodily injury upon the person of a human being when caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance whenever any of the following conditions exists:

NOTE: Same five types as previous statute.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of negligence as set forth in Subsection A.

C. Repealed here was the separate definition of SBI. There is now a universal definition of SBI for all of Title 14. See R.S. 14:2 (C), supra.

D. Sentence: RF up to 05 years and/or $2,000.

R.S. 14:40 Intimidation by officers

Intimidation by officers is the intentional use, by any police officer or other person charged with the custody of parties accused of a crime or violation of a municipal ordinance, of threats, violence, or any means of inhuman treatment designed to secure a confession or incriminating statement from the person in custody.  M.

R.S. 14:40.1 Terrorizing

A. Terrorizing is the intentional communication of information that the commission of a crime of violence is imminent or in progress or that a circumstance dangerous to human life exists or is about to exist, with the intent of causing members of the general public to be in sustained fear for their safety; or causing evacuation of a building, a public structure, or a facility of transportation; or causing other serious disruption to the general public.

B. It shall be an affirmative defense that the person communicating the information provided for in Subsection A of this Section was not involved in the commission of a crime of
violence or creation of a circumstance dangerous to human life and reasonably believed his actions were necessary to protect the welfare of the public.

C. Sentence: Up to $15K fine &/or RF up to 15 years.

R.S. 14:40.2 Stalking

A. Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

B. (1) (a) First conviction is JTM. SOS

All of the many other types are RFs.

Definitions in Subsection C:

(1) "Harassing" ............................................. (2) "Pattern of conduct"

Definitions in Subsection D:

(1) "Pattern of conduct" ......................... (2) "Family member"
(3) "Nonconsensual contact" .................... (4) "Victim."

E. Notice to Employer of perpetrator.


G. N/A to private dicks, working in good faith.

J. No expungement for a conviction for stalking.

R.S. 14:40.3 Cyberstalking

A. For purposes of this Section, the following words shall have the following meanings:

(1) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

B. Cyberstalking is action of any person to accomplish any of the following:

(1) Use in electronic mail or electronic communication of any words or language threatening to inflict bodily harm to any person or to such person's child, sibling, spouse,
or dependent, or physical injury to the property of any person, or for the purpose of 
extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, 
whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing 
any person.

(3) Electronically mail or electronically communicate to another and to knowingly 
make any false statement concerning death, injury, illness, disfigurement, indecent 
conduct, or criminal conduct of the person electronically mailed or of any member of the 
person's family or household with the intent to threaten, terrify, or harass.

(4) Knowingly permit an electronic communication device under the person's 
control to be used for the taking of an action in Paragraph (1), (2), or (3) of this Subsection.

C. *** Sentences are all grades of JTMs, meaning the right to a six-person jury.

D. *** Venue: where the electronic mail or electronic communication was originally 
sent, originally received, or originally viewed by any person.

E. This Section does not apply to any peaceable, nonviolent, or nonthreatening activity 
intended to express political views or to provide lawful information to others.

R.S. 14:40.4 Burning cross on property of another or public place; intent to intimidate

A. It shall be unlawful for any person, with the intent of intimidating any person or group 
of persons to burn, or cause to be burned, a cross on the property of another, a highway, or other 
public place. ........................................B. *** Sentence: RF up to 15 years and/or up to $15K.

R.S. 14:40.5 Public display of a noose on property of another or public place; intent to 
intimidate

A. It shall be unlawful for any person, with the intent to intimidate any person or group 
of persons, to sketch, paint, draw, or otherwise place or display a hangman's noose on the 
property of another, a highway, or other public place.

B. As used in this Section, "noose" means a rope tied in a slip knot, which binds closer 
the more it is drawn, which historically has been used in execution by hanging, and which 
symbolizes racism and intimidation.

C. RF: up to $5K fine; and/or up to one year with or without HL.

R.S. 14:40.6 Unlawful disruption of the operation of a school; penalties

A. Unlawful disruption of the operation of a school is the commission of any of the 
following acts by a person, who is not authorized to be on school premises, which would 
foreseeably cause any of the following:

(1) Intimidation or harassment of any student or teacher by threat of force or force.
(2) Placing teachers or students in sustained fear for their health, safety, or welfare.
(3) Disrupting, obstructing, or interfering with the operation of the school.

B. For the purposes of this Section:
   (1) "Authorized to be present on school premises" means all of the following:
       (a) Any student enrolled at the school.
       (b) Any teacher employed at the school.
       (c) Any person attending a school sponsored function.
       (d) Any other person who has authorization to be present on the school premises from the principal of the school in the case of a public school, or the principal or headmaster in the case of a nonpublic school.
   (2) "School" means any public or nonpublic elementary, secondary, high school, vocational-technical school, college, special, or postsecondary school or institution, or university in this state.
   (3) "School premises" means any property used for school purposes, including but not limited to school buildings, playgrounds, and parking lots.
   (4) "School-sponsored function" means the specific designated area of the function, including but not limited to athletic competitions, dances, parties, or any extracurricular activity.
   (5) "Student" means any person registered or enrolled at a school as defined in this Section.
   (6) "Teacher" shall include any teacher or instructor, administrator, staff person, teacher aide, paraprofessional, school bus driver, food service worker, and other clerical, custodial, or maintenance personnel employed by any public or nonpublic elementary, secondary, high school, vocational-technical school, college, special, or postsecondary school or institution, or university in this state.

C. *** RF from 1-5 years &/or up to $1,000 fine.

D. *** Protection for Freedom of Assembly and for picketing by labor unions. SOS.

R.S. 14:40.7 Cyberbullying

A. Cyberbullying is the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen.

B. For purposes of this Section:
   (1) "Cable operator" means any person or group of persons who provides cable service over a cable system and directly, or through one or more affiliates, owns a
significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(2) "Electronic textual, visual, written, or oral communication" means any communication of any kind made through the use of a computer online service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or online messaging service.

(3) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(4) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, regardless of the facilities used.

C. An offense committed pursuant to the provisions of this Section may be deemed to have been committed where the communication was originally sent, originally received, or originally viewed by any person. [Thus, many possible venues.]

D. (1) Except as provided in Paragraph (2) of this Subsection, whoever commits the crime of cyberbullying shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

(2) When the offender is under the age of eighteen, the disposition of the matter shall be governed exclusively by the provisions of Title VII of the Children's Code.

E. The provisions of this Section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this Section.

F. The provisions of this Section shall not be construed to prohibit or restrict religious free speech pursuant to Article I, Section 8 of the Constitution of Louisiana.

R.S. 14:40.8 Criminal hazing

A. (1) Except as provided by Subsection D of this Section, it shall be unlawful for any person to commit an act of hazing.

(2) (a) Except as provided by Subparagraph (b) of this Paragraph, any person who commits an act of hazing shall be either fined up to one thousand dollars, imprisoned for up to six months, or both.

(b) If the hazing results in the serious bodily injury or death of the victim, or the hazing involves forced or coerced alcohol consumption that results in the victim having a blood alcohol concentration of at least 0.30 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood, any person who
 commits an act of hazing shall be fined up to ten thousand dollars and imprisoned, with or without hard labor, for up to five years.

B. Punishments as to sponsoring organizations. For C-E, SOS.

RAPE AND SEXUAL BATTERY

R.S. 14:41  Rape; defined

A. Rape is the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent.

B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime.

C. For purposes of this Subpart, "oral sexual intercourse" means the intentional engaging in any of the following acts with another person:

(1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender.

(2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

R.S. 14:41.1  Consent; victim in police custody

Poorly drafted, but this statute is trying to say is that a LEO can never use consent as a defense for having sexual relations, with a person in his/her custody.

R.S. 14:42  First degree rape  [Former name: Aggravated Rape]

A. First degree rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:

(1) When the victim resists ** to the utmost, but whose resistance is overcome by force.

(2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.

(3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

(5) When two or more offenders participated in the act.

(6) When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance.
B. For purposes of Paragraph (5), "participate" shall mean:
   (1) Commit the act of rape.
   (2) Physically assist in the commission of such act.

C. For purposes of this Section, the following words have the following meanings:
   (1) "Physical infirmity" means a person who is a quadriplegic or paraplegic.
   (2) "Mental infirmity" means a person with an intelligence quotient of seventy or lower.

D. (1) Whoever commits the crime of first degree rape shall be punished by life imprisonment at HL, without bens. ***

The language in this statute ▲ still provides for a death penalty, but this provision was held unconstitutional by *Kennedy v La*, 554 US 407 (2008)

R.S. 14:42.1 Second degree rape [Former name: Forcible Rape]

A. Second degree rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:
   (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.
   (2) When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.

B. Whoever commits the crime of second degree rape shall be imprisoned at HL from 05-40 years, without benefits. Amended by 2020 Act #32, eff. 8.1.20.

R.S. 14:43 Third degree rape [Former name: Simple Rape]

A. Third degree rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances:
   (1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity.
   (2) When the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity.
(3) When the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.

(4) When the offender acts without the consent of the victim.

B. MF, w/out bens, for not more than twenty-five years.

R.S. 43.1 Sexual battery Always a felony.

A. Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when any of the following occur:

(1) The offender acts without the consent of the victim.

(2) The victim has not yet attained fifteen years of age and is at least three years younger than the offender.

(3) The offender is seventeen years of age or older and any of the following exist:
   (a) The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:
      (i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.
      (ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.
   (b) The act is without consent of the victim, and the victim is sixty-five years of age or older.

B. Lack of knowledge of the victim's age shall not be a defense. However, normal medical treatment or normal sanitary care shall not be construed as an offense under the provisions of this Section. ***

C. (1) Usual sentence: RF of up to 10 years, without bens.
   (2) Victim < 13 and offender 17+ = MF of 25-99 years, at least 25 years without bens. Same with violations of A (3). ***

R.S. 14:43.1.1 Misdemeanor sexual battery

A. Misdemeanor sexual battery is the intentional touching of the breasts or buttocks of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the intentional touching of the breasts or buttocks of the offender
by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when the offender acts without the consent of the victim. *** M.

R.S. 14:43.2 Second degree sexual battery

A. Second degree sexual battery is the intentional engaging in any of the following acts with another person when the offender intentionally inflicts serious bodily injury on the victim:

  (1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or
  (2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

B. Repealed. SBI is now defined for all of R.S. 14 in R.S. 14:2(C). ***

More stern penalties apply when a victim is <13 & perpetrator is 17+. “?Raise the age?”

C. (1) RF, without bens, for not more than fifteen years.

OTHER SEXUAL OFFENSES SOS

R.S. 14:43.3 Oral sexual battery,
R.S. 14:43.4 Female genital mutilation,
R.S. 14:43.5 Intentional exposure to HIV,
R.S. 14:43.6 Administration of MPA to certain sex offenders

R.S. 14:44 Aggravated kidnapping

Aggravated kidnapping is the doing of any of the following acts with the intent thereby to force the victim, or some other person, to give up anything of apparent present or prospective value, or to grant any advantage or immunity, in order to secure a release of the person under the offender's actual or apparent control:

  (1) The forcible seizing and carrying of any person from one place to another; or
  (2) The enticing or persuading of any person to go from one place to another; or
  (3) The imprisoning or forcible secreting of any person.

*** Sentence: MF for life without bens. ▲

R.S. 14:44.1 Second degree kidnapping

A. Second degree kidnapping is the doing of any of the acts listed in Subsection B wherein the victim is:

  (1) Used as a shield or hostage;
  (2) Used to facilitate the commission of a felony or the flight after an attempt to commit or the commission of a felony;
  (3) Physically injured or sexually abused; Note: Hard to get much worse than this.
(4) Imprisoned or kidnapped for seventy-two or more hours, except as provided in R.S. 14:45(A)(4) or (5); or

(5) Imprisoned or kidnapped when the offender is armed with a dangerous weapon or leads the victim to reasonably believe he is armed with a dangerous weapon.

B. For purposes of this Section, kidnapping is:

(1) The forcible seizing and carrying of any person from one place to another; or

(2) The enticing or persuading of any person to go from one place to another; or

(3) The imprisoning or forcible secreting of any person.

C. *** Sentence: MF from 05-40 years, at least 02 without bens.

R.S. 14:44.2 Aggravated kidnapping of a child

A. Aggravated kidnapping of a child is the unauthorized taking, enticing, or decoying away and removing from a location for an unlawful purpose by any person other than a parent, grandparent, or legal guardian of a child under the age of thirteen years with the intent to secret the child from his parent or legal guardian.

B. ***(1) MF for life without bens.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, if the child is returned not physically injured or sexually abused, then the offender shall be punished in accordance with the provisions of R.S. 14:44.1. *** MF up to 40 years 2+ w/out bens).

No life.

R.S. 14:45 Simple kidnapping

A. Simple kidnapping is:

(1) The intentional and forcible seizing and carrying of any person from one place to another without his consent.

(2) The intentional taking, enticing or decoying away, for an unlawful purpose, of any child not his own and under the age of fourteen years, without the consent of its parent or the person charged with its custody.

(3) The intentional taking, enticing or decoying away, without the consent of the proper authority, of any person who has been lawfully committed to any institution for orphans, persons with mental illness, persons with intellectual disabilities, or other similar institution.

(4) The intentional taking, enticing or decoying away and removing from the state, by any parent of his or her child, from the custody of any person to whom custody has been awarded by any court of competent jurisdiction of any state, without the consent of the legal custodian, with intent to defeat the jurisdiction of the said court over the custody of the child.
(5) The taking, enticing or decoying away and removing from the state, by any person, other than the parent, of a child temporarily placed in his custody by any court of competent jurisdiction in the state, with intent to defeat the jurisdiction of said court over the custody of the child.

B. *** Sentence Up to $5K fine; RF up to 05 years, or both. ***

R.S. 14:45.1 Interference with the custody of a child

A. Interference with the custody of a child is the intentional taking, enticing, or decoying away of a minor child by a parent not having a right of custody, with intent to detain or conceal such child from a parent having a right of custody pursuant to a court order or from a person entrusted with the care of the child by a parent having custody pursuant to a court order. It shall be an affirmative defense that the offender reasonably believed his actions were necessary to protect the welfare of the child............................B. Sentence: M. No crossing of a state line.

R.S. 14:46 False imprisonment

A. False imprisonment is the intentional confinement or detention of another, without his consent and without proper legal authority.................................B. M.

R.S. 14:46.1 False imprisonment; offender armed with dangerous weapon

A. False imprisonment while armed with a dangerous weapon is the unlawful intentional confinement or detention of another while the offender is armed with a dangerous weapon.

B. RF, for up to 10 years.

R.S. 14:46.2 Human trafficking

A. It shall be unlawful:

(1) (a) For any person to knowingly recruit, harbor, transport, provide, solicit, receive, isolate, entice, obtain, or maintain the use of another person through fraud, force, or coercion to provide services or labor.

(b) For any person to knowingly recruit, harbor, transport, provide, solicit, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of twenty-one years for the purpose of engaging in commercial sexual activity regardless of whether the person was recruited, harbored, transported, provided, solicited, sold, purchased, received, isolated, enticed, obtained, or maintained through fraud, force, or coercion. It shall not be a defense to prosecution for a violation of the provisions of this Subparagraph that the person did not know the age of the victim or that the victim consented to the prohibited activity.

(2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
(3) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

*** Sentences & definitions. All sentences are MFs. Amended in 2020.

R.S. 14:46.3 Trafficking of children for sexual purposes

A. It shall be unlawful:

(1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.

(2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.

(3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section.

(4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

(5) For any person to knowingly advertise any of the activities prohibited by this Section.

(6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.

B. For purposes of this Section, "commercial sexual activity" means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.

*** Definitions and Sentences – All penalties are MFs. Amended in 2020.

R.S. 14:46.4 Re-homing of a child *** SOS. Up to 05 year MF.

Four Unconstitutional/Unusable Statutes

R.S. 14:47 Defamation;
R.S. 14:48 Presumption of malice;
R.S. 14:49 Qualified privilege;
R.S. 14:50 Absolute privilege.
R.S. 14:50.2  Perpetration or attempted perpetration of certain crimes of violence against a victim sixty-five years of age or older ***SOS. For defined CVs [except life sentences & misdemeanors], an extra 03 years is added if the victim is 65 or older.

R.S. 14:51  Aggravated arson
A.  Aggravated arson is the intentional damaging by any explosive substance or the setting fire to any structure, watercraft, or movable whereby it is foreseeable that human life might be endangered.  ...B.  *** Sentence 06-20 MF + up to $25K fine.  02 years without bens.

R.S. 14:51.1  Injury by arson
A.  Injury by arson is the intentional damaging by any explosive substance or the setting fire to any structure, watercraft, or other movable belonging to another if either of the following occurs:
   (1)  Any person suffers great bodily harm, permanent disability, or disfigurement as a result of the fire or explosion.
   (2)  A firefighter, law enforcement officer or first responder who is present at the scene and acting in the line of duty is injured as a result of the fire or explosion.
B.  *** Sentence 06-20 MF + up to $25K fine.  Two years without bens.

R.S. 14:52  Simple arson
A.  Simple arson is either of the following:
   (1)  The intentional damaging by any explosive substance or the setting fire to any property of another, without the consent of the owner and except as provided in R.S. 14:51.
   (2)  The starting of a fire or causing an explosion while the offender is engaged in the perpetration or attempted perpetration of another felony offense even though the offender does not have the intent to start a fire or cause an explosion.
B.  Whoever commits the crime of simple arson, where the damage done amounts to five hundred dollars or more ***Sentence = up to $15,000 & MF for up to 15 years. .
C.  Where the damage is less than five hundred dollars, the offender shall be fined not more than twenty-five hundred dollars or ***
   Sentence = RF up to 05 years, or both.

R.S. 14:52.1  Simple arson of a religious building
A.  Simple arson of a religious building is the intentional damaging, by any explosive substance or by setting fire, of any church, synagogue, mosque, or other building, structure, or place primarily used for religious worship or other religious purpose.
B.  *** Up to $15K fine; and MF from 02-15 years, at least 02 without bens.
R.S. 14:52.2 Negligent arson

A. Negligent arson is the damaging of any building, as defined by R.S. 33:4771, of another by the setting of fire or causing an explosion, without consent of the owner or custodian of the building, when the offender's criminal negligence causes the fire or the explosion.

B. If the offender knows or should have known that he has no possessory right to the building or other interest therein, or has not previously established a right of entry into or onto the building, it may be inferred that the setting of the fire or the causing of the explosion was without consent of the owner or custodian of the building.

C. Whoever commits the crime of negligent arson where it is not foreseeable that human life might be endangered shall be subject to the following:

(1) On a first conviction, the offender shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both. In addition, the offender shall be ordered to pay restitution for damages sustained.

(2) On a second and subsequent conviction, the offender shall be fined not more than two thousand dollars and imprisoned, with or without hard labor, for not more than two years. In addition, the offender shall be ordered to pay restitution for damages sustained.

D. Whoever commits the crime of negligent arson where it is foreseeable that human life might be endangered shall be fined not more than three thousand dollars and imprisoned, with or without hard labor, for not more than three years. In addition, the offender shall be ordered to pay restitution for damages sustained.

E. Whoever commits the crime of negligent arson resulting in death or serious bodily injury to a human being shall be fined not more than five thousand dollars and imprisoned, with or without hard labor, for not more than five years.

In addition, the offender shall be ordered to pay restitution for damages sustained.

SOS for Subsections F. & G.

R.S. 14:53 Arson with intent to defraud

A. Arson with intent to defraud is the setting fire to, or damaging by any explosive substance, any property, with intent to defraud.

B. *** Up to $10K fine and/or RF up to 05 years.

R.S. 14:54.1 Communicating of false information of planned arson

A. Communicating of false information of arson or attempted arson is the intentional impartation or conveyance, or causing the impartation or conveyance by the use of the mail, telephone, telegraph, word of mouth, or other means of communication, of any threat or false information knowing the same to be false, including bomb threats or threats involving fake
explosive devices, concerning an attempt or alleged attempt being made, or to be made, to commit either aggravated or simple arson.

B. *** Sentence - MF up to 15 years.

R.S. 14:54.3  Manufacture and possession of a bomb

A. It shall be unlawful for any person without proper license as required by R.S. 40:1472.1 et seq., knowingly and intentionally to manufacture, possess, or have under his control any bomb.

B. A "bomb", for the purposes of this Section, is defined as an explosive compound or mixture with a detonator or initiator, or both, but does not include small arms ammunition. The term "bomb", as used herein, shall also include any of the materials listed in Subsection C present in an unassembled state but which could, when assembled, be ignited in the same manner as described in Subsection C, when possessed with intent to manufacture or assemble a bomb.

C. As used herein the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

D. This Section shall not apply to fireworks possessed within the meaning and contemplation of R.S. 51:650 et seq.

E. *** Sentence: Up to $10K &/or MF up to 20 years.

R.S. 14:54.4  Forfeitures *** SOS

R.S. 14:54.5  Fake explosive device

A. It shall be unlawful for any person to manufacture, possess, have under his control, buy, sell, mail, send to another person, or transport a fake explosive device, if the offender knowingly and intentionally:

(1) Influences the official conduct or action of an official or any personnel of a public safety agency; or
(2) Threatens to use the fake explosive device while committing or attempting to commit any felony.

B. For purposes of this Section the following words shall have the following meanings:

(1) A "fake explosive device" means any device or object that by its design, construction, content, or characteristics appears to be or to contain an explosive, an explosive compound or mixture with a detonator or initiator, or both, but is, in fact, an
inoperative facsimile or imitation of such a destructive device, bomb, or explosive as defined in R.S. 14:54.3.

(2) A "public safety agency" means the Department of Public Safety and Corrections, a fire department, an emergency medical or rescue service, a law enforcement agency, or a volunteer agency organized to deal with emergencies.

C. *** Sentence: MF for up to 05 years and fine equaling costs of investigation/response.

D. Provisions of this Section shall not apply to authorized military, police, and fire operations and training exercises.

R.S. 14:54.6 Communicating of false information of planned bombing on school property, at a school-sponsored function, or in a firearm-free zone

A. The communicating of false information of a bombing threat on school property, at a school-sponsored function, or in a firearm-free zone whether or not such threat involves fake explosive devices is the intentional impartation or conveyance, or causing the impartation or conveyance by the use of the mail, telephone, telegraph, word of mouth, or other means of communication, of any such threat or false information knowing the same to be false.

B. *** RF up to 20 years.

C. For purposes of this Section, "at a school-sponsored function" means the specific designated area of the function, including but not limited to athletic competitions, dances, parties, or any extracurricular activity.

R.S. 14:55 Aggravated criminal damage to property

A. Aggravated criminal damage to property is the intentional damaging of any structure, watercraft, or movable, wherein it is foreseeable that human life might be endangered, by any means other than fire or explosion.

B. *** Fine up to $10K; and/or RF from 01-15 years.

R.S. 14:56 Simple criminal damage to property

A. (1) Simple criminal damage to property is the intentional damaging of any property of another, without the consent of the owner, and except as provided in R.S. 14:55, by any means other than fire or explosion.

   (2) The provisions of this Section shall include the intentional damaging of a dwelling, house, apartment, or other structure used in whole or in part as a home, residence, or place of abode by a person who leased or rented the property.

B. *** Sentence graduated from M to RF, depending upon the amount of damage.

R.S. 14:56.4 Criminal damage to property by defacing with graffiti *** SOS.
R.S. 14:56.5  Criminal damage to historic buildings/landmarks by defacing with graffiti

***SOS

R.S. 14:57  Damage to property with intent to defraud

A. Damage to property with intent to defraud is the damaging of any property, by means other than fire or explosion, with intent to defraud. Looking for insurance money.

B. *** Fine of up to $10K; &/or RF up to 04 years.

R.S. 14:58  Contaminating water supplies

A. Contaminating water supplies is the intentional performance of any act tending to contaminate any private or public water supply.

B.  

(1) *** If danger to humans: Up to $01K fine &/or RF up to 20 years.

(2) *** If no danger to humans, up to $500 and/or RF up to 05 years.

R.S. 14:59  Criminal mischief

A. Criminal mischief is the intentional performance of any of the following acts:

(1) Tampering with any property of another, without the consent of the owner, with the intent to interfere with the free enjoyment of any rights of anyone thereto, or with the intent to deprive anyone entitled thereto of the full use of the property.

(2) Giving of any false alarm of fire or notice which would reasonably result in emergency response. Possibly another type of 9-1-1 “swatting.”

(3) Driving of any tack, nail, spike or metal over one and one-half inch in length into any tree located on lands belonging to another, without the consent of the owner, or without the later removal of the object from the tree.

(4) The felling, topping, or pruning of trees or shrubs within the right-of-way of a state highway, without prior written approval of the chief engineer of the Department of Transportation and Development or his designated representative, provided prior written approval is not required for agents or employees of public utility companies in situations of emergency where the person or property of others is endangered.

(5) Giving of any false report or complaint to a sheriff, or his deputies, or to any officer of the law relative to the commission of, or an attempt to commit, a crime. Underutilized.

(6) Throwing any stone or any other missile in any street, avenue, alley, road, highway, open space, public square, or enclosure, or throwing any stone, missile, or other object from any place into any street, avenue, road, highway, alley, open space, public square, enclosure, or at any train, railway car, or locomotive.
(7) Taking temporary possession of any part or parts of a place of business, or remaining in a place of business after the person in charge of such business or portion of such business has directed such person to leave the premises and to desist from the temporary possession of any part or parts of such business.

(8) The communication to any person for the purpose of disrupting any public utility water service, when the communication causes any officer, employee, or agent of the service reasonably to be placed in sustained fear for his or another person's safety, or causes the evacuation of a water service building, or causes any discontinuance of any water services.

(9) The discharging of any firearm at a train, locomotive, or railway car.

B. *** M.

R.S. 14:60  Aggravated burglary  *** Read it like this.

A. Aggravated burglary is the unauthorized entering of any inhabited dwelling,

OR of any structure, water craft, or movable where a person is present,

with the intent to commit a felony or any theft therein,

under any of the following circumstances:

(1) If the offender is armed with a dangerous weapon.

(2) If, after entering, the offender arms himself with a dangerous weapon.

(3) If the offender commits a battery upon any person while in such place, or in entering or leaving such place. ................................................ B.  *** MF for 01-30 years.

R.S. 14:62  Simple burglary

A. Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60.

B. *** Fine up to $2K; and/or RF up to 12 years. New in 2020: If burglar uses/possesses a firearm, minimum of three years and up to 12 years. RF. Effective 8/1/2020

R.S. 14:62.2  Simple burglary of an inhabited dwelling  (RF up to 06 years)

A. Simple burglary of an inhabited home is the unauthorized entry of any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by a person or persons with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60. ◄ This reference is to Agg. Burglary.

B. *** Sentence: MF from 01-12 years.
R.S. 14:62.5  Looting

A.  **Looting** is the intentional entry by a person without authorization of any of the following when normal security of property is not present by virtue of a hurricane, flood, fire, act of God, or force majeure of any kind, or by virtue of a riot, mob, or other human agency, and the person obtains, exerts control over, damages, or removes the property of another without authorization:

1. Any dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person.
2. Any structure belonging to another and used in whole or in part as a place of business.
3. Any vehicle, watercraft, building, plant, establishment, or other structure, movable or immovable.

B. Whoever commits the crime of looting shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than fifteen years, or both.  **MF.**

C. Whoever commits the crime of looting during the existence of a **state of emergency**, which has been declared pursuant to law by the governor or the chief executive officer of any parish, may be fined not less than five thousand dollars nor more than ten thousand dollars and **MF from 03-15 years HL, without bens.**

05 RFs, involving unauthorized entries, or damage to critical infrastructures, to be used, as opposed to the misdemeanor of criminal trespass***

R.S. 14:61  Unauthorized entry of a critical infrastructure (RF up to 06 years)
R.S. 14:61.1  Criminal damage to a critical infrastructure [MF if human lives endangered].
R.S. 14:62.3  Unauthorized entry of an inhabited dwelling
R.S. 14:62.4  Unauthorized entry of a place of business (RF up to 06 years)
R.S. 14:62.7  Unauthorized entry of a dwelling during an emergency or disaster

[Weak law; R.S. 14:62.3 is easier to prove with more exposure.]

R.S. 14:62.8  Home invasion

A.  **Home invasion** is the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.

B.  ***Fine up to $5,000; MF from 01-30 years.***

R.S. 14:63  Criminal trespass

A. No person shall enter any structure, watercraft, or movable owned by another without express, legal, or implied authorization. **Can involve “unmanned aircraft systems.”**
*** 1st offense up to 30 days; 90 days for 2nd. SOS

R.S. 14:63.3 Entry on or remaining in places or on land after being forbidden

A. (1) No person shall without authority go into or upon or remain in or upon or attempt to go into or upon or remain in or upon any structure, watercraft, or any other movable, or immovable property, which belongs to another, including public buildings and structures, ferries, and bridges, or any part, portion, or area thereof, after having been forbidden to do so, either orally or in writing, including by means of any sign hereinafter described, by any owner, lessee, or custodian of the property or by any other authorized person. *** SOS. M.

R.S. 14:63.4 Aiding and abetting others to enter or remain on premises where forbidden

A. (1) No person shall incite, solicit, urge, encourage, exhort, instigate, or procure any other person to go into or upon or to remain in or upon any structure, watercraft, or any other movable, which belongs to another, including public buildings and structures, ferries, and bridges, or any part, portion, or area thereof, knowing that such other person has been forbidden to go or remain there, either orally or in writing, including by means of any sign hereinafter described, by the owner, lessee, or custodian of the property or by any other authorized person. *** SOS. M.

R.S. 14:63.5 Entry or remaining on site of a school or recreation athletic contest after being forbidden

A. No person shall without authority go into or upon or remain in or upon, or attempt to go into or upon or remain in or upon, any immovable property or other site or location that belongs to another and that is used for any school athletic contest or recreation athletic contest, including any area in the immediate vicinity of the site or location of the athletic contest, after having been forbidden to do so, either orally or in writing, by any owner, lessee, or custodian of the property or by any other authorized person.....................................B. Sentence: M. ***

ROBBERY & RELATED

R.S. 14:64 Armed robbery

A. Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.

B. *** MF from 10-99 years, without bens.

R.S. 14:64.1 First degree robbery

A. First degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation,
when the offender leads the victim to reasonably believe he is armed with a dangerous weapon.

B. *** MF 03-40 years, without bens.

R.S. 14:64.2 Carjacking

A. Carjacking is the intentional taking of a motor vehicle, as defined in R.S. 32:1(40), belonging to another person, in the presence of that person, or in the presence of a passenger, or any other person in lawful possession of the motor vehicle, by the use of force or intimidation.

B. *** MF from 02-20 years, without bens.

R.S. 14:64.3 Armed robbery; attempted armed robbery; use of firearm; additional penalty

A. When the dangerous weapon used in the commission of the crime of armed robbery is a firearm, the offender shall be imprisoned at hard labor for an additional period of five years without benefit of parole, probation, or suspension of sentence. The additional penalty imposed pursuant to this Subsection shall be served consecutively to the sentence imposed under the provisions of R.S. 14:64. This is a sentencing enhancement statute for R.S. 14:64.

B. When the dangerous weapon used in the commission of the crime of attempted armed robbery is a firearm, the offender shall be imprisoned at hard labor for an additional period of five years without benefit of parole, probation, or suspension of sentence. The additional penalty imposed pursuant to this Subsection shall be served consecutively to the sentence imposed under the provisions of R.S. 14:27 and 64.

R.S. 14:64.4 Second degree robbery

A. (1) Second degree robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another when the offender intentionally inflicts serious bodily injury.

(2) Repealed in 2019. For Title 14’s universal definition of SBI, see R.S. 14:2 (C).

B. *** MF for 03-40 forty years.

R.S. 14:65 Simple robbery

A. Simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon......................... B. ***Fine up to $3K. RF up to seven years.

R.S. 14:65.1 Purse snatching

A. Purse snatching is the theft of anything of value contained within a purse or wallet at the time of the theft, from the person of another or which is in the immediate control of another, by use of force, intimidation, or by snatching, but not armed with a dangerous weapon.

B. RF from 02-20 years.
R.S. 14:66  Extortion  Threatening to do any harm unless value is received.
MF (1-15 years). ***  

**BASIC THEFT**

R.S. 14:67  Theft  This statute will handle any theft.

A. Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

B. 1. Whoever commits the crime of theft when the misappropriation or taking amounts to a value of twenty-five thousand dollars or more shall be imprisoned at hard labor for not more than twenty years, or may be fined not more than fifty thousand dollars, or both. MF.

   2. When the misappropriation or taking amounts to a value of five thousand dollars or more, but less than a value of twenty-five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than ten thousand dollars, or both. RF.

   3. When the misappropriation or taking amounts to a value of one thousand dollars or more, but less than a value of five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than five years, or may be fined not more than three thousand dollars, or both. RF.

   4. When the misappropriation or taking amounts to less than a value of one thousand dollars, the offender shall be imprisoned for not more than six months, or may be fined not more than one thousand dollars, or both. M.

   If the offender in such cases has been convicted of theft two or more times previously, upon any subsequent conviction he shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.

C. When there has been a misappropriation or taking by a number of distinct acts of the offender, the aggregate of the amount of the misappropriations or taking shall determine the grade of the offense.

D. In a prosecution under this Section where the property allegedly misappropriated or taken was held for sale by a merchant, an intent to permanently deprive the merchant of the property held for sale may be inferred when the defendant:

   1. Intentionally conceals, on his person or otherwise, goods held for sale.
(2) Alters or transfers any price marking reflecting the actual retail price of the goods.

(3) Transfers goods from one container or package to another or places goods in any container, package, or wrapping in a manner to avoid detection.

(4) Willfully causes the cash register or other sales recording device to reflect less than the actual retail price of the goods.

(5) Removes any price marking with the intent to deceive the merchant as to the actual retail price of the goods.

Theft is non-violent. Some of us think LEOs should consider using basic theft (R.S. 14:67) for all thefts, except for Theft of a firearm (R.S. 14:67.15). The DA can always screen & charge the defendant with any other theft that may fit the facts.

R.S. 14:68 Unauthorized use of a movable

A. Unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable, according to the law pertaining to civil matters, is immaterial.

B. Sentence: From M to RF, depending on whether worth > $1,000. SOS.

R.S. 14:68.1 Unauthorized removal of shopping cart, basket, or dairy case

A. It shall be a misdemeanor for any person to remove a shopping cart, basket, or dairy case belonging to another from the parking area or grounds of any store without authorization therefor. M.

R.S. 14:68.2 Unauthorized use of “SNAP” benefits or supplemental nutrition assistance program benefit access devices. RF.

R.S. 14:68.2.1 Failure to report unauthorized use of supplemental nutrition assistance program benefits; penalties Fine only, but a JTM.

R.S. 14:68.3 Unauthorized removal of a motor vehicle; penalties

A. No one, except upon a court order, shall remove a motor vehicle from a garage, repair shop, or vehicle storage facility when there is a charge due such garage, repair shop, or vehicle storage facility for repair work, mechanical service, or storage rendered to such vehicle without paying the charge or making arrangements acceptable to the management of the garage, repair shop, or vehicle storage facility to pay the charge.......................... B. M.
R.S. 14:68.4 Unauthorized use of a motor vehicle

A. Unauthorized use of a motor vehicle is the intentional taking or use of a motor vehicle which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the motor vehicle permanently. 

B. RS up to 02 years + a fine.

R.S. 14:68.6 Unauthorized ordering of goods or services

A. It is unlawful for any person to intentionally place an order for any goods or services to be supplied or delivered to another person when all of the following circumstances apply:

   (1) The person receiving the goods or services has not previously authorized such an order, does not reside with the person who placed the order, and the goods or services are not being given as a gift to that person.

   (2) The person receiving the goods or services is required to pay for such goods or services, either in advance or upon delivery and has not previously agreed to do so, or is required to return the items to the sender at his expense.

   (3) The person placing the order for goods or services intends to harass or annoy the person receiving such goods or services.

B. Receipt and use of an item described in this Section by the receiver shall constitute an affirmative defense to prosecution under this Section.

C. If the person who places the order for the goods or services is told by the customer who receives the goods or services that the customer did not desire the goods or services, the customer is released from any obligation to pay for such goods or services and the providing person shall not be liable under this Section.

D. M. 

E. Restitution

R.S. 14:68.7 Receipts and universal product code labels; unlawful acts

Similar penalties to basic theft. SOS.

R.S. 14:69 Illegal possession of stolen things

A. Illegal possession of stolen things is the intentional possessing, procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses.

B. *** Same grades/penalties as basic theft.

C. When the offender has committed the crime of illegal possession of stolen things by a number of distinct acts, the aggregate of the amount of the things so received shall determine the grade of the offense.
D. It shall be an affirmative defense to a violation of this Section committed by means of possessing, that the accused, within 72 hours of his acquiring knowledge or good reason to believe that a thing was the subject of robbery or theft, reports that fact or belief in writing to the district attorney in the parish of his domicile. Think about this a minute. His domicile?

E. No person shall be exempt from prosecution under this Section for any act committed with fraudulent, willful, or criminal knowledge regardless of any other presumption or exemption provided by statute, including but not limited to any signed statement of ownership executed by a purported owner of property conveyed.

R.S. 14:69.1 Illegal possession of stolen firearms

A. (1) Illegal possession of stolen firearms is the intentional possessing, procuring, receiving, or concealing of a firearm which has been the subject of any form of misappropriation.

(2) It shall be an affirmative defense to a prosecution for a violation of this Section that the offender had no knowledge that the firearm was the subject of any form of misappropriation.

(3) It shall be an affirmative defense to a prosecution for a violation of this Section that the alleged offender has or had possession of the firearm pursuant to his regular course of business, is in possession of a valid federal firearms license, is routinely in the possession of firearms for sale, pawn, lease, rent, repair, modification, or other legitimate acts as part of his normal scope of business operations, and is enforcing a privilege pursuant to R.S. 9:4502.

B. Whoever commits the crime of illegal possession of firearms shall be punished as follows:

(1) For a first offense, *** RF from 01 – 05 years.

(2) For 2nd +++, RF for 02 -10 years.

SOS for all these types of thievery.

R.S. 14:70 False accounting
R.S. 14:70.1 Medicaid fraud
R.S. 14:70.2 Refund or access device application fraud
R.S. 14:70.3 Fraud in selling agricultural equipment
R.S. 14:70.4 Access device fraud
R.S. 14:70.5 Fraudulent remuneration
R.S. 14:70.6 Unlawful distribution/poss./use of theft alarm deactivation devices
R.S.14:70.7 Unlawful production, manufacturing, distribution, or possession of fraudulent documents for identification purposes
R.S. 14:70.8 Illegal transmission of monetary funds
R.S. 14:70.9 Government benefits fraud
R.S. 14:71    Issuing worthless checks

A.  (1)    (a)  Issuing worthless checks is the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such check, draft, or order in full upon its presentation.

(b)  This Section shall apply to a check, draft, or order tendered for satisfaction, in whole or in part, of payments due on installment contracts, open accounts, or any other obligation for which the creditor has authorized periodic payments or the extension of time in which to pay.

(c)  This provision shall apply to a check, draft, or order for the payment of money given for a motor vehicle when such payment is conditioned upon delivery of documents necessary for transfer of a valid title to the purchaser.

(d)  For purposes of this Section, an open account shall include accounts where checks are tendered as payment:

(i)  In advance of receipt, in whole or in part, for telecommunication facilities or services.

(ii)  For deposits, prepayments, or payments for the lease or rent of a rental motor vehicle, pursuant to a lease or rental agreement.

(e)  This Section shall apply to a check, draft, or order tendered for satisfaction, in whole or in part, of a state tax obligation. For purposes of this Section, "state tax obligation" means a state tax, interest, penalty, or fee, or any contract, installment agreement, or other obligation arising out of such obligation.

(f)  For purposes of this Section, any check, draft, or order tendered for payment of any tax, fee, fine, penalty, or other obligation to the state or any of its political subdivisions shall be considered issuing a check, draft, or order in exchange for anything of value.

(2)  The offender's failure to pay a check, draft, or order, issued for value, within ten days after notice of its nonpayment upon presentation has been deposited by certified mail in the United States mail system addressed to the issuer thereof either at the address shown on the instrument or the last known address for such person shown on the records of the bank upon which such instrument is drawn or within ten days after delivery or personal tender of the written notice to said issuer by the payee or his agent, shall be presumptive evidence of his intent to defraud.
B. Issuing worthless checks is also the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money or the issuing of such an instrument for the payment of a state tax obligation, when the offender knows at the time of the issuing that the account designated on the check, draft, or order has been closed, or is nonexistent or fictitious, or is one in which the offender has no interest or on which he has no authority to issue such check, draft, or order.

C. Penalties mirror basic theft. ............................................ D. – G. SOS.

SOS for these additional examples of thievery. SOS.

R.S. 14:71.1 Bank fraud
R.S. 14:71.2 Failure to pay bridge or bridge-causeway toll
R.S. 14:71.3 Mortgage fraud
R.S. 14:71.4 Homestead exemption fraud

R.S. 14:72 Forger

A. It shall be unlawful to forge, with intent to defraud, any signature to, or any part of, any writing purporting to have legal efficacy.

B. Issuing, transferring, or possessing with intent to defraud, a forged writing, known by the offender to be a forged writing, shall also constitute a violation of the provisions of this Section.

C. For purposes of this Section:
   (1) "Forge" means the following:
       (a) To alter, make, complete, execute, or authenticate any writing so that it purports:
           (i) To be the act of another who did not authorize that act;
           (ii) To have been executed at a time or place or in a numbered sequence other than was in fact the case; or
           (iii) To be a copy of an original when no such original existed.
       (b) To issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged in accordance with the meaning of Subparagraph (1)(a).
       (c) To possess a writing that is forged within the meaning of Subparagraph (1)(a).
   (2) "Writing" means the following:
       (a) Printing or any other method of recording information;
       (b) Money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and
       (c) Symbols of value, right, privilege, or identification.
D. **SOS. RF up to 10 years, &/or up to $5,000.**

**Other Title 14 crimes involving forgeries and false IDs *** SOS.**

- R.S. 14:72.1 Use of forged academic records
- R.S. 14:72.1.1 Forgery of a certificate of insurance or insurance identification card; penalties
- R.S. 14:72.2 Monetary instrument abuse
- R.S. 14:72.3 Identification of alleged offender
- R.S. 14:72.4 Disposal of property with fraudulent or malicious intent
- R.S. 14:72.5 Unlawful production, manufacture, distribution or possession of fraudulent postsecondary education degree
- R.S. 14:72.6 Forgery of a motor vehicle inspection certificate; penalties
- R.S. 14:73 Commercial bribery

**Computer Related Crimes of Title 14 *** SOS.**

- R.S. 14:73.1 – 73.12 Twelve Different Laws. All LEO geeks should check [www.drewlawbooks.com](http://www.drewlawbooks.com).

**Family Related Crimes of Title 14 *** SOS.**

- R.S. 14:74 Criminal neglect of family
- R.S. 14:74.1 Right of action
- R.S. 14:75 Failure to pay child support obligation
- R.S. 14:76 Bigamy
- R.S. 14:77 Abetting in bigamy
- R.S. 14:79 Violation of protective orders

A. (1) (a) Violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320 and 871.1 after a contradictory court hearing, or the willful disobedience of a temporary restraining order or any ex parte protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., criminal stay-away orders as provided for in Code of Criminal Procedure Article 320, Children's Code Article 1564 et seq., or Code of Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(b) A defendant may also be deemed to have been properly served if tendered a certified copy of a temporary restraining order or ex parte protective order, or if tendered a faxed or electronic copy of a temporary restraining order or ex parte protective order received directly from the issuing magistrate, commissioner, hearing
officer, judge or court, by any law enforcement officer who has been called to any scene where the named defendant is present. Such service of a previously issued temporary restraining order or ex parte protective order if noted in the police report shall be deemed sufficient evidence of service of process and admissible in any civil or criminal proceedings. A law enforcement officer making service under this Subsection shall transmit proof of service to the judicial administrator's office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after making service, exclusive of weekends and holidays. This proof shall include, at a minimum, the case caption, docket number, type of order, serving agency and officer, and the date and time service was made.

(2) Violation of protective orders shall also include the willful disobedience of an order of protection issued by a foreign state.

(3) Violation of protective orders shall also include the willful disobedience of the following:

(a) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a criminal defendant stay away from a specific person or persons as a condition of that defendant's release on bond.

(b) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a defendant convicted of a violation of any state, federal, parish, municipal, or city criminal offense stay away from any specific person as a condition of that defendant's release on probation.

(c) A condition of a parole release pursuant to R.S. 15:574.4.2(A)(5) or any other condition of parole which requires that the parolee stay away from any specific person.

(d) An order issued pursuant to R.S. 46:1846.

(4) Violation of protective orders shall also include the possession of a firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the purchase or attempted purchase of a firearm, and the carrying of a concealed weapon in violation of R.S. 14:95.1, 95.1.3, or 95.10.

B. & C. Sentencing: From M. to various RFs, depending upon the facts. SOS.

D. If, as part of any sentence imposed under this Section, a fine is imposed, the court may direct that the fine be paid for the support of the spouse or children of the offender.

E. (1) Law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent
injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320 and 871.1 after a contradictory court hearing, or to enforce a temporary restraining order or ex parte protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Article 320 if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(2) Law enforcement officers shall at a minimum issue a summons to the person in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, and 871.1.

F. This Section shall not be construed to bar or limit the effect of any other criminal statute or civil remedy.

G. "Instant offense" as used in this Section means the offense which is before the court.

H. An offender ordered to participate in a court-monitored domestic abuse intervention program under the provision of this Section shall pay the cost incurred in participating in the program, unless the court determines that the offender is unable to pay.

Failure to make payment under this Subsection shall subject the offender to revocation of probation.

R.S. 14:79.1 Criminal abandonment

A. Criminal abandonment is any of the following:

(1) The intentional physical abandonment of a minor child under the age of ten years by the child's parent or legal guardian by leaving the minor child unattended and to his own care when the evidence demonstrates that the child's parent or legal guardian did not intend to return to the minor child or provide for adult supervision of the minor child.

(2) The intentional physical abandonment of a person who is aged or person with a disability by a caregiver as defined in R.S. 14:93.3 who is compensated for providing care to such person. For the purpose of this Paragraph a person who is aged shall mean any individual who is sixty years of age or older..........................B. Sentence: JTM.
R.S. 14:80  Felony carnal knowledge of a juvenile

A. Felony carnal knowledge of a juvenile is committed when:

(1) A person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or

(2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 commits a first offense of misdemeanor carnal knowledge of a juvenile.

B. As used in this Section, "sexual intercourse" means anal, oral, or vaginal sexual intercourse.

C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

D. Sentence: RF for up to 10 years &/or fine up to $5,000.

R.S. 14:80.1 Misdemeanor carnal knowledge of a juvenile

A. Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.

B. As used in this Section, "sexual intercourse" means anal, oral, or vaginal sexual intercourse.

C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

D. M. ***SOS Not required to register as a sex offender.

R.S. 14:81 Indecent behavior with juveniles

A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

(1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or

(2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at
least two years younger than the offender. It shall not be a defense that the person who actually receives the transmission is not under the age of seventeen.

B. The trial judge shall have the authority to issue any necessary orders to protect the safety of the child during the pendency of the criminal action and beyond its conclusion.

C. For purposes of this Section, "textual, visual, written, or oral communication" means any communication of any kind, whether electronic or otherwise, made through the use of the United States mail, any private carrier, personal courier, computer online service, Internet service, local bulletin board service, Internet chat room, electronic mail, online messaging service, or personal delivery or contact.

D. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, free over-the-air television broadcast station, an Internet provider, or commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.

E. An offense committed under this Section and based upon the transmission and receipt of textual, visual, written, or oral communication may be deemed to have been committed where the communication was originally sent, originally received, or originally viewed by any person. Former Subs. F & G. repealed in 2020.

F. Sentences

(1)*** RF up to 07 yrs &/or $5K. Ineligible for conviction set aside or dismissal.

(2)*** If offender is 17+ & victim <13, MF 02-25 years, w) 02+ without bens.

R.S. 14:81.1 Pornography involving juveniles

A. (1) It shall be unlawful for a person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles.

(2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.................................SOS for B. – H. All sentences = MFs without bens.

R.S. 14:81.1.1 "Sexting"; prohibited acts; penalties

A. (1) No person under the age of seventeen years shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person. Note: Only applies to perpetrators <17.

(2) No person under the age of 17 years shall knowingly possess or transmit an indecent visual depiction that was transmitted by another under the age of seventeen years in violation of the provisions of Paragraph (1) of this Subsection.

B. – D. SOS. All sentences = Ms.
R.S. 14:81.2  Molestation of a juvenile or a person with a physical or mental disability

A.  (1) Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense.

(2) Molestation of a person with a physical or mental disability is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the victim or in the presence of any victim with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the victim, when any of the following conditions exist:

(a) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.

(b) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

(c) The victim is sixty-five years of age or older.

B. – D. SOS. All sentences = 25-99 year MFs without bens for at least 25 years.


SOS (See www.drewlawbooks.com) for the following Sections of Title 14. Some were amended in 2020.

R.S. 14:81.3  Computer-aided solicitation of a minor
R.S. 14:81.4  Prohibited sexual conduct between educator and student
R.S. 14:81.5  Unlawful possession of videotape of protected persons under R.S. 15:440.1 et seq.

Offenses concerning Prostitution:  R.S. 14:82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86

Offenses re: Abortion R.S. 14:87 (SCOTUS has held La's Abortion law unconstitutional.):  87.1, 87.2, 87.3, 87.4, 87.5, 87.6, & 88.

Crimes against nature:  R.S. 14:89 (partially unconstitutional), 89.1, 89.2, 89.3, & Human-animal hybrids (89.6)

Gambling:  R.S. 14:90 – 90.7.

Offenses affecting the health and morals of minors:  R.S. 14:91 – 91.21

R.S. 14:91.2  (Unlawful presence of a sex offender).
R.S. 14:91.9  (Unlawful presence/contact of a sex offender re: former victim).
R.S. 14:92  Contributing to the delinquency of juveniles

A. Contributing to the delinquency of juveniles is the intentional enticing, aiding, soliciting, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen, and no exception shall be made for a child who may be emancipated by marriage or otherwise, to:

1. Beg, sing, sell any article or play any musical instrument in any public place for the purpose of receiving alms.

2. Associate with any vicious or disreputable persons, or frequent places where the same may be found.

3. Visit any place where beverages of either high or low alcoholic content are the principal commodity sold or given away.

4. Visit any place where any gambling device is found, or where gambling habitually occurs.

5. Habitually trespass where it is recognized he has no right to be.

6. Use any vile, obscene or indecent language.


8. Absent himself or remain away, without authority of his parents or tutor, from his home or place of abode.

9. Violate any law of the state or ordinance of any parish or village, or town or city of the state.

10. Visit any place where sexually indecent and obscene material, of any nature, is offered for sale, displayed or exhibited.

11. (a) Become involved in the commission of a crime of violence as defined in R.S. 14:2(B) which is a felony or a violation of the Uniform Controlled Dangerous Substances Law which is a felony. A felony

   (b) Become involved in the commission of any other felony not enumerated in Subparagraph (a) of this Paragraph.

B. Lack of knowledge of the juvenile's age shall not be a defense.

For C – E, SOS. From M to MF, depending upon facts.

R.S. 14:92.1 Encouraging or contributing to child delinquency, dependency, or neglect; penalty; suspension of sentence; definitions SOS. M.

R.S. 14:92.2 Improper supervision of a minor by parent or legal custodian SOS. M.

R.S. 14:92.3 Retaliation by a minor against a parent, legal custodian, witness, or complainant SOS. M.
R.S. 14:93 Cruelty to juveniles

A. Cruelty to juveniles is:

(1) The intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child. Lack of knowledge of the child's age shall not be a defense; or

(2) The intentional or criminally negligent exposure by anyone seventeen years of age or older of any child under the age of seventeen to a clandestine laboratory operation as defined by R.S. 40:983 in a situation where it is foreseeable that the child may be physically harmed. Lack of knowledge of the child's age shall not be a defense.

(3) The intentional or criminally negligent allowing of any child under the age of seventeen years by any person over the age of seventeen years to be present during the manufacturing, distribution, or purchasing or attempted manufacturing, distribution, or purchasing of a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law. Lack of knowledge of the child's age shall not be a defense.

B. The providing of treatment by a parent or tutor in accordance with the tenets of a well-recognized religious method of healing, in lieu of medical treatment, shall not for that reason alone be considered to be criminally negligent mistreatment or neglect of a child. The provisions of this Subsection shall be an affirmative defense to a prosecution under this Section. Nothing herein shall be construed to limit the provisions of R.S. 40:1299.36.1.

C. The trial judge shall have the authority to issue any necessary orders to protect the safety of the child during the pendency of the criminal action and beyond its conclusion.

D. RF. If victim <08, then a MF for up to 20 years.

SOS for these two sections of Title 14:93.1, 93.2, 93.2.2,

R.S. 14:93.2.1 Child desertion

A. Child desertion is the intentional or criminally negligent exposure of a child under the age of ten years, by a person who has the care, custody, or control of the child, to a hazard or danger against which the child cannot reasonably be expected to protect himself, or the desertion or abandonment of such child, knowing or having reason to believe that the child could be exposed to such hazard or danger. ....................................................B. M.

R.S. 14:93.2.3 Second degree cruelty to juveniles

A. (1) Second degree cruelty to juveniles is the intentional or criminally negligent mistreatment or neglect by anyone over the age of seventeen to any child under the age of seventeen which causes serious bodily injury or neurological impairment to that child.
(2) Repealed by Acts 2019, No. 2, §3. SBI is now defined at R.S. 14:2 (C) for all of R.S. 14.

B. The providing of treatment by a parent or tutor in accordance with the tenets of a well-recognized religious method of healing, in lieu of medical treatment, shall not for that reason alone be considered to be intentional or criminally negligent mistreatment or neglect and shall be an affirmative defense to a prosecution under this Section.

C. MF up to 40 years.

SOS for three Title 14 crimes affecting persons with infirmities: R.S. 14:93.3, 93.4, and 93.5.

SOS for these “liquor laws”: R.S. 14:93.10 – 93.15.

R.S. 14:94 Illegal use of weapons or dangerous instrumentalities

A. Illegal use of weapons or dangerous instrumentalities is the intentional or criminally negligent discharging of any firearm, or the throwing, placing, or other use of any article, liquid, or substance, where it is foreseeable that it may result in death or great bodily harm to a human being.

B. Except as provided in Subsection E, whoever commits the crime of illegal use of weapons or dangerous instrumentalities shall be fined not more than one thousand dollars, or imprisoned with or without hard labor for not more than two years, or both.

C. Except as provided in Subsection E, on a second or subsequent conviction, the offender shall be imprisoned at hard labor for not less than five years nor more than seven years, without benefit of probation or suspension of sentence.

D. The enhanced penalty upon second and subsequent convictions provided for in Subsection C of this Section shall not be applicable in cases where more than five years have elapsed since the expiration of the maximum sentence, or sentences, of the previous conviction or convictions, and the time of the commission of the last offense for which he has been convicted. The sentence to be imposed in such event shall be the same as may be imposed upon a first conviction.

E. Whoever commits the crime of illegal use of weapons or dangerous instrumentalities by discharging a firearm from a motor vehicle located upon a public street or highway, where the intent is to injure, harm, or frighten another human being, shall be imprisoned ...from 05-10 years MF without bens.

F. SOS. If this crime committed during a CV or a violation of CDS law, then MF of 10-20 years without bens. ***

If a machine gun or firearm has a silencer, then 20-30 years (no hard labor) without bens. If 2nd offense, jail (No HL) for not less ? than twenty years.
If 2\textsuperscript{nd} offense of machine gun or firearm with silencer, life (No HL) without bens. Your sheriff will go broke on these sentences.

R.S. 14:95 Illegal carrying of weapons

A. Illegal carrying of weapons is:

(1) The intentional concealment of any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, on one's person; or

(2) The ownership, possession, custody or use of any firearm, or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; or

(3) The ownership, possession, custody or use of any tools, or dynamite, or nitroglycerine, or explosives, or other instrumentality customarily used by thieves or burglars at any time by any person with the intent to commit a crime; or

(4) (a) The intentional concealment on one's person of any switchblade knife, spring knife, or other knife or similar instrument having a blade which may be automatically unfolded or extended from a handle by the manipulation of a button, switch, latch, or similar contrivance located on the handle.

(b) The provisions of this Paragraph shall not apply to the following:

(i) Any knife that may be opened with one hand by manual pressure applied to the blade or any projection of the blade.

(ii) Any knife that may be opened by means of inertia produced by the hand, wrist, or other movement, provided the knife has either a detent or other structure that provides resistance that shall be overcome in opening or initiating the opening movement of the blade or a bias or spring load toward the closed position.

(5) (a) The intentional possession or use by any person of a dangerous weapon on a school campus during regular school hours or on a school bus. "School" means any elementary, secondary, high school, or vo-tech school in this state and "campus" means all facilities and property within the boundary of the school property. "School bus" means any motor bus being used to transport children to and from school or in connection with school activities.

(b) The provisions of this Paragraph shall not apply to:

(i) A peace officer as defined by R.S. 14:30(B) in the performance of his official duties.
(ii) A school official or employee acting during the normal course of his employment or a student acting under the direction of such school official or employee.

(iii) Any person having the written permission of the principal or school board and engaged in competition or in marksmanship or safety instruction.

B. (1) M. ................

(2) If firearm used with CV, then up to 02 years RF, consecutive.

C. On a second conviction, the offender shall be imprisoned with or without hard labor for not more than five years.

D. On third and subsequent convictions, the offender shall be imprisoned with or without hard labor for not more than ten years without benefit of parole, probation, or suspension of sentence.

E. If the offender uses, possesses, or has under his immediate control any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, while committing or attempting to commit a crime of violence or while unlawfully in the possession of a controlled dangerous substance except the possession of fourteen grams or less of marijuana, or during the unlawful sale or distribution of a controlled dangerous substance, the offender shall be fined not more than ten thousand dollars and imprisoned at hard labor for not less than five nor more than ten years without the benefit of probation, parole, or suspension of sentence. Upon a second or subsequent conviction, the offender shall be imprisoned at hard labor for not less than twenty years nor more than thirty years without the benefit of probation, parole, or suspension of sentence.

F. (1) For purposes of determining whether a defendant has a prior conviction for a violation of this Section, a conviction pursuant to this Section or a conviction pursuant to an ordinance of a local governmental subdivision of this state which contains the elements provided for in Subsection A of this Section shall constitute a prior conviction.

(2) The enhanced penalty upon second, third, and subsequent convictions shall not be applicable in cases where more than five years have elapsed since the expiration of the maximum sentence, or sentences, of the previous conviction or convictions, and the time of the commission of the last offense for which he has been convicted; the sentence to be imposed in such event shall be the same as may be imposed upon a first conviction.

(3) Any ordinance that prohibits the unlawful carrying of firearms enacted by a municipality, town, or similar political subdivision or governing authority of this state shall be subject to the provisions of R.S. 40:1796.

G. (1) The provisions of this Section except Paragraph (A)(4) of this Section shall not apply to sheriffs and their deputies, state and city police, constables and town marshals, or persons vested with police power when in the actual discharge of official duties. These
provisions shall not apply to sheriffs and their deputies and state and city police who are not actually discharging their official duties, provided that such persons are full time, active, and certified by the Council on Peace Officer Standards and Training and have on their persons valid identification as duly commissioned law enforcement officers.

(2) The provisions of this Section except Paragraph (A)(4) of this Section shall not apply to any law enforcement officer who is retired from full-time active law enforcement service with at least twelve years service upon retirement, nor shall it apply to any enforcement officer of the office of state parks, in the Department of Culture, Recreation and Tourism who is retired from active duty as an enforcement officer, provided that such retired officers have on their persons valid identification as retired law enforcement officers, which identification shall be provided by the entity which employed the officer prior to his or her public retirement. The retired law enforcement officer must be qualified annually in the use of firearms by the Council on Peace Officer Standards and Training and have proof of such qualification. This exception shall not apply to such officers who are medically retired based upon any mental impairment.

(3) (a) The provisions of this Section except Paragraph (A)(4) of this Section shall not apply to active or retired reserve or auxiliary law enforcement officers qualified annually by the Council on Peace Officer Standards and Training and who have on their person valid identification as active or retired reserve law or auxiliary municipal police officers. The active or retired reserve or auxiliary municipal police officer shall be qualified annually in the use of firearms by the Council on Peace Officer Standards and Training and have proof of such certification.

(b) For the purposes of this Paragraph, a reserve or auxiliary municipal police officer shall be defined as a volunteer, non-regular, sworn member of a law enforcement agency who serves with or without compensation and has regular police powers while functioning as such agency's representative, and who participates on a regular basis in agency activities including, but not limited to those pertaining to crime prevention or control, and the preservation of the peace and enforcement of the law.

H. (1) Except as provided in Paragraph (A)(5) of this Section and in Paragraph (2) of this Subsection, the provisions of this Section shall not prohibit active justices or judges of the supreme court, courts of appeal, district courts, parish courts, juvenile courts, family courts, city courts, federal courts domiciled in the state of Louisiana, and traffic courts, members of either house of the legislature, officers of either house of the legislature, the legislative auditor, designated investigative auditors, constables, coroners, designated coroner investigators, district attorneys and designated assistant district attorneys, United States attorneys and assistant United States attorneys and investigators, the attorney general, designated assistant attorneys general, and justices of the peace from possessing and
concealing a handgun on their person when such persons are qualified annually in the use of firearms by the Council on Peace Officer Standards and Training.

(2) Nothing in this Subsection shall permit the carrying of a weapon in the state capitol building.

I. The provisions of this Section shall not prohibit the carrying of a concealed handgun by a person who is a college or university police officer under the provisions of R.S. 17:1805 and who is carrying a concealed handgun in accordance with the provisions of that statute.

K. (1) The provisions of this Section shall not prohibit a retired justice or judge of the supreme court, courts of appeal, district courts, parish courts, juvenile courts, family courts, city courts, retired attorney general, retired assistant attorneys general, retired district attorneys, retired assistant district attorneys, and former members of either house of the legislature from possessing and concealing a handgun on their person provided that such retired person or former member of the legislature is qualified annually, at their expense, in the use of firearms by the Council on Peace Officer Standards and Training and has on their person valid identification showing proof of their status as a former member of the legislature or as a retired justice, judge, attorney general, assistant attorney general, district attorney, or assistant district attorney. For a former member of the legislature, the valid identification showing proof of status as a former legislator required by the provisions of this Paragraph shall be a legislative badge issued by the Louisiana Legislature that shall include the former member's name, the number of the district that the former member was elected to represent, the years that the former member served in the legislature, and words that indicate the person's status as a former member of the legislature.

(2) The retired justice, judge, attorney general, assistant attorney general, district attorney, or assistant district attorney or former member of the legislature shall be qualified annually in the use of firearms by the Council on Peace Officer Standards and Training and have proof of qualification. However, this Subsection shall not apply to a retired justice, judge, attorney general, assistant attorney general, district attorney, or assistant district attorney or to a former member of the legislature who is medically retired based upon any mental impairment, or who has entered a plea of guilty or nolo contendere to or been found guilty of a felony offense. For the purposes of this Subsection, "retired district attorney" or "retired assistant district attorney" shall mean a district attorney or an assistant district attorney receiving retirement benefits from the District Attorneys' Retirement System.

L. The provisions of Paragraph (A)(1) of this Section shall not apply to any person who is not prohibited from possessing a firearm pursuant to R.S. 14:95.1 or any other state or federal law and who is carrying a concealed firearm on or about his person while in the act of evacuating during a mandatory evacuation order issued during a state of emergency or disaster.
declared pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act. For purposes of this Subsection, "in the act of evacuating" means the immediate and urgent movement of a person away from the evacuation area within 48 hours after a mandatory evacuation is ordered. The 48-hours may be extended by the governor’s order. Subs. L was enacted in 2020. See R.S. 29:724 (E) for emergency powers of LEOs.

R.S. 14:95.1 Poss. of firearm or carrying C/W by a person convicted of certain felonies

A. It is unlawful for any person who has been convicted of, or has been found not guilty by reason of insanity for, a crime of violence as defined in R.S. 14:2(B) which is a felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling, unauthorized entry of an inhabited dwelling, felony illegal use of weapons or dangerous instrumentalities, manufacture or possession of a delayed action incendiary device, manufacture or possession of a bomb, or possession of a firearm while in the possession of or during the sale or distribution of a controlled dangerous substance, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony, or any crime which is defined as a sex offense in R.S. 15:541, or any crime defined as an attempt to commit one of the above-enumerated offenses under the laws of this state, or who has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be one of the above-enumerated crimes, to possess a firearm or carry a concealed weapon.

B. Whoever is found guilty of violating the provisions of this Section shall be imprisoned at hard labor for not less than five nor more than twenty years without the benefit of probation, parole, or suspension of sentence and be fined not less than one thousand dollars nor more than five thousand dollars. Notwithstanding the provisions of R.S. 14:27, whoever is found guilty of attempting to violate the provisions of this Section shall be imprisoned at hard labor for not more than seven and one-half years and fined not less than five hundred dollars nor more than two thousand five hundred dollars.

C. The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of, or who have been found not guilty by reason of insanity for, certain felonies shall not apply to any person who has not been convicted of, or who has not been found not guilty by reason of insanity for, any felony for a period of ten years from the date of completion of sentence, probation, parole, suspension of sentence, or discharge from a mental institution by a court of competent jurisdiction.

D. For the purposes of this Section, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.
SOS for these next three Title 14 laws about firearms.

R.S. 14:95.1.1 Illegally supplying a felon with a firearm
R.S. 14:95.1.2 Illegally supplying a felon with ammunition
R.S. 14:95.1.3 Fraudulent firearm and ammunition purchase; mandatory reporting
R.S. 14:95.1.4 Illegal transfer of a firearm to a prohibited possessor

A. Illegal transfer of a firearm to a prohibited possessor is the intentional giving, selling, donating, lending, delivering, or otherwise transferring a firearm to any person known to the offender to be a person prohibited from possessing a firearm under state or federal law.

B. Fine up to $2,500; RF up to one year.

R.S. 14:95.2 Carrying a firearm or dangerous weapon by a student or nonstudent on school property, at school-sponsored functions, or in a firearm-free zone

A. Carrying a firearm, or dangerous weapon as defined in R.S. 14:2, by a student or nonstudent on school property, at a school sponsored function, or in a firearm-free zone is unlawful and shall be defined as possession of any firearm or dangerous weapon, on one's person, at any time while on a school campus, on school transportation, or at any school sponsored function in a specific designated area including but not limited to athletic competitions, dances, parties, or any extracurricular activities, or within one thousand feet of any school campus.

B. For purposes of this Section, the following words have the following meanings:

(1) "Campus" means all facilities and property within the boundary of the school property.

(2) "Nonstudent" means any person not registered and enrolled in that school or a suspended student who does not have permission to be on the school campus.

(3) "School" means any elementary, secondary, high school, vocational-technical school, college, or university in this state.

(4) "School bus" means any motor bus being used to transport children to and from school or in connection with school activities.

C. The provisions of this Section shall not apply to:

(1) A federal law enforcement officer or a Louisiana-commissioned state or local Post Certified law enforcement officer who is authorized to carry a firearm.

(2) A school official or employee acting during the normal course of his employment or a student acting under the direction of such school official or employee.

(3) Any person having the written permission of the principal or as provided in R.S. 17:3361.1.
(4) The possession of a firearm occurring within one thousand feet of school property and entirely on private property, or entirely within a private residence.

(5) Any constitutionally protected activity which cannot be regulated by the state, such as a firearm contained entirely within a motor vehicle.

(6) Any student carrying a firearm to or from a class, in which he is duly enrolled, that requires the use of the firearm in the class.

(7) A student enrolled or participating in an activity requiring the use of a firearm including but not limited to any ROTC function under the authorization of a university.

(8) A student who possesses a firearm in his dormitory room or while going to or from his vehicle or any other person with permission of the administration. Unsure how to interpret (8).

(9) Any person who has a valid concealed handgun permit issued pursuant to R.S. 40:1379.1 or 1379.3 and who carries a concealed handgun within one thousand feet of any school campus.

D. (1) Whoever commits the crime of carrying a firearm, or a dangerous weapon as defined in R.S. 14:2, *** on school property, at a school-sponsored function, or in a firearm-free zone shall be imprisoned at hard labor for not more than five years.

(2) Whoever commits the crime of carrying a firearm, or a dangerous weapon as defined in R.S. 14:2, on school property or in a firearm-free zone with the firearm or dangerous weapon being used in the commission of a crime of violence as defined in R.S. 14:2(B) on school property or in a firearm-free zone, shall be fined not more than two thousand dollars, or imprisoned, with or without hard labor, for not less than one year nor more than five years, or both. Any sentence issued pursuant to the provisions of this Paragraph and any sentence issued pursuant to a violation of a crime of violence as defined in R.S. 14:2(B) shall be served consecutively. Upon commitment to the Department of Public Safety and Corrections after conviction for a crime committed on school property, at a school-sponsored function or in a firearm-free zone, the department shall have the offender evaluated through appropriate examinations or tests conducted under the supervision of the department. Such evaluation shall be made within thirty days of the order of commitment.

E. Lack of knowledge that the prohibited act occurred on or within one thousand feet of school property shall not be a defense.

F. (1) School officials shall notify all students and parents of the impact of this legislation and shall post notices of the impact of this Section at each major point of entry to the school. These notices shall be maintained as permanent notices.
(2) (a) If a student is detained by the principal or other school official for violation of this Section or the school principal or other school official confiscates or seizes a firearm or concealed weapon from a student while upon school property, at a school function, or on a school bus, the principal or other school official in charge at the time of the detention or seizure shall immediately report the detention or seizure to the police department or sheriff's department where the school is located and shall deliver any firearm or weapon seized to that agency.

(b) The confiscated weapon shall be disposed of or destroyed as provided by law.

(3) If a student is detained pursuant to Paragraph (2) of this Subsection for carrying a concealed weapon on campus, the principal shall immediately notify the student's parents.

(4) If a person is arrested for carrying a concealed weapon on campus by a university or college police officer, the weapon shall be given to the sheriff, chief of police, or other officer to whom custody of the arrested person is transferred as provided by R.S. 17:1805(B).

G. Any principal or school official in charge who fails to report the detention of a student or the seizure of a firearm or concealed weapon to a law enforcement agency as required by Paragraph (F)(2) of this Section within seventy-two hours of notice of the detention or seizure may be issued a misdemeanor summons for a violation hereof and may be fined not more than five hundred dollars or sentenced to not more than forty hours of community service, or both. Upon successful completion of the community service or payment of the fine, or both, the arrest and conviction shall be set aside as provided for in Code of Criminal Procedure Article 894(B).


- R.S. 14:95.2.1
- R.S. 14:95.2.2
- R.S. 14:95.3
- R.S. 14:95.5
- R.S. 14:95.6
- R.S. 14:95.7
- R.S. 14:95.8
- R.S. 14:95.9
- R.S. 14:95.10 Possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner

A. It is unlawful for any person who has been convicted of any of the following offenses to possess a firearm or carry a concealed weapon:

(1) Domestic abuse battery (R.S. 14:35.3).

(2) A second or subsequent offense of battery of a dating partner (R.S. 14:34.9).

(3) Battery of a dating partner when the offense involves strangulation (R.S. 14:34.9(K)).

(4) Battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).
B. **RF for 01-20 years, without benefits** and a fine of from one to five thousand dollars.

C. A person shall not be considered to have been convicted of domestic abuse battery or battery of a dating partner for purposes of this Section unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and in the case of a prosecution for an offense described in this Section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise. A person shall not be considered convicted of R.S. 14:34.9 or 35.3 for the purposes of this Section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned or had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, possess, or receive firearms.

D. For the provisions of this Section, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

E. The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of the offenses set forth in Subsection A of this Section shall not apply to any person who has not been convicted of any of the offenses set forth in Subsection A of this Section for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence. **10 year cleansing period.**

Obstructing Highways of Commerce – Four laws from Title 14:

- R.S. 14:96 Aggravated obstruction of a highway of commerce
- R.S. 14:97 Simple obstruction of a highway of commerce
- R.S. 14:97.1 Solicitation on an interstate highway
- R.S. 14:97.2 Unlawful sale, purchase, possession, or use of traffic signal preemption devices {Someone’s in a hurry.}

**DUI**

- R.S. 14:98 Operating a vehicle while intoxicated

  A. (1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance [Must be a MV, per St v Carr, 761 So. 2d 1271 (La. 2000); A LEO’s non-expert observations may be enough to convict for DWI, per St v Kestle, 996 So. 2d 275 (La. 2008); Allegations that the drinking didn’t start until after the MV stalled probably won’t fly, per St v Lewis, 236 So. 3d 1197 (La. 2017).] when any of the following [five] conditions exist:

    (a) The operator is under the influence of alcoholic beverages.
(b) The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood.

(c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(d) (i) The operator is under the influence of a combination of alcohol and one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(e) (i) The operator is under the influence of one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph that the operator did not knowingly consume quantities of the drug or drugs that substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

(2) A valid driver's license shall not be an element of the offense, and the lack thereof shall not be a defense to a prosecution for operating a vehicle while intoxicated.

B. (1) This Subsection shall be cited as the "Child Endangerment Law".

(2) When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child twelve years of age or younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense:

(a) Except as provided in Subparagraphs (b) and (c) of this Paragraph, the execution of the minimum mandatory sentence provided by R.S. 14:98.1 or 98.2, as appropriate, shall not be suspended.

(b) Notwithstanding any provision of law to the contrary, if imprisonment is imposed pursuant to the provisions of R.S. 14:98.3, the execution of the minimum mandatory sentence shall not be suspended.

(c) Notwithstanding any provision of law to the contrary, if imprisonment is imposed pursuant to the provisions of R.S. 14:98.4, the execution of the minimum mandatory sentence shall not be suspended.
C. (1) For purposes of determining whether a defendant has a prior conviction for a violation of this Section, a conviction under any of the following shall constitute a prior conviction:

Five possible predicate offenses:

(a) R.S. 14:32.1, vehicular homicide.
(b) R.S. 14:32.8, third degree fetusicide.
(c) R.S. 14:39.1, vehicular negligent injuring.
(d) R.S. 14:39.2, first degree vehicular negligent injuring.
(e) A law of any state or an ordinance of a municipality, town, or similar political subdivision of another state that prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance, or as otherwise provided by R.S. 13:1894.1.

(2) The determination under this Subsection shall be made by the court as a matter of law.

(3) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section, a conviction for an offense under R.S. 14:39.1, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance, or as otherwise provided by R.S. 13:1894.1, if committed more than ten years prior to the commission of the crime for which the defendant is being tried, and such conviction shall not be considered in the assessment of penalties in this Section.

However, periods of time during which the offender was awaiting trial, under an order of attachment for failure to appear, or on probation or parole for an offense described in this Paragraph, or periods of time during which an offender was incarcerated in a penal institution in this or any other state for any offense, including an offense described in Paragraph (1) of this Subsection, shall be excluded in computing the ten-year period.

D. (1) On a conviction of a first offense violation of the provisions of this Section, notwithstanding any other provision of law to the contrary, the offender shall be sentenced under the provisions of R.S. 14:98.1.

(2) (a) Except as provided by Subparagraph (b) of this Paragraph, on a conviction of a second offense violation of the provisions of this Section, notwithstanding any other provision of law to the contrary and regardless of whether the second offense occurred before or after the first conviction, the offender shall be sentenced under the provisions of R.S. 14:98.2.
(b) If the conviction of a second offense violation of the provisions of this Section when the first offense was for the crime of vehicular homicide in violation of R.S. 14:32.1, third degree feticide in violation of R.S. 14:32.8, or first degree vehicular negligent injuring in violation of R.S. 14:39.2, the offender shall be sentenced under the provisions of R.S. 14:98.2(D).

(3) On a conviction of a third offense violation of the provisions of this Section, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be sentenced under the provisions of R.S. 14:98.3.

(4) On a conviction of a fourth or subsequent offense violation of the provisions of this Section, notwithstanding any other provision of law to the contrary and regardless of whether the fourth or subsequent offense occurred before or after an earlier conviction, the offender shall be sentenced under the provisions of R.S. 14:98.4.

E. The legislature hereby finds and declares that conviction of a third or subsequent offense of operating while intoxicated is presumptive evidence of the existence of a substance abuse disorder that poses a serious threat to the health and safety of the public. Further, the legislature finds that there are successful treatment methods available for treatment of addictive disorders.

F. (1) On a third or subsequent conviction of operating while intoxicated pursuant to this Section, in addition to any other sentence, the court shall order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and be sold at auction in the same manner and under the same conditions as executions of writs of seizure and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure.

(2) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid. In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.

(3) If the district attorney elects to forfeit the vehicle, he shall file a written motion at least five days prior to sentencing, stating his intention to forfeit the vehicle. When the district attorney elects to forfeit the vehicle, the court shall order it forfeited.

(4) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be allocated as follows:

(a) Sixty percent of the funds shall go to the arresting agency.
(b) Twenty percent of the funds shall go to the prosecuting district attorney.

(c) Twenty percent of the funds shall go to the Louisiana Property and Casualty Insurance Commission for its use in studying ways to reduce drunk driving and insurance rates.

G. (1) If an offender placed on probation for a conviction of a violation of this Section fails to complete the required substance abuse treatment, or fails to participate in a driver improvement program, or violates any other condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.

(2) If the offender is found to be in violation of both the terms of his release for good behavior by the Department of Public Safety and Corrections, committee on parole, and in violation of his probation by the court, then the remaining balance of his diminution of sentence shall be served first, with the previously suspended sentence imposed by the court to run consecutively thereafter.

DWI Penalties:

DWI First: R.S. 14:98.1
DWI 2nd: R.S. 14:98.2
DWI 3rd: R.S. 14:98.3
DWI 4th: R.S. 14:98.4.

Other sentencing considerations: R.S. 14:98.5

New statute as per Act #41 of 2020, effective 8/1/2020:

R.S. 14:98.5.1 Assessment for alcohol or drug dependence; rehabilitative programs; 8 second and subsequent convictions

A. Notwithstanding any other provision of law to the contrary provided by R.S. 14:98, 98.1, 98.2, 98.3, and 98.4, on a second or subsequent conviction for a violation of R.S. 14:98, the court may order the offender, at the sole expense of the offender, to undergo an assessment that uses a standardized evidence-based instrument performed by a physician to determine whether the offender has a diagnosis for alcohol or drug dependence and would likely benefit from a court-approved medication-assisted treatment indicated and approved for the treatment of alcohol or drug dependence by the United States Food and Drug Administration, as specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

B. Upon considering the results of the assessment, the court may refer the offender to a rehabilitative program that offers one or more forms of court-approved medications that are
approved for the treatment of alcohol or drug dependence by the United States Food and Drug Administration.

C. This Section shall not apply when an offender shows that he is unable to pay the costs of the assessment and rehabilitative program, either personally or through a third party insurer.

R.S. 14:98.6 Underage operating while intoxicated

A. The crime of underage operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is 0.02 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, if the operator is under the age of twenty-one.

B. Any underage person whose blood alcohol concentration is found to be in violation of R.S. 14:98(A)(1)(b) shall be charged under the provisions of that Subparagraph rather than under this Section. If BAC of 0.08% or more, then the prosecution should be under R.S. 14:98.

C. (1) On a first conviction, the offender shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, and imprisoned for not less than ten days nor more than three months. Imposition or execution of sentence shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

   (a) Perform thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.

   (b) Participate in a court-approved substance abuse and driver improvement program.

(2) On a second or subsequent conviction, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, and imprisoned for not less than thirty days nor more than six months. Imposition or execution of sentence under this Paragraph shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

   (a) Serve forty-eight hours in jail without benefit of parole, probation, or suspension of sentence, or in lieu thereof, perform no less than eighty hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.

   (b) Participate in a court-approved substance abuse program.

   (c) Participate in a court-approved driver improvement program.

(3) Nothing in this Section shall prohibit a court from sentencing an offender to serve any portion of the sentence under home incarceration either in lieu of, or in addition
to, a term of imprisonment if otherwise allowed under the provisions of Code of Criminal Procedure Article 894.2 and R.S. 14:98.5(B).

(4) The court may require that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in accordance with R.S. 14:98.5(C).

D. Court programs regarding substance abuse as provided for by Subsection C of this Section shall include a screening procedure to determine the portions of the program that may be applicable and appropriate for individual offenders.

R.S. 14:98.7 Unlawful refusal to submit to chemical tests; arrests for driving while intoxicated

A. No person under arrest for a violation of R.S. 14:98, or 98.1, [Amended by Act #40 of 2020, eff. 6.4.2020] or any other law or ordinance that prohibits operating a vehicle while intoxicated, may refuse to submit to a chemical test when requested to do so by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions of any such violation.

B. (1) Whoever violates the provisions of this Section shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months.

(2) Imposition or execution of sentence shall not be suspended unless one of the following occurs:

(a) The offender is placed on probation with the minimum conditions that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program.

(b) The offender is placed on probation with the minimum conditions that he perform thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program.

An offender who participates in a litter abatement or collection program pursuant to this Subparagraph shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, as provided by R.S. 14:98.5(D).

R.S. 14:98.8 Operating a vehicle while under suspension for certain prior offenses

A. It is unlawful to operate a motor vehicle on a public highway where the operator’s driving privileges have been suspended under the authority of R.S. 32:414(A)(1), (B)(1) or (2),
(D)(1)(a), or R.S. 32:667. It shall not be a violation of the provisions of this Section when a person operates a motor vehicle to obtain emergency medical care for himself or any other person.

B. Whoever violates the provisions of this Section shall be imprisoned for not less than fifteen days nor more than six months without benefit of suspension of imposition or execution of sentence, except as provided in Subsection C of this Section.

C. When the operator's driving privileges were suspended for manslaughter, vehicular homicide, or negligent homicide, the offender shall be imprisoned for not less than sixty days nor more than six months without benefit of suspension of imposition or execution of sentence.

R.S. 14:99  Reckless operation of a vehicle

A. Reckless operation of a vehicle is the operation of any motor vehicle, aircraft, vessel, or other means of conveyance in a criminally negligent or reckless manner.

Compare with R.S. 32:58, Careless operation, which must occur on a public highway, but only prohibits failure to maintain control.

Careless operation has a slight less serious penalty than Reckless operation, though each crime is a misdemeanor.

B. ***Whether for first or subsequent offense: M. 2+++ has minimums.

SOS for these next two laws.

R.S. 14:99.1  Hit and run damaging of a potable waterline by operation of a watercraft or vessel

R.S. 14:99.2  Reckless operation of an off-road vehicle

R.S. 14:100  Hit-and-run driving

A. Hit-and-run driving is the intentional failure of the driver of a vehicle involved in or causing any accident, to stop such vehicle at the scene of the accident, to give his identity, and to render reasonable aid.

B. For the purpose of this Section:

(1) "To give his identity", means that the driver of any vehicle involved in any accident shall give his name, address, and the license number of his vehicle, or shall report the accident to the police.

(2) Repealed in 2019. SBI is defined in R.S. 14:2 (C ) for all of Title 14.

(3) "Vehicle" includes a watercraft.

(4) "Accident" means incident/event resulting in damage to property/injury to person.

C. (1) (a) Whoever commits the crime of hit-and-run driving where there is no death or serious bodily injury shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.
(b) Whoever commits the crime of hit-and-run driving where there is no death or SBI shall be fined not more than five hundred dollars, imprisoned for not less than ten days nor more than six months, or both when:

(i) there is evidence that the vehicle operator consumed alcohol or used drugs or a controlled dangerous substance prior to the accident;

(ii) the consumption of the alcohol, drugs, or a controlled dangerous substance contributed to the accident; and

(iii) the driver failed to stop, give his identity, or render aid with the knowledge that his actions could affect an actual or potential present, past, or future criminal investigation or proceeding.

(2) Whoever commits the crime of hit-and-run driving, when death or serious bodily injury is a direct result of the accident and when the driver knew or should have known that death or serious bodily injury has occurred, **RF for up to 10 years &/or $5K**.

(3) Whoever commits the crime of hit-and-run driving where all of the following conditions are met shall be imprisoned, **as a RF for 05 to 20 years**:

(a) Death or serious bodily injury is a direct result of the accident.

(b) The driver knew or must have known that the vehicle he was operating was involved in an accident or that his operation of the vehicle was the direct cause of an accident.

(c) The driver had been previously convicted of any of the following:

(i) A violation of R.S. 14:98, or a law or an ordinance of any state or political subdivision prohibiting operation of any vehicle or means of transportation or conveyance while intoxicated, impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance on two or more occasions within ten years of this offense.


**R.S. 14:100.1 Obstructing public passages**

**A.** No person shall willfully obstruct the free, convenient, and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor, or passage of any public building, structure, water craft, or ferry, by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon or therein .......................... **B. M.**

**C.** This Section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation,
maintenance, repair, replacement, or other work in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties.

Prevention of Terrorism on the Highways *** SOS for these sections of Title 14.

R.S. 14:100.11 Legislative findings; purpose
R.S. 14:100.12 Definitions
R.S. 14:100.13 Operating a vehicle without lawful presence in the United States ▲
[Unconstitutional – preempted by the Feds]
R.S. 14:100.14 Giving false information regarding lawful presence in the United States in order to obtain a driver's license

SOS for these three ghoulish crimes.

R.S. 14:101 Desecration of graves ................................................................. M.
R.S. 14:101.1 Purchase or sale of human organs ................................................. RF.
R.S. 14:101.2 Unauthorized use of sperm, ovum, or embryo
The penalty is revocation of license.

Cruelty to animals *** SOS.

R.S. 14:102.11 Illegal contact sports; penalty
R.S. 14:102.21 Unauthorized use of the identity of a deceased soldier
R.S. 14:102.25 Unlawfully supplying any product for purpose of falsifying a screening test

R.S. 14:103 Disturbing the peace This crime does not require a complainant.
A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:
   (1) Engaging in a fistfight; (has nothing to do with masturbation) or
   (2) Addressing any offensive, derogatory, or annoying words to any other person who
       is lawfully in any street, or other public place; or call him by any offensive or derogatory
       name, or make any noise or exclamation in his presence and hearing with the intent to deride,
       offend, or annoy him, or to prevent him from pursuing his lawful business, occupation, or
       duty; or [Remember: Freedom of Speech is in the First Amendment.]
   (3) Appearing in an intoxicated condition; or
   (4) Engaging in any act in a violent and tumultuous manner by any 03+ persons; or
   (5) Holding of an unlawful assembly; or
   (6) Interruption of any lawful assembly of people; or

Subs. (7) & (8) involve disruption of funerals or funeral routes. SOS. *** M.

Nuisance crimes, seldom used. SOS ***
R.S. 14:103.2 Amplified devices in public places; quiet zones; penalties
R.S. 14:104 Keeping a disorderly place – Amended in 2020.

R.S. 14:106 Obscenity [From M to RF]

   A. The crime of obscenity is the intentional:
   
   (1) Exposure of the genitals, pubic hair, anus [This references the full red eye.], vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive. [Probably would not include a lightly-pressed ham.]

   (2) (a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.

   For (2)(b) – H., SOS. *** Next is a mandatory duty on LEOs in response to acts of obscenity near a school.

   I. (1) (a) When an act of obscenity as defined in Paragraph (A)(1) of this Section is reported, the law enforcement agency acting in response to the reported incident shall provide notice of the incident to the principal or headmaster of each school located within two thousand feet of where the incident occurred. This notice shall be provided by the law enforcement agency to the principal or headmaster within twenty-four hours of receiving the report of the incident and by any reasonable means, including but not limited to live or recorded telephone message or electronic mail.

   (b) The notice required by the provisions of Subparagraph (a) of this Paragraph shall include the date, time, and location of the incident, a brief description of the incident, and a brief description of the physical characteristics of the alleged offender which may include but shall not be limited to the alleged offender's sex, race, hair color, eye color, height, age, and weight.

   (2) (a) Within 24 hours of receiving notice of the incident from law enforcement pursuant to the provisions of Paragraph (1) of this Subsection, the principal or headmaster shall provide notice of the incident to the parents of all students enrolled at the school by any reasonable means, including but not limited to live or recorded telephone message or electronic mail.
(b) The notice required by the provisions of Subparagraph (a) of this Paragraph shall include the same info required for the notice provided in Paragraph (1) of this Subsection to the extent that the info is provided by law enforcement to the principal or headmaster of the school.

(3) When the expiration of the twenty-four-hour period occurs on a weekend or holiday, notice shall be provided no later than the end of the next regular school day.

(4) For purposes of this Subsection, "school" means any public or private elementary or secondary school in this state, including all facilities of the school located within the geographical boundaries of the school property.

(5) The principal, headmaster, school, owner of the school, operator of the school, and the insurer or self-insurance program for the school shall be immune from any liability that arises as a result of compliance or noncompliance with this Subsection, except for any willful violation of the provisions of this Subsection.

**SOS for these crimes.***

R.S. 14:106.1 Promotion or wholesale promotion of obscene devices
R.S. 14:106.2 Sexual acts prohibited in public; penalties
R.S. 14:106.3 Unlawful exhibition of sexually explicit material in a motor vehicle; penalties
R.S. 14:107.1 Ritualistic acts *** Pertains to the 7th type of First degree murder.
R.S. 14:107.2 Hate crimes
R.S. 14:107.3 Criminal blighting of property
R.S. 14:107.4 Unlawful posting of criminal activity for notoriety and publicity – Amended in 2020
R.S. 14:107.5 Solicitation of funds or transportation for certain unlawful purposes

R.S. 14:108 Resisting an officer

A. Resisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual acting in his official capacity and authorized by law to make a lawful arrest, lawful detention, or seizure of property or to serve any lawful process or court order when the offender knows or has reason to know that the person arresting, detaining, seizing property, or serving process is acting in his official capacity.

B. (1) The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification, and connotation mean the following:

(a) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest.

(b) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.
(c) Refusal by the arrested or detained party to give his name and make his identity known to the arresting or detaining officer or providing false information regarding the identity of such party to the officer.

(d) Congregation with others on a public street and refusal to move on when ordered by the officer.

(e) Knowing interference with a police cordon resulting from the intentional crossing or traversing of a police cordon by an unauthorized person or an unmanned aircraft system. The cordoned area includes the airspace above the cordoned area.

(i) For purposes of this Subparagraph, "police cordon" means any impediment or structure erected or established by an officer for crowd or traffic control, or to prevent or obstruct the passage of a person at the scene of a crime or investigation.

(ii) "Impediment or structure" includes but is not limited to crime scene tape, rope, cable, wire or metal barricades, or the posting of uniformed officers or other personnel otherwise identifiable as law enforcement officers.

(iii) "Unmanned aircraft system" shall have the same meaning as provided by R.S. 14:337(B).

(iv) If the flight of a UAS into the cordoned area endangers the public or an officer's safety, law enforcement personnel or fire department personnel are authorized to disable the UAS.

(2) The word "officer" as used herein means any peace officer, as defined in R.S. 40:2402, and includes deputy sheriffs, municipal police officers, probation and parole officers, city marshals and deputies, and wildlife enforcement agents.

C. M up to $500 and/or six months.

R.S. 14:108.1 Flight from an officer; aggravated flight from an officer

A. No driver of a motor vehicle or operator of a watercraft shall intentionally refuse to bring a vehicle or watercraft to a stop knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle or marked police watercraft.........................B. M.

C. Aggravated flight from an officer is the intentional refusal of a driver to bring a vehicle to a stop or of an operator to bring a watercraft to a stop, under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver or operator has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle or marked police watercraft.
D. Circumstances wherein human life is endangered shall be any situation where the operator of the fleeing vehicle or watercraft commits at least two of the following acts:
  (1) Leaves the roadway or forces another vehicle to leave the roadway.
  (2) Collides with another vehicle or watercraft.
  (3) Exceeds the posted speed limit by at least twenty-five miles per hour.
  (4) Travels against the flow of traffic or in the case of watercraft, operates the watercraft in a careless manner in violation of R.S. 34:851.4 or in a reckless manner in violation of R.S. 14:99.
  (5) Fails to obey a stop sign or a yield sign.
  (6) Fails to obey a traffic control signal device.

▲ The “danger to human life” can also be proven if the suspect TWICE commits ANY ONE of these six provisions, as per St v Randy Lee Turner, 293 So. 3d 997 (La. 05/08/19).

E. (1) Whoever commits aggravated flight from an officer shall be imprisoned at hard labor for not more than five years and may be fined not more than two thousand dollars.
  (2) (a) Whoever commits the crime of aggravated flight from an officer that results in serious bodily injury shall be imprisoned at hard labor for not more than ten years and may be fined not more than two thousand dollars.
  (b) Repealed. For universal definition of SBI for Title 14, see R.S. 14:2 (C).

F. ***Restitution required.

R.S. 14:108.2 Resisting a police officer with force or violence

A. Resisting a police officer with force or violence is any of the following when the offender has reasonable grounds to believe the victim is a police officer who is arresting, detaining, seizing property, serving process, or is otherwise acting in the performance of his official duty:
  (1) Using threatening force or violence by one sought to be arrested or detained before the arresting officer can restrain him and after notice is given that he is under arrest or detention.
  (2) Using threatening force or violence toward or any resistance or opposition using force or violence to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.
  (3) Injuring or attempting to injure a police officer engaged in the performance of his duties as a police officer.
  (4) Using or threatening force or violence toward a police officer performing any official duty.
B. For purposes of this Section, "police officer" shall include any commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, state park warden, or probation and parole officer.

C. Whoever commits the crime of resisting an officer with force or violence shall be fined not more than two thousand dollars or imprisoned with or without hard labor for not less than one year nor more than three years, or both.

R.S. 14:110 Simple escape; aggravated escape

A. Simple escape shall mean any of the following:

(1) The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined, from a designated area of a place where such person is legally confined, or from the lawful custody of any law enforcement officer or officer of the Department of Public Safety and Corrections.

(2) The failure of a criminal serving a sentence and participating in a work release program authorized by law to report or return from his planned employment or other activity under the program at the appointed time.

(3) The failure of a person who has been granted a furlough under the provisions of R.S. 15:833 or R.S. 15:908 to return to his place of confinement at the appointed time.

B. (1) A person who is participating in a work release program as defined in Paragraph (A)(2) of this Section and who commits the crime of simple escape may be imprisoned with or without hard labor for not less than six months nor more than one year.

(2) A person who fails to return from an authorized furlough as defined in Paragraph (A)(3) of this Section shall be imprisoned with or without hard labor for not less than six months nor more than one year and any such sentence shall not run concurrently with any other sentence.

(3) A person participating in a home incarceration program under the jurisdiction and control of the sheriffs of the respective parishes who commits the crime of simple escape shall be imprisoned with or without hard labor for not less than six months nor more than five years, and such sentence shall not run concurrently with any other sentence.

(4) A person imprisoned, committed, or detained who commits the crime of simple escape as defined in Paragraph (A)(1) of this Section shall be imprisoned with or without hard labor for not less than two years nor more than five years; provided that such sentence shall not run concurrently with any other sentence.

C. (1) Aggravated escape is the intentional departure of a person from the legal custody of any officer of the Department of Public Safety and Corrections or any law
enforcement officer or from any place where such person is legally confined when his departure is under circumstances wherein human life is endangered. **Agg. Escape is an EF.**

(2) **MF from 5-10 years. Cannot be CC. SOS. Also SOS for Subs. D & E.**

For R.S. 14:110.1 – 143, SOS. *** See www.drewlawbooks.com or www.legis.la.gov. ***

R.S. 14:113 **Treason**

A. Treason is the levying of war against the United States or the state of Louisiana, adhering to enemies of the United States or of the state of Louisiana, or giving such enemies aid and comfort.

B. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his own confession in open court.

C. Whoever commits the crime of treason shall be punished by death.

**NOTE:** Death as the exclusive punishment may make this statute unconstitutional.

***

R.S. 14:122 **Public intimidation and retaliation**

If someone tells you: “I know the Sheriff well – you’d better not write that ticket or you won’t have a job Monday,” this (poor) conduct is freedom of speech, and not a crime. *Seals v McBee, Fed 5th Cir. 2018 (LA), # 17-30667* declared this law unconstitutionally overbroad. If there is a “true threat” of danger, you can use R.S. 14:122.2. Threatening a *** LEO.


R.S. 14:128.1 **Terrorism** An enumerated felony.

A. Terrorism is the commission of any of the acts enumerated in this Subsection, when the offender has the intent to intimidate or coerce the civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by intimidation or coercion:

(1) Intentional killing of a human being.

(2) Intentional infliction of serious bodily injury upon a human being.

(3) Kidnapping of a human being.

(4) Aggravated arson upon any structure, watercraft, or movable.

(5) Intentional aggravated criminal damage to property.

B. (1) Whoever commits the crime of terrorism as provided in Paragraph (A)(1) of this Section shall be punished by life imprisonment at hard labor, without benefit of probation, parole, or suspension of sentence.
(2) Whoever commits the crime of terrorism as provided in Paragraph (A)(2) of this Section shall be imprisoned at hard labor for not more than thirty years.

(3) Whoever commits the crime of terrorism as provided in Paragraph (A)(3) of this Section shall be imprisoned at hard labor for not more than ten years.

(4) Whoever commits the crime of terrorism as provided in Paragraph (A)(4) of this Section shall be imprisoned at hard labor for not less than six years nor more than forty years. At least four years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

(5) Whoever commits the crime of terrorism as provided in Paragraph (A)(5) of this Section shall be imprisoned at hard labor for not less than one year nor more than thirty years.

C. Nothing in this Section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including but not limited to any labor dispute between any employer and its employees.

R.S. 14:130.1 Obstruction of justice

A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:

   (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or
   (b) At the location of storage, transfer, or place of review of any such evidence.

(2) Using or threatening force toward the person or property of another with the specific intent to:

   (a) Influence the testimony of any person in any criminal proceeding;
   (b) Cause or induce the withholding of testimony or withholding of records, documents, or other objects from any criminal proceeding;
   (c) Cause or induce the alteration, destruction, mutilation, or concealment of any object with the specific intent to impair the object's integrity or availability for use in any criminal proceeding;
(d) **Evade legal process** or the summoning of a person to appear as a *witness* or to produce a record, document, or other object in any criminal proceeding;

(e) Cause the hindrance, delay, or **prevention of the communication to a peace officer**, as defined in R.S. 14:30, of information relating to an arrest or potential arrest or relating to the commission or possible commission of a crime or parole or probation violation.

(3) **Retaliating** against any witness, victim, juror, judge, party, attorney, or informant by knowingly engaging in any conduct which results in bodily injury to or damage to the property of any such person or the communication of threats to do so with the specific intent to retaliate against any person for:

   (a) The attendance as a witness, juror, judge, attorney, or a party to any criminal proceeding or for producing evidence or testimony for use or potential use in any criminal proceeding, or

   (b) The giving of information, evidence, or any aid relating to the commission or possible commission of a parole or probation violation or any crime under the laws of any state or of the United States.

(4) **Inducing or persuading** or attempting to induce or persuade any person to do any of the following:

   (a) **Testify falsely** or, without right or privilege to do so, to withhold any testimony.

   (b) Without the right or privilege to do so, **absent himself from such proceedings despite having received service of a subpoena**.

B. **SENTENCE**: Three grades, from RF to MF.

***

**R.S. 14:133.3 Falsification of drug tests**

A. (1) No person who submits to court-ordered drug testing, either after arrest for an offense and as a condition of pretrial release or after conviction of, or plea of guilty to, an offense and as a condition of probation, shall intentionally falsify or alter or attempt to falsify or alter the results of such a drug test by the substitution of urine or other samples or specimens or the use of any device in order to obscure or conceal the presence of a substance the presence of which the test is administered to detect.

(2) No person shall knowingly and intentionally deliver, possess with intent to deliver, or manufacture with intent to deliver a substance or device designed or intended solely to falsify or alter drug test results. .................................................B.  M. ***
Note: Act 08 of 2020, effective 8.1.20, amended R.S. 14:139.1, to allow incumbent Sheriffs without opposition for a subsequent additional term, to transfer assets during the last few months of an expiring term. ***

This is the end of the 1st chapter of RS 14, known as the La. Criminal Code [R.S. 14:1-143].

***

Next are a few laws we have pulled from the 2nd chapter of RS 14: Miscellaneous Crimes and Offenses (R.S. 14:201-513). For the hundreds of other crimes in Title 14, see our website: www.drewlawbooks.com.

R.S. 14:214 Fishing or hunting contest fraud

A. The crime of fishing or hunting contest fraud is the act of any person, who, with the intent to defraud, knowingly makes a false representation in an effort to win any prize awarded in any fishing or hunting contest.

B. If prize <$100, a M of up to $500 or 06 months in jail.

C. When most valuable prize is worth $100+, up to $3,000, and RF for up to one year.

R.S. 14:283.1 Voyeurism M. SOS Has sexual component.

R.S. 14:283.1 Video Voyeurism RF. SOS Has sexual component.

R.S. 14:283.2 Nonconsensual disclosure of a private image [AKA “Revenge Porn.”]

A. A person commits the offense of nonconsensual disclosure of a private image when all of the following occur:

(1) The person intentionally discloses an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part.

(2) The person who discloses the image obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private.

(3) The person who discloses the image knew or should have known that the person in the image did not consent to the disclosure of the image.

(4) The person who discloses the image has the intent to harass or cause emotional distress to the person in the image, and the person who commits the offense knew or should have known that the disclosure could harass or cause emotional distress to the person in the image.
B. – E.  SOS.  Fine up to ten thousand dollars, RF up to two years, or both

***

R.S. 14:284    Peeping Tom; penalties
A. No person shall perform such acts as will make him a "Peeping Tom" on or about the premises of another, or go upon the premises of another for the purpose of becoming a "Peeping Tom".
B. "Peeping Tom" as used in this Section means one who peeps through windows or doors, or other like places, situated on or about the premises of another or uses an unmanned aircraft system for the purpose of spying upon or invading the privacy of persons spied upon without the consent of the persons spied upon. It is not a necessary element of this offense that the "Peeping Tom" be upon the premises of the person being spied upon.

C. M. Third offense is a RF. No sexual component.

R.S. 14:285    Unlawful communications; telephones and telecommunications devices; improper language; harassment; penalty
A. No person shall:
   (1) Engage in or institute a telephone call, telephone conversation, or telephone conference, with another person, or use any telecommunications device to send any text message or other message to another person directly, anonymously or otherwise, and therein use obscene, profane, vulgar, lewd, or lascivious language, or make any suggestion or proposal of an obscene nature or threaten any illegal or immoral act with the intent to coerce, intimidate, or harass any person.
   (2) Make repeated telephone communications or send repeated text messages or other messages using any telecommunications device directly to a person anonymously or otherwise in a manner reasonably expected to abuse, torment, harass, embarrass, or offend another, whether or not conversation ensues.
   (3) Make a telephone call and intentionally fail to hang up or disengage the connection.
   (4) Engage in a telephone call, conference, or recorded communication by using obscene language or by making a graphic description of a sexual act, or use any telecommunications device to send any text message or other message containing obscene language or any obscene content, anonymously or otherwise, directly to another person, when the offender knows or reasonably should know that such obscene or graphic language is directed to, or will be heard by, a minor. Lack of knowledge of age shall not constitute a defense.
(5) Knowingly permit any telephone or any other telecommunications device under his control to be used for any purpose prohibited by this Section.

B. Any offense as set forth in this Section shall be deemed to have been committed at either the place where the communication originated or at the place where the communication was received. **Two possible venues.**

C. **First offense = M.** ........................................................ D. **2+++ offense = RF.**

E. For the purposes of this Section, "**telecommunications device**" shall mean any type of instrument, device, or machine that is capable of transmitting or receiving telephonic, electronic, radio, text, or data communications, including but not limited to a cellular telephone, a text-messaging device, a personal digital assistant, a computer, or any other similar wireless device that is designed to engage in a call or communicate text or data.

**R.S. 14:322 Wire-tapping prohibited; penalty**

A. No person shall tap or attach any devices for the purpose of listening in on wires, cables, or property owned and used by any person, for the transmission of intelligence by magnetic telephone or telegraph, without the consent of the owner.

B. **M.**

C. This Section shall not be construed to prevent officers of the law, while in the actual discharge of their duties, from tapping in on wires or cables for the purpose of obtaining information to detect crime.

**R.S. 14:323 Tracking devices prohibited; penalty**

A. No person shall use a tracking device to determine the location or movement of another person without the consent of that person.

B. The following penalties shall be imposed for a violation of this Section:

   (1) For the first offense, **M.**
   
   (2) For the second offense, **JTM.**
   
   (3) For the third offense, **JTM.**

C. The provisions of this Section shall not apply to the following:

   (1) The owner of a motor vehicle, including the owner of a vehicle available for rent, who has consented to the use of the tracking device with respect to such vehicle.
   
   (2) The lessor or lessee of a motor vehicle and the person operating the motor vehicle who have consented to the use of a tracking device with respect to such vehicle.
   
   (3) Any law enforcement agency, including state, federal, and military law enforcement agencies, who is acting pursuant to a court order or lawfully using the tracking device in an ongoing criminal investigation, provided that the law enforcement officer
employing the tracking device creates a contemporaneous record describing in detail the circumstances under which the tracking device is being used.

(4) (a) A parent or legal guardian of a minor child whose location or movements are being tracked by the parent or legal guardian.

(b) When the parents of the minor child are living separate and apart or are divorced from one another, this exception shall apply only if both parents consent to the tracking of the minor child’s location and movements, unless one parent has been granted sole custody, in which case consent of the noncustodial parent shall not be required.

(5) The Department of Public Safety and Corrections tracking an offender who is under its custody or supervision.

(6) Any provider of a commercial mobile radio service (CMRS), such as a mobile telephone service or vehicle safety or security service, which allows the provider of CMRS to determine the location or movement of a device provided to a customer of such service.

(7) Any commercial motor carrier operation.

(8) Any employer that provides a cellular device to employees for use during the course and scope of employment.

D. For the purposes of this Section, a "tracking device" means any device that reveals its location or movement by the transmission of electronic signals.

R.S. 14:327 Obstructing a fireman

A. (1) It shall be unlawful for any person intentionally to obstruct any fireman while in the performance of his official duties. Obstructing a fireman is hereby defined as intentionally hindering, delaying, hampering, interfering with, or impeding the progress of any regularly employed member of a fire department of any municipality, parish, or fire protection district of the state of Louisiana, or any volunteer fireman of the state of Louisiana while in the performance of his official duties; or cursing, reviling, or using any opprobrious language directed at any such fireman while in the performance of his official duties. **Cussing is pretty much protected by the First Amendment in the Bill of Rights.**

(2) For the purposes of this Section, "fireman" shall include all persons defined as "emergency medical services personnel" by R.S. 40:1075.3, all persons defined as "emergency medical services personnel" by R.S. 40:1131, and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state of Louisiana, or any volunteer fireman of the state of Louisiana.

B. Whoever commits the crime of obstructing a fireman shall be punished as follows:
(1) If the act constituting the offense is equivalent to manslaughter or attempted murder as those crimes are defined in the Louisiana Criminal Code, he shall be imprisoned at hard labor for not less than ten nor more than thirty-five years.

(2) If the act constituting the offense is equivalent to aggravated battery as that crime is defined in the Louisiana Criminal Code, he shall be imprisoned with or without hard labor for not less than five years nor more than twenty years.

(3) If the act constituting the offense is equivalent to simple battery, aggravated assault, or false imprisonment, as those crimes are defined in the Louisiana Criminal Code, he shall be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned for not less than two years nor more than ten years, or both.

(4) If the act constituting the offense is equivalent to simple assault as that crime is defined in the Louisiana Criminal Code, he shall be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned for not less than one year nor more than five years, or both.

(5) In all other cases, he shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned for not less than six months nor more than five years, or both.

C. Whoever attempts to commit the crime of obstructing a fireman shall be fined not less than two-thirds of the minimum fine nor more than two-thirds of the maximum fine provided in Subsection B of this Section or imprisoned for not less than two-thirds of the minimum term nor more than two-thirds of the maximum term as provided in Subsection B of this Section, or both. For the purposes of this Subsection, an attempt shall be defined as provided in R.S. 14:27.

D. The penalties provided in this section for the crime of obstructing a fireman shall be in addition to any other penalties provided by existing law.

R.S. 14:329  Interfering with a law enforcement investigation

A. Interfering with a law enforcement investigation is the intentional interference or obstruction of a law enforcement officer conducting investigative work at the scene of a crime or the scene of an accident by refusing to move or leave the immediate scene of the crime or the accident when ordered to do so by the law enforcement officer when the offender has reasonable grounds to believe the officer is acting in the performance of his official duties.

B. For the purposes of this Section, "law enforcement officer" means any commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, state park warden, livestock brand inspector, forestry officer, or probation and parole officer. .................................................................C. M.
R.S. 14:329.6 Proclamation of state of emergency; conditions therefor; effect thereof


R.S. 14:329.7 Punishment ...... M. ... If SBI, 05 years MF. If death, 25 years MF.

R.S. 14:332 Interference with medical treatment

A. Interference with medical treatment is the intentional and willful interference with a physician, physician's trained assistant, nurse, nurse's aide, paramedic, emergency medical technician, or other medical or hospital personnel in the performance of their duties relating to the care and treatment of patients in any hospital, clinic, other medical facility, or at the scene of a medical emergency. ..............................................................

B. M.

R.S. 14:336 Unlawful aiming of a laser at an aircraft

A. "Unlawful aiming of a laser at an aircraft" is the intentional projection of a laser on or at an aircraft or at the flight path of an aircraft in the aircraft jurisdiction of the state of Louisiana.

B. For purposes of this Section, the following terms have the following meanings:

(1) "Laser" means any device that projects a beam or point of light by means of light amplification by stimulated emission of radiation or any device that emits light which simulates the appearance of a laser.

(2) "Police officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.

C. The provisions of this Section shall not prohibit aiming of a laser at an aircraft by any of the following:

(1) An authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct research and development or flight test operations.

(2) Members or employees of the United States Department of Defense, United States Department of Homeland Security, or police officers acting in the course and scope of their official duties for the purpose of research, development, operations, testing, or training.

(3) A person using a laser emergency signaling device to send an emergency distress signal.

D. (1) Whoever commits the crime of unlawful aiming of a laser at an aircraft: JTM.

(2) On a conviction for a second or subsequent offense, JTM.
R.S. 14:337  Unlawful use of an unmanned aircraft system


This relates to use of “drones” by terrorists. You will more likely use statutes like Resisting an officer and Criminal trespass, which can include an UAS as an element.

R.S. 14:338  Interfering with emergency communication

A. The crime of interfering with emergency communication is committed when a person disconnects, damages, disables, removes, or uses physical force or intimidation to block access to any telephone or telecommunications device with the specific intent to interfere or prevent an individual from doing any of the following:

   (1) Using a 911 emergency telephone number.

   (2) Obtaining medical assistance.

   (3) Making a report to any law enforcement officer.

B. Whoever commits the crime of interfering with emergency communication as defined by this Section shall be either fined not more than five hundred dollars, imprisoned for not more than six months, or both.

C. For the purposes of this Section:

   (1) "Law enforcement officer" shall include commissioned police officers, state police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.

   (2) "Telecommunications device" shall mean any type of instrument, device, or machine that is capable of transmitting or receiving telephonic, electronic, radio, text, or data communications, including but not limited to a cellular telephone, a text-messaging device, a personal digital assistant, a computer, or any other similar wireless device that is designed to engage in a call or communicate text or data.

R.S. 14:403  Abuse of children; reports; waiver of privilege

A. (1) (a) Any person who, pursuant to Children's Code Article 609(A), is required to report the abuse or neglect of a child and knowingly and willfully fails to so report shall ...M.

   (b) (i) Any person who, pursuant to Children’s Code Article 609(A), is required to report the sexual abuse of a child, or the abuse or neglect of a child that results in the serious bodily injury, neurological impairment, or death of the child, and the person knowingly and willfully fails to so report, shall be fined not more than three thousand dollars, imprisoned, with or without hard labor, for not more than three years, or both.
(ii) Repealed. See R.S. 14:2 (C) for standard definition of SBI for Title 14. This statute alone [in Title 14] includes a sixth way to prove SBI: malnutrition or starvation.

(2) Any person, any employee of a local child protection unit of the Department of Children and Family Services, any employee of any local law enforcement agency, any employee or agent of any state department, or any school employee who knowingly and willfully violates the provisions of Chapter 5 of Title VI of the Children's Code, or who knowingly and willfully obstructs the procedures for receiving and investigating reports of child abuse or neglect or sexual abuse, or who discloses without authorization confidential information about or contained within such reports shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(3) Any person who reports a child as abused or neglected or sexually abused to the department or to any law enforcement agency, knowing that such information is false, shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(4) (a) Notwithstanding the provisions of Paragraph (1) of this Subsection, any person who is eighteen years of age or older who witnesses the sexual abuse of a child and knowingly and willfully fails to report the sexual abuse to law enforcement or to the Department of Children and Family Services as required by Children's Code Article 610, shall be fined not more than ten thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

(b) For purposes of this Paragraph, "sexual abuse" shall include but is not limited to the perpetration or attempted perpetration of R.S. 14:41, 42, 42.1, 43, 43.1, 43.2, 43.3, 43.4, 46.2, 46.3, 80, 81, 81.1, 81.2, 86, 89, or 89.1.

B. In any proceeding concerning the abuse or neglect or sexual abuse of a child or the cause of such condition, evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister or Christian Science practitioner and his communicant.

***

R.S. 14:403.3 Reports of missing children; procedures; false reports or communications
Amended by Act 96 of 2020, eff. 8/1/2020.

A. (1) Any state or local law enforcement agency receiving a report of a missing child, or the recovery of a missing child, and having reasonable grounds to believe the report is accurate shall do all of the following immediately after receiving the report:

(a) Enter the name of the child into the National Crime Information Center's database.
(b) Notify each of the following of the facts and contents of the report:

(i) The Department of Children & Family Services to the extent that the reporting is required pursuant to Chapter 05 of Title VI of the Children's Code.

(ii) The office of state police, if it did not originally receive the report.

(iii) The office of the sheriff for the parish in which the report was received, if it did not originally receive the report.

(iv) Any other local, state, or federal law enforcement agency that the law enforcement agency receiving the report deems necessary and appropriate depending upon the facts of each case.

(2) The law enforcement agency may also notify any other appropriate local, state, or federal agency of the fact and contents of the report. * * * Duties repeated in R.S. 40:2521, also amended by Act 96 of 2020, eff. 8.1.2020. See www.legis.la.gov.

R.S. 14:403.7 Failure to report a missing child – SOS: www.drewlawbooks.com

R.S. 14:403.8 Failure to report the death of a child

A. It shall be unlawful for a child's caretaker to fail to report to an appropriate authority the death of a child that occurs while the child is in the physical custody of the caretaker, within one hour of the caretaker's discovery of the child's death or one hour of the caretaker learning of the location of the child's body.

B. For purposes of this Section:

(1) "Appropriate authority" includes:

(a) A state or local law enforcement agency.

(b) A 911 Public Safety Answering Point as provided in Title 33 of the Louisiana Revised Statutes of 1950.

(c) The coroner of the parish in which the child's body is located.

(d) Emergency medical personnel.

(2) "Caretaker" means the child's parent, grandparent, guardian, or any person who, at the time of the child's death, has physical custody of the child.

(3) "Child" means any person under the age of 17 years. Ignores “Raise the age.”

C. Fine up to $5K; RF from 01-05 years.

D. The period of time in which a caretaker is required to report the death of a child as required by Subsection A of this Section shall be suspended for the period of time in which the caretaker is unable to make a report due to circumstances beyond the caretaker's control.
R.S. 14:501 Killing or injuring a person while hunting; penalty for failure to render aid

Whoever, while taking any bird or mammal, kills or injures another person by the use of any firearm, bow and arrow, spear, slingshot, or other weapon or device used in such taking, and who knowingly either abandons such person or fails to render to such injured person all necessary aid possible under the circumstances, shall be punished by a fine of up to $500.

R.S. 14:502 Failure to seek assistance

A. (1) Any person at the scene of an emergency who knows that another person has suffered serious bodily injury shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the injured person. Reasonable assistance includes immediately seeking or reporting the need for medical assistance from an appropriate authority.

(2) Any person who engages in reckless behavior that results in the serious bodily injury of any person shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the person. Reasonable assistance includes immediately seeking or reporting the need for medical assistance from an appropriate authority.

B. For purposes of this Section:

(1) "Appropriate authority" includes:

(a) Any state or local law enforcement agency.

(b) A 911 Public Safety Answering Point as defined in Title 33 of the Louisiana Revised Statutes of 1950.

(c) Emergency medical personnel.

(2) "Reckless behavior" means an activity or behavior in which a reasonable person knew or reasonably should have known that the activity or behavior may result in injury to another, including but not limited to excessive consumption of alcohol, binge drinking, drag racing, consumption of any controlled dangerous substance, acts of hazing, or other similar activity, including activity which is defined as a criminal offense under this Title.

C. Sentences: RFs.
Title 14 Legal Study Guide
Jean and Harmon Drew

Homicide = killing of a human being.
Feticide = killing of an unborn child.

05 Homicides:
1st degree murder; 2nd degree murder;
Manslaughter; Negligent homicide;
Vehicular Homicide.

Example of new type (2020) of Manslaughter:
X shoots at crowd; Y shoots back, killing Z by mistake. X is responsible for this death.

Homicide language used in the 03 feticides:
Feticide 01 uses language from Murder 02.
Feticide 02 uses language from M/S.
Feticide 03 uses wording from Vehicular/Negligent Homicide.

02 Parties to a crime:
PARTies. Principals & Accessories after the fact

06 Culpability factors:
I-I-I just made 2 mistakes.
Infancy [<10], Insanity, Intoxication, justification, mistake of law & mistake of fact.

04 Inchoate offenses:
CALifornia IS Inchoate.
Criminal Conspiracy, Attempt, Inciting a Felony, and Solicitation for Murder

General intent is included in Specific intent.

04 “generic” batteries (Relating to any victim):
Simple; 2nd degree; Aggravated; & Aggravated 2nd degree.

03 grades of Rape [names of crimes]:
First degree; Second degree; Third degree.

03 body parts subject to rape
• Vaginal; Anal; Oral.
  Some penetration is required in Vaginal & Oral Rape.

04 grades of Robbery:
Armed; First degree; 2nd degree; Simple

Purse-snatching is a felony which requires that something of value be inside the purse.

Difference in Careless Operation & Reckless Operation
• Careless Operation (RS 32:58) – Failure to maintain control; Must occur on public highway.
• Reckless Operation (RS 14:99) – Requires criminal negligence or recklessness; Can occur on or off a public highway.

ALL Burglaries will include at least these elements: An unauthorized entry with intent to commit a felony or any theft therein.

The 04 Kidnapping criminal statutes:
Aggravated; Second degree; Aggravated Kidnapping of a child; Simple kidnapping.

04 basic LEO activities that can possibly lead to the crime of Resisting an officer:
• Lawful arrest
• Lawful detention
• Seizing property
• Executing any order of the court

04 general prohibitions on the public, if LEOs are doing any one these 04 activities:
• No resistance to the LEO
• No interfering with the LEO
• No obstruction of the LEO
• No opposition to the LEO
A lawful detainee must provide his name.

**02** ways to commit an assault.
- Attempted battery
- Putting another in reasonable fear of receiving a battery.

**03** required elements of Flight from an officer:
- Pursuit by marked unit
- Using lights
- Using siren.

**06** factors, that can make misdemeanor Flight from a LEO into the felony of Agg. Flight from a LEO, if **02** occur, or one is committed twice:
- Leaves roadway or forces MV to do so
- Collision
- 25 mph or more over speed limit
- Travel against traffic
- Runs stop or yield sign
- Runs traffic control signal device

**04** grades of Basic Theft under La RS 14:67
- Value < $1,000 = M.
- Value $1K to <$5K = RF.
- Value $5K to <$25K = RF.
- $25K or more = MF.

Serious Bodily Injury = "SBI." In Title 14, there are always at least these **05** ways to prove SBI:
- unconsciousness;
- extreme physical pain;
- protracted/obvious disfigurement;
- protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or
- substantial risk of death.

For R.S. 14:403, Abuse of Children, "SBI" can also be proven by starvation or malnutrition.

In Title **32**, Serious Bodily Injury ["SBI"] is usually defined in each statute using the term.

**Difference between 1st degree Felony murder & 2nd degree Felony murder:**
- **First degree felony murder** requires proof of the Specific Intent to Kill ["SIK"] or Inflict Great Bodily Harm ["IGBH"].
- **Second degree felony murder** does **NOT** require proof of SIK or the IGBH.

**12** types of 1st degree murder, each of which requires proof of the SIK or the IGBH:
1. F –15 enumerated felonies
2. F –Victim = LEO/FF/DA/Judge/Crime lab
3. F –Focus on > 01 victim
4. C - Contract
5. A – Victim’s Age [>12 or 65+]
6. D – Drug violence
7. R - Ritualistic killing
8. O - Protective Order Violation
9. R - Witness retribution and...

**Taxi the Cereal to the Civilian jail employee:**
- (10) Taxi Cab Driver
- (11) Serial Killer
- (12) Civilian jail employee

R.S. 32:681 **Post-accident drug testing,** requires chemical test(s) after a crash if a fatality, or voluntary submission, or a SW, or it is foreseeable that a citation or arrest is imminent & “Suspected Serious Injury” exists, as defined:
- Severe lacerations;
- Broken or distorted extremities;
- Crush injuries;
- Bad skull, chest or abdominal injuries;
- Significant burns;
- Unconsciousness when taken from scene;
- Paralysis.

**Timely Lagniappe:** La. R.S. 29:724 (E) gives LA LEOs authority to enforce Emergency Declarations issued by the Governor. A misdemeanor.
We are honored to often receive emails asking to “run something by us” – and we always want to help. What follows are a few of the most common questions that we get – and we hereby present our best answer.

None of this is simple, and your local DA’s office should be the most important source for answering any legal question you may have. Many smart and experienced people may disagree with us, and that is fine, so rely on your superior officers and your local DA.

1. **Can traffic stops lawfully be made by LEOs in unmarked units?**

**OUR ANSWER:** Yes, particularly if the LEO is in uniform. Not many LEOs ask our advice on this, but this practice seems like a terrible idea, if used as an everyday means of traffic control – too much pressure, uncertainty, and danger. It looks to us like the stop would be good, but R.S. 14:108.1 clearly would not apply. Nine times out of 10, this will be a policy decision of the law enforcement agency, made in conjunction with the local DA. Check out this obscure statute:

- **La. R. S. 49:121** Name of board, department, or subdivisions; marking on boat or vehicle; Louisiana public license plates; exemptions Full text at [www.legis.la.gov](http://www.legis.la.gov).

We boldface highlighted wording. *** – reflects where part of laws are omitted.

A. (1) **Every*** **vehicle** belonging to the **state** or to any of its **political subdivisions**, or to any department, board, commission, or agency of any of its political subdivisions shall, if required by law to bear a La. **LP**, bear a **public LP**, & each such vehicle also shall have **inscribed, painted, decaled, or stenciled conspicuously thereon**, either with letters not less than two inches in height and not less than one-quarter inch in width or with an insignia containing not less than one hundred forty-four square inches, or if circular, not less than eight inches in diameter, the **name** of the **board, commission, department, agency, or subdivision** of the **state** to which the *** MV **belongs. ***

E. **Those vehicles used in crime prevention and detection and similar investigative work**, which if identified as required by this Section could not be used effectively for such purposes, are **exempt** from the provisions of this Part. ***

I. **No LEO** shall issue a **citation** for a violation of the MV laws of La., **unless the MV** used for the apprehension bears the **identifying insignia** required by this Section and bar **lights or grille lights**, or the LEO **is wearing a uniform** identifying his authority.
The provisions of this Subsection shall not apply in circumstances endangering public safety. See Subs E, supra.

2. **What does La. R. S. 32:295.1 (F) mean about the validity of searches made when the stop is strictly for a seat belt violation?**

   - **R.S. 32:295.1** Safety belt use; tags indicating exemption

     F. Probable cause for violation of this Section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person not restrained as required by this Section. A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

     **OUR ANSWER:** All this says is that there can be no search, just because of a seat belt violation. If PC develops or Consent occurs during a lawful stop, the search is good as gold.

3. **What is the latest law on checkpoints in Louisiana?**

    **OUR ANSWER:**

    - **R.S. 32:295.4** Guidelines for seat belt, motor vehicle inspection, and motor vehicle liability security checkpoints; law enforcement agencies

        All law enforcement agencies involved in traffic enforcement shall establish guidelines for the operation of seat belt checkpoints, MV inspection checkpoints, or proof of compulsory MV liability security checkpoints.

        [Note: Strangely, nothing about sobriety checkpoints is listed in this statute.]

        Such guidelines shall include but not be limited to the following provisions:

        (1) The location, time, and duration for seat belt, motor vehicle inspection, or compulsory motor vehicle liability security checkpoints shall be established in written form by supervisory or other administrative personnel of the law enforcement agency rather than the field officers implementing the checkpoint.

        (2) For purposes of motor vehicle inspections, the location of the checkpoint shall not be <five hundred feet> from an intersection between a state and federal highway.

        (3) Provision for advance warning to the approaching motorists with signs, flares, and other indications to warn motorists of an impending stop and to provide indication of its official nature as a police checkpoint.

        (4) Provisions to ensure detention of motorists for a minimal length of time.

        (5) The use of systematic, nonrandom criteria for stopping motorists.
(6) Provisions prohibiting the establishment of checkpoints where the only vehicles subject to or targeted for inspection are motorcycles, as defined in R.S. 32:1.

Suggest you read *St. v Jackson*, 764 So. 2d 64 (La. 2000), from which the above statute was taken. Also: *St. v Owens*, 977 So. 2d 300 (La. App 2nd Cir 2008), a state second circuit court case. Both cases can be found in 2021 TBDB Chapter Four, *infra*.

4. During a lawful MV stop, is a LEO entitled to the names of the passengers?

**OUR ANSWER:** We think the answer is yes, however, many criminal law questions are now being rendered 5-4 from SCOTUS, and 4-3 from the LASC. Some judges, DAs, & LEOs disagree with us, & they may be correct. Follow your local policy by your supervisors and your DA.

The guest passenger’s name can certainly be requested during a lawful MV stop. The rub comes as to a LEO’s recourse when this information is not forthcoming.

The following chronological research may be of assistance to your rank or your District Attorney, in determining a policy on this issue. All these cases can be found in this book, *infra*, with full citations. This is not simple, so strap in. This will take 2.5 pages for us to explain.

*Terry v OH*, 392 US 1 (1968), HELD THAT with REASONABLE SUSPICION:

- Of criminal activity, a LEO can briefly detain a person and “demand” his name;
- That the subject is armed and dangerous, a LEO could frisk the person; and
- That something touched could be a weapon, it could be seized & the person searched.

Also in 1968, the “Louisiana version” of *Terry* was enacted by the LA. Legislature, with essentially the same wording: *La. C. Cr. P. art 215.1 (A-C)*. The main difference is that the Subsection B of art 215.1 only requires reasonable suspicion of danger before frisking.

The courts have long acknowledged the perilous risk of making vehicular stops.

Accordingly, in *PA v Mimms*, 434 US 106 (1977), SCOTUS held that the LEO can automatically require a driver to exit a MV, for LEO safety. In *St v Landry*, 588 So. 2d 345 (1991), the LASC held the same to be true for guest passengers. In *MD v Wilson*, 117 S. Ct. 882 (1997), SCOTUS ruled likewise for guest passengers. These three cases haven’t been seriously challenged.


*D. During detention of an alleged violator of any provision of the motor vehicle laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. ***
In *Hiibel v 6th Judicial Court. of NV*, 124 S. Ct. 2451 (2004), SCOTUS held that **identity** of a **lawful detainee** is a **safety factor**, meaning an involved LEO has the right to know with whom he/she is dealing.

Louisiana’s resisting an officer statute [La. R.S. 14:108] was amended in **2006** to require lawfully detained persons to provide their name, or to face criminal consequences.

In *Brendlin v CA*, 127 S. Ct 2400 (2007), SCOTUS held guest passengers to have the same legal status as drivers during the stop of a personal MV. Thus: Good stop, all are lawfully detained; Bad stop, all are illegally detained. In *AZ v Johnson*, 129 S. Ct. 781 (2009), SCOTUS allowed a LEO to proceed to the 2<sup>nd</sup> stage of *Terry* — a frisk — of a lawfully-detained guest passenger, finding reasonable suspicion that the passenger was armed and dangerous.

In *Rodriguez v US*, 135 S. Ct. 1609 (2015), SCOTUS held that an **08**-minute extension of a traffic stop must be justified by objective factors as reflected by the record. In *St v Mantia*, 235 So. 3d 1061 (5/26/17), the LASC held that even **one**-minute extension must be justified. No more approvals will be given for “**merely a de minimus extension**” or because of not being “**a material extension**.” To extend the stop requires objective supportive facts in the record.

La. C. Cr. P. art. 215.1(D), supra, is in accord with *Rodriguez, supra* & *Mantia, supra*.

A second officer at the scene may lawfully ask passengers for identification during the stop. But if there is only one LEO making the stop of a MV, without backup, he/she may not be able to secure the names of everyone in the personal vehicle, because the clock is running on the reason for the stop itself. When the vehicular detention of the driver ends, the guest passengers are no longer lawfully detained, making La. R.S. 14:108 then to be inapplicable.

This was highlighted in *Johnson v Thibodaux City*, 887 Fed 3d 726 (4/17/2018) (5<sup>th</sup> Cir LA), a civil liability lawsuit against LEOs under 42 U.S.C. 1983. In *Johnson*, a **completed stop was extended** (to identify guest passengers) **without justification in the record**, resulting in possible civil liability for the LEOs. The case says identification of passengers could be sought **during** a traffic stop with possible criminal exposure for a passenger’s refusal to provide his name. The Federal Fifth Circuit is not binding on La. LEOs, but this recent ruling may be instructive.

We feel that if getting the guest passenger out of the MV is lawful, for officer safety, then getting the name of passengers (**during the stop**) should be also be lawful, for officer safety.

We recognize that some take the position that not only must the passenger be lawfully detained, but the detention must be generated by the actions of the passenger himself, to trigger the right for a name, under the penal sanction of La. R.S. 14:108. In other words, some argue that the passenger’s ancillary detention because of actions of the driver is a somewhat lesser detention due to no reasonable suspicion of criminal activity committed by the passenger himself. This argument would make demanding the name under penalty of arrest to be unlawful.
Johnson has this holding: "Under the Fourth Amendment, police officers may not require identification absent an otherwise lawful detention or arrest based on reasonable suspicion or probable cause. See Brown v Texas, 443 U.S. 47 (1979). Thus, is the lawful detention of a passenger, on account of the wrong-doing of a driver, sufficient to allow the penal sanction to apply to a passenger who refuses? We think so, but plenty of smart people disagree.

This ability of a LEO (to get the name of the guest passenger, on penalty of arrest) is not clearly established, either way, so we desperately need a clear expression of the LASC. Until then, the DA should be involved in establishing a standard policy on this issue for the judicial district.

Common sense seems to us that providing a name is less intrusive than physically getting someone out of a car, and providing a name is just as important in protecting the safety of LEOs.

The request for a name in Johnson came AFTER the reason for the stop had ended.

Thus, since the passenger's status of being detained was ancillary to that of the driver, relative to the MV, they were free to go, as the MV matter had ended, in that the driver had been removed from the car, arrested, and was awaiting transportation.

At the time they were asked, Johnson and the other passengers had no continuing obligation to reveal their name. Until there is a clearly dispositive case on this case from the LASC, we are referring LEOs to their local DAs for guidance.

Here are two important sentences from Johnson: "Thus, under both Louisiana law and the Constitution, Johnson was required to provide identification only if she was otherwise lawfully stopped. The officers would have no probable cause to arrest if the request for identification came during an illegal seizure." But it's still not 100% clear:

After determining that the initial stop was lawful, there is a 2nd required determination (cited in Johnson, taken from Hiibel, supra), which is also confusing:

"...whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop." We are not certain what this line means. We think it means common sense and reasonableness, particularly for officer safety. We need a LASC case on this.

5. **What offenses in Title 32 allow an arrest?**

**OUR ANSWER:** Ask this question to 10 lawyers, 10 LEOs, and 10 prosecutors, and get ready for 30 different replies. Here is our take, about which there is no consensus. First, we know of only one RS 32 offense that usually results in arrest, and that is DUS, R.S. 32:415. Other RS 32 arrests are rare.

We say 08 RS 32 offenses allow arrest, 05 of which are in the La. Highway Regulatory Act [LHRA], which is the first chapter of Title 32, running from section 01 to section 399.
1. Speeding 15 or more over the speed limit; [Probably precluded by local policy]
2. Speeding in a school zone;
3. Drag racing;
4. Driving under Suspension;        *Not in LHRA
5. No DL issued;                  *Not in LHRA
6. No Liability Insurance in place; *Not in LHRA
7. Injury Accident; and
8. Committing same LHRA offense twice within one hour.

▲ Many smart people disagree with our assessment.

6. Has there been any recent Implied Consent legislation?

OUR ANSWER: Yes, La. RS 32:681, was amended in 2019 & became “Katie Bug’s Law.” The law relates to warrantless chemical testing being mandated after a horrific MV wreck that does not immediately result in a fatality. The statute is triggered when there is “suspected serious injuries” after a MV arrest. Here is the text:

- R.S. 32:681 Post accident drug testing; accidents involving fatalities, required

   A. The operator of any motor vehicle or watercraft which is involved in a collision or crash on the public highways, including waterways, shall be deemed to have given consent to, and shall be administered, a chemical test or tests of his blood, urine, or other bodily substances for the purpose of determining the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or other applicable provision of law or any other impairing substance, under any of the following circumstances:

   (1) A fatality occurs.

   (2) It is foreseeable that a citation for a traffic violation or an arrest is imminent and the investigating officer finds that a bodily injury occurred that is rated as "suspected serious injury" on the Uniform Motor Vehicle Traffic Crash Report.

   (3) The operator voluntarily agrees to submit to a chemical test.

   (4) A search warrant is issued, ordering the collection and testing of any bodily substance for purposes of this Section.

   B. The test or tests required pursuant to Subsection A of this Section shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating or in actual physical control of a motor vehicle upon the public highways of this state which is involved in a collision or crash or to have been operating or in physical control of a watercraft on the waterways of this state involved in a collision, crash, or
other casualty in which a suspected serious injury or a fatality occurs, in order to determine the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or any other applicable provision of law, or any other impairing substance. The law enforcement agency by which such officer is employed shall designate in writing under what conditions the test or tests shall be administered.

C. In the case of all traffic or boating fatalities, the coroner, or his designee, shall perform or cause to be performed a toxicology screen on the deceased victim or victims for determining evidence of the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or other applicable provision of law, or any other impairing substance which shall include the extracting of all bodily substance samples necessary for such toxicology screen. The coroner, or his designee, shall be responsible for ensuring the body is not removed from his custody until such time as the bodily substance samples are extracted. The coroner’s report shall be made available to the investigating law enforcement agency and may be admissible in any court of competent jurisdiction as evidence of the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or other applicable provision of law, or any other impairing substance at the time of the fatality. Nothing herein shall be construed to limit the authority of the investigating law enforcement agency from conducting an investigation of the accident scene concurrently with the coroner or his designee.

D. Any chemical test or tests of a person’s blood, urine, or other bodily substance for the purpose of determining the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or other applicable provision of law, or any other impairing substance shall be administered in the same manner and subject to the provisions of Part XIV of this Chapter.

E. For the purposes of this Section, "suspected serious injury", as provided for in the Fourth Edition of the Model Minimum Uniform Crash Criteria Guideline, means any injury other than fatal which results in any of the following:

**Memory Devices:**

1. Severe laceration resulting in exposure of underlying tissues, muscle, or organs, or resulting in a significant loss of blood.
2. Broken or distorted extremity.
3. Crush injuries.
4. Suspected skull, chest, or abdominal injury other than bruises or minor lacerations.
5. Significant burns.
6. Unconsciousness when taken from the crash scene.
7. Paralysis.
F. Neither the law enforcement officer nor the law enforcement agency employing the law enforcement officer shall be liable, civilly or criminally, for any action or omission taken in response to this Section.

G. This Section shall be known and may be cited as "Katie Bug's Law".

This preceding law was amended by the determination and true grit of a loving mother, Mrs. Morgan Grantham, who would not take “no” for an answer, as she painfully traversed all 2019 Legislative twists & turns. She is an inspiring hero, a wonderful Mama, and a dear friend.

Also, changes to Implied Consent [RS 32:661, 666, 667, 667.1] were enacted by Act #40 of 2020, effective 6.4.2020. See www.legis.la.gov.

7. Any big Implied Consent Cases Since Birchfield (2016)?


LASC ANSWER:  *St. v Michael*, ____So. 3d ____, (La. 7/9/20). Based on *Schmerber v CA*, 384 US 757 (1966), EXIGENCIES (e.g., Multi-MV crash, multiple injuries, hit & run, needed debris clearance, traffic protection clearance, other immediate dangers to the public), may allow a warrantless blood draw, to be determined on a case-by-case basis. You need a good report.

8. If a LEO runs a LP check, discovering that the owner’s driving privileges are revoked, is it reasonable to make a stop, on an inference that the owner is the driver?

SCOTUS ANSWER:  Yes, assuming that there are no contrary demographics to suggest that the operator is someone else. Our red flag example: Computer query comes back with an owner who is a young Caucasian female yet the driver is an older African-American male. This would clearly negate reasonable suspicion to make the stop. *KS v Glover*, 140 S. Ct. 1183 (04/06/20).

9. 2020 Amendments to R.S. 32:327. Special restrictions on lamps  

D. No person shall sell a dashboard, hood, vehicle front grill, or vehicle roof mounted emergency light that emits a blue glow to any person.

E. No person shall sell a dashboard, hood, vehicle front grill, or vehicle roof mounted emergency light that emits a red glow, or that emits a glow of red and white, to any person who is not a peace officer, a firefighter, or a person employed in the performance of emergency, highway construction, or public utility services. No person shall possess such an emergency light except peace officers, firefighters, public utility, highway construction, or emergency personnel.

*** Effective 8.1.20 per Act #158.  

03.Chap III - Traffic FAQs cbs 072020
CHAPTER IV. • SEARCH AND SEIZURE

2021 TRUE BLUE DREW BOOK

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I. Search & Seizure Terminology/Burdens

A. Constitutional Guidance

1. The Fourth Amendment of the United States Constitution, eff. 1791.

   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.


   Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

B. Burdens - As we see them [Reasonable Suspicion & Probable Cause]

1. We suggest that burdens are met by LEOs by combining the officer’s knowledge, training, and experience, in conjunction with his/her observations: sight; smell; hear; taste; touch.

2. In order to briefly detain and frisk someone requires the LEO to develop articulable facts that establish Reasonable Suspicion (“RS”) of criminal activity, which we suggest is about a 30% indicia of criminality.

3. The term Probable Cause (“PC”) is used in both Constitutions, but defined in neither. It is usually defined as a “fair probability”. We suggest that PC is a finding of 50% chance of criminality. PC allows an arrest and/or a search. PC is sufficient to secure an arrest warrant or search warrant.

4. Summary - One way for you to possibly bracket this terminology may be to consider this analysis:

   - Doubling RS roughly results in PC;
   - Doubling PC roughly results in Proof Beyond a Reasonable Doubt, which is the burden required for a conviction.

5. LEOs have more S & S latitude at the border, because of national security & smuggling, but all actions must be reasonable, considering the circumstances of each situation.
II. **Stops/Detentions**

A. **Making a Stop of a Person**

1. **Terry Stop, Terry Frisk, and Terry Weapon Search & Seizure.**

   *TERRY v OHIO*, 392 US 1 (1968) – 52 years ago, SCOTUS held that LEOs can:
   - Stop a suspect, briefly, with reasonable suspicion of criminal activity;
   - Frisk the detainee, with reasonable suspicion that he is armed and dangerous; &
   - Seize the weapon & search him, if the LEO develops reasonable suspicion that he/she has touched something hard that could be a weapon.

2. **La. C. CR. P. art 215.1**  Temporary Questioning of Persons in Public Places; Frisk and Search for Weapons - [Subsections A – C, legislatively enacted in 1968, closely mirror *Terry v OHIO*, rendered in 1968 by SCOTUS.]

   A. A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.

   B. When a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, *he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person.*

   *This statute requires RS of danger in order to frisk, which technically differs from the Terry burden of RS that the subject is “armed & dangerous.”*

   C. If the law enforcement officer finds a dangerous weapon, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

3. **All facts** separately supporting a stop, a frisk, or the seizure of a weapon should be set out in a **detailed report.** This helps in many ways: preserving the LEO’s credibility; helping the ADA who screens the case; in making sure the right questions are asked by the ADA at the Motion to Suppress, & protecting the LEO from Civil Liability.

   [Subsection D (pertaining to MVs) was added 29 years later. See Subsection E in the middle of TBDB page #133, infra.]
B. Unprovoked Flight by a Person

- **St v Benjamin**, 722 So. 2d 988 (La. 1998)
  
  Unprovoked flight from a clearly identifiable LEO while holding a waistband amounted to reasonable suspicion of criminal activity, justifying a pursuit and a stop (but NOT an arrest, without further manifestations of criminality).

  
  Unprovoked flight from a clearly identifiable LEO in a high crime area provides reasonable suspicion of criminal activity, justifying a pursuit and brief detention.

- **St v Alvarez**, 31 So. 3d 1022 (La. 2010)
  
  A strange-acting person was “cagily” observing a MV stop from a dark alley in a high crime area. When the LEOs asked to speak with him, he ran for no apparent reason. The LEOs were entitled to pursue him.

  During the chase, he pulled out and discards a concealed pistol, hiding it under a bush. The LEOs had PC for illegal carrying of weapons, a serious misdemeanor, allowing close pursuit into a home for arrest.

- **St v Morgan**, 59 So. 3d 403 (La. 2011)
  
  Unprovoked about-face and flight in the opposite direction from a clearly identifiable LEO in a poorly-lighted low crime area, late at night, amounted to Reasonable Suspicion of Criminal Activity, which justified the stop.

C. Making a Stop of a Motor Vehicle

- **Alabama v White**, 496 US 325 (1990)
  
  Corroborated information from an anonymous tip may impart some reliability to the tip, justifying an investigatory MV stop.

  The anonymous tip contained details relating not just to easily obtained facts and conditions existing at the time of the tip, but to not-easily predictable future actions. This “inside info” revealed familiarity with defendant's affairs, bolstering the reliability of the tipster’s communications.

  
  This case established the possibility of a GOOD pretextual stop, a concept which did NOT exist before 1996. Today’s S & S analysis focuses more (but no longer exclusively)
on what happened, as opposed to the LEO's subjective agenda. What matters the most: Were the LEO's actions objectively reasonable? Bottom Line: Did the police observe a traffic infraction? If so, the stop is good.

- **St v Waters**, 780 So. 2d 1053 (La. 2001)

  MV stop on I-12 at 3:10 a.m. after a car veered to the right and made contact once with the fog line. The LEO discovered that Waters had been arrested for serious crimes and there was a gun in the car. With consent to retrieve the gun, the LEO detected the odor of freshly cut marijuana [Note: The smell is not always “overwhelming.”]

  LASC: Since the MV rolled on the fog line, a minor violation of R.S. 32:79, the LEOs had the minimal level of objective justification required to justify a legal traffic stop. Good stop; good search.


  When LEOs make a valid traffic stop of a personal MV, the driver and all passengers are seized for purposes of the Fourth Amendment. The question asked here was: Would a reasonable passenger feel free to walk away during a lawful traffic stop? Answer: NO, because everyone in the MV would have the same legal status as the driver.

  A good traffic stop of a personal MV means that everyone in the MV is lawfully detained. The reverse is also true: a bad traffic stop of a personal MV means that everyone in the MV is illegally detained, meaning that whatever flows from the illegally initiated encounter may be subject to suppression, as fruit of the poisonous tree. Bottom line: On a typical traffic stop of a personal motor vehicle, all passengers have the exact legal status as the driver: good or bad.


  The first Terry condition (a lawful investigatory stop) is met when a personal MV is validly stopped for a MV violation. With a good traffic stop, the driver and all passengers are lawfully detained. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.

  To justify a pat down of the driver or a passenger during a traffic stop, the police must have reasonable suspicion that the person subjected to the frisk is armed and dangerous.
• **St v Elliott**, 35 So. 3d 247 (La. 2010)

   911 calls are more reliable than an anonymous tip because 911 generates, at a minimum, **location & phone number**, thus making the caller accountable for the info, like a concerned citizen. Especially so if the report involves impaired driving and is being provided in real time. Extreme danger to the motoring public.

   **LASC HELD:** Lawful stop. “**Collective Knowledge**” is the issue. The determination of whether PC exists for an arrest or RS for an investigatory stop is a purely objective inquiry that takes into account all of the information known collectively to the law enforcement personnel involved in the investigation, even if some of the information is not communicated directly to the arresting officer.

• **Navarette v California**, 134 S. Ct. 1683 (2014)

   This 5-4 case validated a **MV** stop based on a 911 call alleging that an erratically-driven pickup had almost run her off the road. She gave a full description, LP#, location, & direction. The info was dispatched. The truck was found 20 minutes later, 20 miles south, on the same highway. LEOs followed 05 minutes, saw no bad driving, but pulled over the **MV**.

   SCOTUS: Lawful stop because of 1) danger to the public; 2) verified observations (route, time frame, make, model, plate number); and 3) the presumptive reliability of real-time 911 calls, particularly as to impaired driving.

• **Kansas v Glover**, 140 S. Ct. 1183 (4.6.20)

   LEO was following a MV on the highway and ran the tags, revealing that the owner had a revoked DL. The owner’s demographics matched that of the driver, so SCOTUS found that the LEO had a common sense inference that the reasonable suspicion of criminal activity existed, allowing a lawful traffic stop.

**D. Checkpoint and Roadblock Stops**

• **Michigan v Sitz**, 496 US 444 (1990)

   DWI checkpoints can be legal.


   A checkpoint for illegal drugs violates the 4th Amendment, since its purpose is indistinguishable from the general interest in crime control. **Traffic checkpoints must relate to traffic matters.**
• **St v Jackson**, 764 So. 2d 64 (La. 2000)

La. **DWI** checkpoints are legal, if statutory guidelines are followed. This case is the basis for most of R.S. 32: 295.4.


A checkpoint was held lawful because it was set up to obtain info about a fatal hit and run accident that had happened one week earlier at the same location and time. The checkpoint was not set up for general crime control, so it was objectively reasonable.

• **St v Owens**, 977 So. 2d 300 (La. App 2nd 2008)

Checkpoint guidelines under **Jackson**, supra, as codified & enhanced under R.S. 32:295.4, are aspirational. In this state second circuit case, two minor discrepancies didn’t doom the checkpoint.

E. **Extending a Traffic Stop**

Subsection D of La. C. Cr. P. art 215.1 (immediately below), pertaining to extension of MV stops was added in 1997, 29 years after article 215.1 (A) – (C).

D. During detention of an alleged violator of any provision of the MV laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. ***

The clock is running from the first moment of a MV stop. That point in time will be readily ascertainable at court.

Q: What can the LEO do with the driver on a typical traffic stop?

A: Introduce himself/herself;
   Provide the reason for the stop;
   Get the subject(s) out of the MV for safety or
   Keep him in the MV for safety [LEO’s choice];
   Check the DL, proof of Insurance, and registration;
   Get the report from the computer, &
   Issue a citation, or warning ticket, or not.

To extend a stop (beyond the normal citation/safety process of a traffic matter) requires development, during the stop, of additional objectively reasonable suspicion of criminal activity, per La.C.Cr.P.Art.215.1(D). ▲ See above. Analysis of extensions is on a case-by-case basis.

SCOTUS recognized that a dog sniff during a lawful traffic stop is not unreasonable under the 4th Amendment.

Even though a MV stop is more like a *Terry* stop than a formal arrest, the tolerable duration of police inquiries is determined by orderly processing of the stop’s mission, i.e., addressing the traffic violation leading to the stop.

Authority for the stop ends when tasks tied to the stop have or reasonably should have ended, unless additional reasonable suspicion of criminal activity has happened during the stop.

The courts will no longer accept general extensions without justification. We urge LEOs to “bullet” in their reports any observations justifying an extension, to make certain that the ADA asks these questions during a Motion to Suppress.

A traffic stop is easier to make today, as compared with 25 years ago. Justifying a traffic stop extension is harder today, as compared with 25 years ago.

In order to extend the detention, after the traffic stop ends, requires the development of additional RS of criminal activity during the stop.

What a LEO does today, relative to the Fourth Amendment, is 90% judged objectively, not subjectively.

The question now is MAINLY what happened and when – still way more than why.


Even if a motorist is lawfully stopped on a traffic matter, the event can still become an unreasonable seizure if the motorist is detained longer than it takes to process the traffic stop, unless additional reasonable suspicion of criminal activity develops during the traffic stop. These observed facts (leading to the additional reasonable suspicion of criminal activity) should be detailed in the LEO’s report.

Facts here: Canine officer and his dog are patrolling. The LEO is driving. After seeing Rodriguez cross the fog line, a 21-minute traffic stop occurred, about which no one complained. Within the next 08 minutes, however, this happens:

- LEO requests permission to run his dog around the subject's MV;
- Rodriguez refuses;
- Dog makes first pass around the MV; and the dog alerts on the second pass.
ISSUE: Can a brief dog sniff after completion of the traffic stop violate the 4th Amendment?

SCOTUS HELD: Yes. The extension can violate the Fourth Amendment, if the extension is not objectively justified by the fact. Put it in your report.

A valid MV stop can become illegal if the stop extends, without justification, the minimum time needed to process the traffic matter for which the stop was made. Justifications for extensions must be in the LEO’s report and asked about at the Motion to Suppress.

We note that the LEO should be asked about: his/her knowledge, training, experience.

- **St v Mantia**, 235 So. 3d 1061 (La. 2017)
  
  Lawfully obtained evidence was secured via a canine’s alert upon a MV during or immediately after another LEO’s traffic stop. LASC ruled: the open-air canine alert on the MV did not violate **Rodriguez**, because:

  1. The alert came during a lawful traffic stop, or during a justifiable extension.
  3. It was factually similar to **Ill v Caballes, supra**, where SCOTUS approved a canine sniff conducted by a 2nd LEO during another officer’s traffic stop.
  4. The LEO here observed Mantia try to conceal a clearly-visible bag inside the passenger compartment, so this amounted to additional reasonable suspicion of criminal activity, justifying any brief extension required before the alert.
  5. Evidence discovered by the dog’s alert was held to be lawfully obtained.

III. Officer Safety

A. Requiring Subjects to Exit the Vehicle

- **Pennsylvania v Mimms**, 434 US 106 (1977)

  Even on minor traffic stops, drivers can be made to exit MVs, for LEO safety.

- **St v Landry**, 588 So. 2d 345 (La. 1991) – LASC and
  
  **Maryland v Wilson**, 519 US 408 (1997) – SCOTUS. Both cases HELD:

  On any traffic stop, all occupants can be made to exit the car, for officer safety.
• **St v Kelley**, 934 So. 2d 51 (La. 2006)

  *Kelley* was passed out in his MV. Key was in the ignition (motor not running). *Kelley* didn’t recall how he got there. He showed a suspended DL. As LEO was getting *Kelley* out of the MV to arrest him for R.S. 32:415, he saw drugs on the front seat. The LEO was objectively allowed to get *Kelley* out for safety, regardless of the LEO’s actual reason. A valid PV seizure.

• **St v Cure**, 93 So. 3d 1268 (La. 2012)

  When ordering subjects out of the MV, a LEO can open the car door without materially increasing the intrusiveness of the situation. Requiring lawfully-detained folks to exit a motor vehicle car is a safety factor.

B. **Requiring Names of Driver (Absolutely) & Passengers (Close: Only During a Valid Detention/Stop and not if the Inquiry Extends the Stop)**

• **Hiibel v Sixth Judicial Court of NV**, 542 US 177 (2004)

  If a subject is lawfully detained, a state can criminalize his refusal to ID himself, because identity is a safety issue. Since 2006, LA’s Resisting statute, R.S. 14:108(B)(1)(c), has required a lawfully detained subject to ID himself.

• **Johnson v Thibodaux City**, 887 Fed 3d 726 [5th Cir (La. 04/17/18)]

  During the lawful stop of a personal MV, guest passengers can be asked their names, with possible criminal exposure for refusing to answer. However, once the traffic stop is over, the lawful authority to demand the name of a passenger **ends**. See Q & A #4 in Chapter 03, *supra*. We believe that a second LEO can request the names for passengers, while the first LEO is working the original traffic stop. Ask your DA.

C. **Frisk**

1. **Frisking an individual for weapons**

• **St v Boyer**, 967 So. 2d 458 (La. 2007)

  LEOs executed a SW on a home. Boyer was outside. He ignored commands to remove his hand from his pocket.

  Detaining & frisking Boyer, the LEO felt and seized a cell phone. Removal of the cell phone was lawful, as it could have been a weapon.

  The LEO also felt & removed 02 small filters (for crack-smoking), with no idea what the items were.
LASC HELD: The detention of Boyer was lawful, to exercise command, to learn his ID, & to maintain the status quo, due to the connexity between drugs and violence.

The hand in the pocket was an objective basis for a frisk. Seizing the filters was unlawful, because there was no PC for arrest, thus no SITA, and no PC to search him.

2. Frisking a Motor Vehicle for Weapons


  LEOs may frisk (for weapons) a MV passenger compartment, if they reasonably suspect they are in danger, and a previously frisked occupant will soon reenter the car. This case was referenced, with approval, in *AZ v Gant* 556 US 332 (2009), as one reason that *Belton*’s SITA analysis had to be restricted.

  Similar LASC case: *St v Duhe*, 130 So. 3d 880 (La. 2013).

3. Plain Feel Seizure (of Evidence) During a Frisk


  SCOTUS approved Plain Feel Seizure. A frisk is for weapons, but if a frisking LEO’s fingers touch something that (without manipulation) is immediately apparent to be contraband, then the LEO can seize the item. The LEO must have enough knowledge, training, and experience to come to this instantaneous conclusion. To seize a WEAPON during a frisk requires Reasonable Suspicion that an item is a weapon, which can be anything hard. To seize EVIDENCE during a frisk requires PC.

- *St v Keith Lee*, 166 So. 3d 241 (La. 2015)

  Probationers have diminished expectation of privacy.

4. Cuffing During Frisking

  Brief cuffing during frisks, under rare circumstances (usually late at night; high crime area; more subjects than LEOs; nature of case), can be approved without having PC to make an arrest. This is a drastic, uncommon situation, only if needed to maintain the status quo for officer safety.

- *St v Thompson*, 93 So. 3d 553 (La. 2012)

  Execution of a SW for drugs at motel known for high crime, drug trafficking, and prostitution. LASC again approved brief cuffing of a nearby bystander (for LEO safety), who turned out to be a convicted felon who admitted having a gun/drugs...
in his nearby MV. Several LASC cases allow cuffing during frisking, without PC, to maintain the status quo, for LEO safety:

- **St v Adams**, 836 So. 2d 9 (La. 2003) (LASC approved light pat-down of female subject by male LEO; when a female LEO arrived, she conducted a more thorough frisk, discovering drugs, which were allowed into evidence.)
- **St v Porche**, 943 So. 2d 335 (La. 2006) (handcuffed detention was brief)
- **St v Palmer**, 14 So. 3d 304 (La. 2009) (13 men handcuffed during search of home)
- **St v Boudoin**, 56 So. 3d 233 (La. 2011) (Using handcuffs doesn’t always convert a detention into an arrest).

5. **Other Safety Issues**

- **St v Hamilton**, 36 So. 3d 209 (La. 2010)

Even in consensual encounters, LEOs can require hands out of pockets.

IV. **Arrest**

A. **Without a Warrant** [“Warrantless”] – 48 hour Affidavit of PC

This statute codifies a “Riverside Finding” [per Riverside v McLaughlin, 500 US 44 (1991)] & is a Fourth Amendment issue, applying only to warrantless arrests.

**ART. 230.2. Probable Cause Determinations; Persons Arrested without a Warrant and Continued in Custody**

Almost always handled by affidavits.

A law enforcement officer effecting the arrest of a person without a warrant shall [“Shall” is mandatory language.] promptly complete an affidavit of probable cause supporting the arrest of the person and submit it to a magistrate. Persons continued or remaining in custody pursuant to an arrest made without a warrant shall be entitled to a determination of probable cause within forty-eight hours of arrest.

The probable cause determination shall be made by a magistrate and shall not be an adversary proceeding.

The determination may be made without the presence of the defendant and may be made upon affidavits or other written evidence, which may be transmitted to the magistrate by means of facsimile transmission or other electronic means. ***

Sanction for non-compliance: ROR.
• **Draper v US**, 358 US 307 (1959)
  
  Corroborated info from a CI may establish PC for arrest.

  
  In assessing whether adequate PC exists for an arrest, each piece of information should be interpreted collectively/cumulatively (not separately), through the eyes of a reasonable, well-trained LEO. Even if a factor, when examined on its own, can be explained away as innocent, it can still assist in satisfying a burden when combined with other (criminal) factors.

B. **With an Arrest Warrant**

   No need for 48-hour affidavit if the arrest is made with a warrant.

      
      LEOs need an AW to enter a home to arrest an occupant, unless there is consent, close pursuit, or PC plus exigent circumstances (e.g., LEO safety or preserving evidence).

   • **Steagald v US**, 451 US 204 (1981)
      
      If a potential arrestee is in someone else's home, LEOs should get a SW to enter that home, plus an AW for the subject, unless entry is allowed by consent, close pursuit, or PC + exigency.

C. **Stationhouse Detention**

   • **Hayes v FL**, 470 US 811 (1985)
      
      Requiring a non-consenting subject to come to the stationhouse, for fingerprinting, without having PC to arrest him, violates his Constitutional rights.

V. **Searches**

A. **Protective Sweep of a Home – for Persons, not Evidence**

   • **Flippo v WV**, 528 US 11 (1999)
      
      Suppression of (warrantless) 16-hour general evidentiary search after sweep.

      
      LEOs had PC that McArthur's home contained contraband. McArthur would not grant consent for them to search his house.
      
      While LEOs awaited a SW, it was OK for the LEOs to
      
      (1) make a protective sweep and...
(2) prevent him from entering his home, pending arrival of the **SW**.

- **US v Gould**, 364 Fed 3d 578 [5th Cir (La) 2004]
  
  The Federal Fifth Circuit (La. Case) held that an arrest is not required for a sweep of a home. Required: lawfully in home and reasonable belief of danger.

- **St v Armstrong**, 266 So. 3d 885 (La. 03/25/19)
  
  A sweep is for humans only. During the sweep, however, items seen in PV, and immediately apparent to be contraband, may be seized.

**Editorial:** We urge that the evidence not be **harvested** until the **SW** is issued, unless the evidence is rapidly dissipating.

**B. Search Warrants [“SWs”]**

1. **Procedure for obtaining search warrant**
   
   a. Keep an updated biographical paragraph on your computer;
   
   b. Insert the **bio** as the 1st paragraph of Affidavit in Support of a **SW**;
   
   c. Type out, in detail, where you want to search, & for what you're looking;
   
   d. Don't retype the what and where. Instead: highlight, copy, and paste;
   
   e. Before taking/transmitting to judge, get a senior officer to review the affidavit;
   
   f. If danger is known beforehand, add this info to the affidavit in support of the **SW** & request approval in the **SW** itself for a No-Knock Entry;
   
   g. The **SW** needs language authorizing a search at night & on Sundays;
   
   h. Add this language to your warrant, just in case: *The affidavit in support of this warrant is made a part of this warrant.*

2. **Suggested Assignments:**
   
   a. Two LEOs sweep, then keep everyone outside (unless your agency’s policy differs);
   
   b. Three LEOs search but only one actually takes possession of evidence;
   
   c. That LEO should be responsible for transporting anything (needing analysis) to and from the crime lab.

  
  LEOs can “routinely exercise unquestioned command” when executing a **SW**. No one gets to leave – not those who are there and not those who arrive during
the process. Justifications for this policy: Safety of LEOs; Facilitation of search; and help in locating possible arrestees.


  "Totality of the Circumstances" became the standard to judge the combined reliability of a CI and the information he provides, relative to an affidavit in support of a **SW**.


  SCOTUS created here the **“good faith rule”** in favor of LEOs and their searches/seizures, when LEOs go to the time and trouble to secure a SW in advance of a search. This reward for LEOs is not absolute: the affidavit must establish PC + the SW must be facially sound.


  The default rule is that SWs require knock & announce. The LEO in charge can, however, make a command decision to proceed on a no knock basis if the failure to do so would endanger the LEOs or result in no evidence being found.

  LEOs should request judicial approval for a no-knock entry if the grounds are known in advance. Just because a SW is drug-related doesn’t automatically OK a “No-Knock” execution of the warrant.


  LEOs executing a SW for drugs complied with the 4th Amendment by waiting 15 20 seconds from knock and announce until making the forced entry. Basis for a reasonable time frame before entry: How long before destruction of the evidence could begin?

- **Muehler v Mena**, 544 US 93 (2005)

  Occupants (& those arriving during a search) can be detained a reasonable time to prevent flight of one who may need to be arrested, should PC arise.

  Keeping all present also lessens the risk of harm to LEOs; and can possibly facilitate the search. Questioning by LEOs is not a seizure.

  If a detention was not prolonged for questioning, reasonable suspicion was not required before making inquiries, even though the suspects were cuffed.
  A lawful anticipatory SW requires: PC that:
  (1) particular criminal evidence will be found in a particular place when a
      triggering event occurs; &
  (2) the triggering event will in fact occur.

• **St v Skinner**, 10 So. 3d 1212 (La. 2009)
  Seizing/reviewing a person's medical & Rx records requires a SW, as opposed
  to a court order or a subpoena.

• **US v Jones**, 565 US 400 (2012)
  Attaching and/or monitoring a GPS on a MV's exterior even if done in a public
  place, is a search, which generally requires a SW.

  LEOs should get a SW before affixing a GPS tracking device onto a MV, and/or
  before monitoring the MV's movements.

  Remember that a “regular SW” expires in 10 days and must be served within
  the proper jurisdiction of the court.

  Question: Did the "unquestioned command" of the SW execution, as established
  by Summers, supra, extend to a person who had already left the premises in a MV,
  before the LEOs began to execute the SW?
  Answer: No. MV stop was illegal - No RS or PC.

• **St v Donald**, 115 So. 3d 1138 (La. 2013)
  LEOs observed the defendant exit his home, conduct an apparent drug sale, &
  return to his home. LEOs got a SW for drugs. Before the SW’s execution, Donald
  left the house.

  When he was a block away, LEOs stopped him and took him back to his home,
  where he was secured during the search.

  These LEOs actually saw a crime - different from the facts of Bailey, supra.

• **St v Crochet**, 200 So. 3d 370 (La. 2016) [*Cert denied* (2017)].
  LASC reversed the trial court’s grant of defendant’s motion to suppress
  evidence found on his laptop. The LaFourche S. O. produced three perfect SWs
  and two perfect affidavits. The middle affidavit was weak.
The three SWs were issued:

1. For a stolen cellphone in Crochet’s home;
2. For proof of drug sales on Crochet’s laptop; and, then,
3. For juvenile pornography found on his laptop.

Based on the *Leon* good faith rule, the LEOs acted reasonably at every step of the investigation. Consequently, there was no suggestion that the LEOs were not in good faith when searching the computer. The LASC vacated the order of suppression, thus making all of the developed criminality available to the state at trial.

- **St v Brock**, 210 So. 3d 276 (La. 2017)

  You must get a search warrant to secure medical records.

  LEOs were required to obtain a SW before searching prescription records from the Louisiana Prescription Monitoring Program for a criminal investigation, even though the LEOs complied precisely with the administrative procedures set out in La. R.S. 40:1007 to get the report from the La. Prescription Monitoring Program. Bottom Line: Talk with your DA about getting a SW when seeking personal information about a defendant, even if a statute facially allows warrantless access to same.


  The state cannot access a week or more of historical Cell Site Location Info (CSLI) without a SW.

  Stored Communications Act (SCA) court orders do not require a showing of PC, merely requiring a showing of “reasonable grounds that the records sought are relevant and material to a current investigation.” See 18 USC. § 2703(d).

  SCOTUS held that to access these records for a week or more requires a sworn showing of probable cause and the actual issuance of a SW. In other words, the SCA court order violates the Fourth Amendment to the US Constitution. Perhaps a cell site dump may be obtainable by court order in an emergency [“Amber Alert”?]. Possibly less extensive [briefer time frames] searches may be OK via SCA Order, but the better idea is to get a SW.

- **R.S. 6:333(F)(11)**, now provides for the provision of banking records by law enforcement, pursuant to SWs, among other ways.

  Getting a **SW** is by far the best and surest procedure for LEOs.
C. Lawful Warrantless Searches and Seizures

1. Have to have Probable Cause [“PC”]

   Our definition is that the criminality should at least be 50%, when combining:
   
   • the knowledge, training, and experience of the LEO, and
   
   • the quantity/quality of observations [sight, smell, touch, taste, sound].

2. DNA Swabs

   • *St v Derrick Todd Lee*, 976 So. 2d 109 (La. 2008)

     While detained, Lee’s mouth was swabbed for DNA without PC, without his consent, and without a SW.

     This was held improper, in that a nonconsensual buccal swab was a search requiring a SW.

     A DNA SW, issued pursuant to La. C. Cr. P. art 163.1, can be executed within 180 days, wherever the subject can be found.

     The LASC held that, under the inevitable discovery rule, Lee was eventually going to be arrested (hits were already coming in pursuant to an artist’s sketch drawn from a survivor’s description) and his DNA would have been taken at booking.

     Bottom Line: The buccal swab was held to be admissible.

   • *Maryland v King*, 569 US 435 (2013)

     Upon arrest for a serious crime, collection and analysis of DNA via buccal swab is a reasonable search under the 4th Amendment. The swab is similar to booking photos or fingerprinting & is minimally intrusive. A detainee already has a reduced expectation of privacy.

     La. R.S. 15:609 requires that a DNA sample be taken administratively, usually by buccal swab, as part of the felony booking process.

3. PC for Warrantless Search of a MV

   • *Carroll v US*, 267 US 132 (1925)

     PC to believe contraband is in a MV in a public area allows a search of the MV.


     The scope/extent of a PC search of a MV is just as extensive as with a SW.
• **US v Reed**, 882 Fed 2d 147 (5th Cir 1989)
  
  Odor of MJ allows search of entire MV, including locked compartments.

• **Horton v CA**, 496 US 128 (1990)
  
  OK for Plain View seizure - No need for inadvertency.

• **California v Acevedo**, 500 US 565 (1991)
  
  With PC for a bag located in a MV on a public highway, LEOs may stop the vehicle, seize the bag, search it, and seize any contraband located inside.

  
  This speeder had a visible syringe in his shirt pocket. He admitted that his group was about to shoot up some drugs.

  The LEO’s plain view of the syringe, coupled with the driver’s amazing honesty [“refreshing candor”], amounted to PC for a search of the entire MV, including a purse belonging to a nonconsenting female seated in the back seat.

  LEOs with PC to search a MV in a public area may also search any containers therein which could contain the object of the search.

  
  Caballes was stopped for speeding. As one LEO wrote a ticket, another walked a canine around the car. The dog alerted, providing PC to search. The "open air" canine sniff of the car DURING the stop was lawful. NOTE: The problem is justifying the extension of a MV stop, after the traffic matter is complete.

  See La. C. Cr. P. art 215.1 (D), at the beginning of this Chapter.

• **St v Jackson**, 42 So. 3d 368 (La. 2010)
  
  Plain smell by experienced LEO may still provide PC, even if a dog fails to alert.

• **FL v Harris**, 568 US 237 (2013) – [A 9-0 decision.]
  
  After a dog is tested or certified for reliability, a court can presume (subject to any conflicting evidence offered) that the dog’s alert provides probable cause to search.

4. Consent
   
a. To search a home
  
  A landlord detected the odor of whiskey mash on the premises and unlawfully allowed the LEOs to enter. SCOTUS suppressed evidence found by LEOs when a landlord allowed entry. Even if only rented for one night (or for less than an hour, in some places). It is someone's home for that time period.

  
  Co-occupant can give permission for common areas of a home.

  
  If LEOs enter a home in reasonable reliance on the consent of an unauthorized 3rd party, the search is okay. The key word here is reasonable.

  
  Compare with *Fernandez*, infra. Wife called a LEO, telling him that hubby was a cocaine user and giving consent for a home search. Hubby shows up and refuses. The LEO searches anyway, finding cocaine. SCOTUS HELD: If one occupant consents to a home search, but if a physically present co-occupant objects, the search is unreasonable and invalid as to the one who is at the scene and objecting, even though the co-occupant grants permission.

- **St v Brown**, 35 So. 3d 1069 (La. 2010)
  
  Owner’s agent/granddaughter lived in one half of a double. She told LEOs that the drug dealers in the adjoining half had no right to be there. LASC HELD: Trespassers lack a right of privacy in the trespassed premises. Warrantless entry into duplex was held to be objectively reasonable. Information from a known citizen is credible since the person is going to be held responsible for any facts transmitted, as held by *St v Mosley*, 412 So. 2d 527 (La. 1982).

- **St v Carter**, 54 So. 3d 1093 (La. 2011)
  
  After vague reports of prowlers in the area, a LEO entered what he thought was an abandoned house. It turns out the house was Carter's home. The evidence was suppressed because the LEO gave no FACTS to support his conclusion of abandonment.
• **St v Seiler**, 89 So. 3d 1159 (La. 2012)

The burglar of Seiler’s home was arrested. He told LEOs that he saw dope inside. LEOs went to the home, knocked, said they were investigating the burglary, & requested entry. Seiler let them in. LEOs saw the drugs & got a SW. LASC HELD that even if the LEOs used a pretext to gain entry, it was objectively a valid knock-and-talk. The odor of marijuana and the PV discovery of MJ gave PC to seize the drugs, detain Seiler, and secure a SW.

• **St v Jones**, 117 So. 3d 97 (La. 2013)

Consent for a home entry was given by a person who may not have had authority to do so. That is not the issue. The standard is whether the LEOs reasonably relied on the apparent authority of the person granting the consent to enter and search.

• **Fernandez v California**, 571 US 292 (2014)

LEOs were conducting a sweep related to an armed robbery, LEOs went to the apartment of Fernandez & his girlfriend. They heard screams. Girlfriend came to door, appearing to have been recently beaten. She was asked to exit the apartment so a protective sweep could be performed. Fernandez loudly protested.

After Fernandez told the LEOs to get lost, he was arrested for battery of his girlfriend. An hour later, the LEOs returned and the girlfriend consented to a search of the apartment. SCOTUS: Search was lawful. Compare with *Randolph*, before.

• **St v Lucas**, 195 So. 3d 1208 (La. 2016)

Defendant was arrested inside his home. He asked the LEOs to secure a bunch of his cash that was in a kitchen cabinet. The LEOs tried to comply, but the cabinet was full of drugs, not money. The LASC reversed suppression of the evidence. The dope was lawfully seized as being in plain view, and was thus admissible.

• **St v Howard**, 226 So. 3d 419 (La. 2017)

LEOs secured an AW for Howard for probation violation via a tip that:

1. defendant was often at his girlfriend’s home, but didn’t live there;
2. he had a firearm, and
3. he was involved in narcotics distribution.
The girlfriend answered the LEOs’ knock at the door.

When the LEOs asked where defendant was, she said he was in the bedroom. When they asked to enter, she stepped aside, which LASC held to be a valid consent. Would have been better for the LEOs holding an AW to have had a SW to enter the house of a third party, in order to search for the potential arrestee. LEOs lucked out.

b. To search a Motor Vehicle

  
  A vehicular consent for the search of a MV includes containers therein, so long as a LEO can answer these three questions affirmatively:
  
  (a) Did the LEO reasonably believe she had permission to search the container;
  
  (b) Could what she was searching for fit into it; and
  
  (c) Could she open the container without damaging it?

• *Ohio v Robinette*, 519 US 33 (1996)
  
  When asking consent, LEOs don’t have to tell motorists they are free to go. In our opinion, when asking consent, LEOs should not be holding lawful personal property of the motorist.

• *St v McClellan*, 206 So. 3d 873 (La. 2017)
  
  Defendant was not being custodially interrogated during a routine MV stop. The MV search, to which defendant consented (while handcuffed), without benefit of *Miranda*, was not a violation of his 4th Amendment rights. Consent to search is not a *Miranda* issue. Similar to *St v Palmer* (La. 2009), *supra*.

c. To search a person

Scenario: A LEO thinks, but is not sure, that she just saw a subject put some CDS in his pocket. What should she do?

Suggestion: Approach in a non-threatening manner & ask some Qs, e.g.,

1. Man, what in the world did you just put in your pocket?
2. Do you have any weapons or drugs on you?
3. Would you mind if I take that item and put it on the hood of my car?
4. Would you please put that cocaine on the hood of my car?
If a person empties his pockets (upon request), this situation is not a search; it is merely a PV seizure.

5. **Search Incident To Arrest (“SITA”)**

SITA is a contemporaneous search of an arrestee and his lunge space or wingspan. The purpose of a SITA is to find weapons or evidence.

SITA of the arrestee's person is OK, whether occurring before, during, or after an arrest, if the LEO has already developed PC for a crime that allows an arrest.

There are no cases allowing SITA of a MV before the arrest.

  
  La. C. Cr. P. art 225 is Louisiana's statutory concept of SITA. At a lawful arrest, LEOs can search an arrestee, his wingspan and lunge space, for weapons or evidence.

- **US v Robinson**, 414 US 218 (1973)
  
  SITA was extended to traffic matters, if combined with a valid custodial arrest.

  
  It is lawful for a SITA to occur before arrest, if PC to arrest already exists.

  
  SITA is for weapons & evidence. Scope of a MV SITA = passenger compartment.

  The previous two sentences are the part of Belton that are still good law.

- **Knowles v Iowa**, 525 US 113 (1998)
  
  No SITA is allowed after a traffic citation has been issued for an offense.

- **St v Sherman**, 931 So. 2d 286 (La. 2006)
  
  A LEO with PC to arrest can SITA without arresting the subject, even if she has no intention of making an arrest.

  SITA of a person may be conducted just before, during, after, or in lieu of, an arrest, if PC for arrest exists.

  It took 26 years for the LASC to clearly adopt Rawlings, supra.
  
  LEOs may conduct a SITA of a MV's passenger compartment in two situations:
  
  1) when an unshackled arrestee is still near the MV, such that he could feasibly take possession of a weapon or else conceal evidence (Dangerous not recommended); or
  
  2) LEO has reas. suspicion that evidence of the instant crime is in the MV.

- **St v Surtain**, 31 So. 3d 1037 (La. 2010)
  
  LASC reaffirmed the doctrine of collective knowledge and the right of reviewing courts to take a fresh look at the facts. **Surtain** also reaffirmed the rule of both **Rawlings** and **Sherman**, infra, which allow SITA of an individual before arrest, if LEO has PC to arrest.

- **St v Cook**, 83 So. 3d 1259 [La. App 2nd Cir (2012)]
  
  DWIs will almost always generate reasonable belief (reasonable suspicion) by which to justify a SITA of the passenger compartment, i.e., if the LEO develops PC that the operator is impaired, surely there will be Reasonable Belief/Reasonable Suspicion that evidence of the impairment is in the passenger compartment, such as beer bottles, pills, other drugs. Relies on **Gant**, SCOTUS, *supra*.

  
  The SITA of a cell phone is not like the brief physical search in **Robinson *supra***, where the LEO searched a crumpled cigarette pack found in **Robinson**'s pocket incident to his arrest on an arrestable traffic matter. There is nothing wrong with the SEIZURE of a cell under SITA. The problem is forensically searching it.

  Now, in Louisiana you can seek a SW under **La. C. Cr. P. art 163 (E) →** If a SW is in lawful effect while an electrical device is in the possession of the state, then there is no time limit for a lawful forensic examination of the device.

  
  Without ACTUAL consent, there is a high likelihood that a warrantless blood test, pursuant to SITA or Implied Consent, will be considered illegal.

  NOTE: If possible, we recommend that LEOs always get a SW (will require PC) before a blood draw for DWI, or for any of the three “vehicular” crimes.

  An option: Actual (Not just Implied) Consent.
Another option: a MV crash, with no clear impairment, resulting in a fatality or “suspected serious injury” to an occupant, as per R.S. 32:681 (as amended in 2019) – See Q & A #6 in Chapter Three, supra.

Another option: An unconscious driver - See Mitchell v WI, 139 S. Ct. 2525 (06/27/19), holding that a chemical test will “almost always” be lawful when the drive is unconscious.

Another option: Exigency situation. See State v Michael, ___So. 3d ___ (2020) on page 126.

But nothing is better than a SW.

6. Inventory – When inventorying a MV, your agency needs a written policy authorizing the inventorying of closed containers

There are three valid objectives for this administrative search:

1. To preserve property and list all valuables in the MV;
2. To shield the agency against a civil suit for lost/broken property; and
3. To protect against bombs or other dangerous items. If, however, contraband is seen in PV, the LEOs can seize the items for prosecution.

An inventory must be strictly executed in accordance with a standard written agency policy.

  Approved inventory of impounded MV as administrative search for valuables.

- FL v Wells, 495 US 1 (1990)
  A written agency policy is required for LEOs to inventory the contents of closed containers during the inventory of a MV.

VI. Landmark Exclusionary Rule Cases [Including Many Exceptions]

To suppress evidence, a M/Suppress must be filed under La. C. Cr. P. art 703.

A. Older (Foundational) Cases

For Weeks, you Examined the Mapp, looking for the Wrong Son’s Katz.

- Weeks v US, 232 US 383 (1914)
  Established Federal Exclusionary Rule a quick century ago. The original purpose of the rule was to deter unconstitutional/unlawful LEO conduct.
• **Mapp v Ohio**, 367 US 643 (1961)
  Established State Exclusionary Rule, via the 14th Amendment, 47 years after the federal exclusionary rule was established.

• **Wong Sun v US**, 371 US 471 (1963)
  It is possible to purge the taint of the fruit from a poisonous tree.

  Wiretap case adding a 4th Amendment analysis ("reasonable expectation of privacy") to protect a non-property item, if the privacy expectation is reasonable.

B. More Recent Exclusionary Rule Cases

*Leon Oliver from Greenwood Even Heard J. J. Collins carping at Mitchell.*

  SCOTUS created here the “good faith” rule in favor of LEOs and their searches/seizures, when LEOs go to the time and trouble to secure a SW in advance of a search. This reward for LEOs is not absolute: the affidavit must establish PC + the SW must be facially sound.

  Established the "open fields" exception to the exclusionary rule.

• **California v Greenwood**, 486 US 35 (1988)
  No right of privacy in trash left for collection outside the curtilage of a home.

  Exclusionary Rule is for deterring LEO misconduct, not for when court personnel err.

  LEO arrested Herring when informed of an outstanding AW from the next county. Minutes later, after Arrest/SITA, the LEO was told that the AW had been recalled. SCOTUS: When police error results from isolated negligence, X rule = inapplicable.

• **US v Jones**, 565 US 400 (2012)
  To attach/monitor GPS on MV exterior is a trespass. Need a **SW**.

• **FL v Jardines**, 569 US 1 (2013)
  SCOTUS Justice Scalia said: “a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do. But introducing a trained police dog to explore the area around the home in hopes of
discovering incriminating evidence is something else. There is no customary invitation
to do that.”

A certified canine's sniff at a home's door (clearly within the curtilage) to discover
criminality, is a search under the Fourth Amendment.

The later SW of the home, based solely upon the dog’s alert at the front door, was
thrown out by SCOTUS, because of the subjective intent of the LEOs involved in
intruding upon the curtilage.

This return to subjective intent is a confusing development in 4th Amendment
analysis, which (from 1996 to 2013) had been 100% OBJECTIVE.

This case and **Collins v VA**, 138 S. Ct 1663 (2018) have strengthened the privacy
rights associated with curtilage around the home by inquiring WHY (Crime detection?)
the LEO entered the curtilage.

Amazingly, each case has language protecting items in the curtilage to the same
extent as if the items were in the living room.

The above is **not** a mis-print.

- **Collins v Virginia**, 138 S. Ct 1663 (2018)
  
The PC search of a MV in a driveway next to a home, must yield to the superior
privacy rights of the curtilage. Without an exigency, you should get a SW.

  Compare with a case two years' before, **St v Hilton**, 187 So. 2d 981 (La. 2016), which
  allowed La. LEOs to enter the curtilage & approach the front door to see what was
  exposed to the public. No mo.’

- **Mitchell v Wisconsin, supra** (2019)
  
  In serious MV accidents, blood can **almost always** be drawn from unconscious
  drivers, because of the exigency of the dissipation of the ethanol level in the blood.

### VII. Articles from the La. Code of Criminal Procedure Relative to Fourth Amendment

**ART. 161 PROPERTY SUBJECT TO SEIZURE**

A. Except as authorized by Article 163.1, a judge may issue a warrant authorizing the
search for and seizure of anything within the territorial jurisdiction of the court which:

(1) Has been the subject of theft.

(2) Is intended for use or has been used as a means of committing an offense.
(3) May constitute evidence tending to prove the commission of an offense.

***

ART. 162 ISSUANCE OF WARRANT; AFFIDAVIT; DESCRIPTION

A. A **SW** may issue only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for issuance of the warrant.

B. In any application for warrant, an affidavit containing the electronic signature of the applicant shall satisfy the constitutional requirement that the testimony of the applicant be made under oath, provided that such signature is made under penalty of perjury and in compliance with **R.S. 9:2603.1(D). See below.**

C. A **SW** shall **particularly describe** the person or place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search or seizure.

**Note:** Here is the text of La. R.S. 9:2603.1 (D):

- **R.S. 9:2603.1** Electronic applications for all warrants; signatures; electronic judicial records***

D. Any application used to attach a digital signature to any warrant or affidavit must have security procedures in place that insure the authenticity of the digital signature. The application must also be able to keep an electronic record of the warrant or affidavit, including the time and date of when the signature was attached. The application must also include encryption measures to ensure secure access of the application.

***

ART. 162.1 WARRANT ISSUED UPON ORAL TESTIMONY

**NOTE:** We are negative about oral SWs, as this results in the LEO having made the duty judge a witness in the case. Subs (D) can be useful, as it pertains to FAX SWs.

***

(D) The testimony may also be communicated to the judge by facsimile transmission signed by the applicant, after the administration of the oath by the judge by telephone, radio, or such other electronic method of communication deemed appropriate by the judge.

The judge shall certify on the facsimile transmission the date and time of the administration of the oath. If the judge determines that the warrant should issue, he shall affix his signature to the warrant which the applicant has prepared and forwarded to him by facsimile transmission.
The judge shall transmit to the applicant, by facsimile transmission, the warrant which he has executed together with the written testimony and certification of oath.

The original application for the warrant with the applicant's signature and the facsimile copy with the original signature of the judge shall be preserved in the same manner as an original warrant signed by both the applicant and the judge.

ART. 162.2 WARRANT ISSUED UPON ELECTRONIC TESTIMONY

A. In addition to the provisions of Articles 162 and 162.1, a SW may issue upon probable cause established to the satisfaction of the judge by the electronic testimony of a credible person reciting facts establishing the cause for issuance of the warrant.

B. For purposes of this Section, the following words shall have the following meanings:

(1) "Electronic signature" shall include any electronic means indicating that the person originating an electronic document adopts the contents of the document, and that the person who claims to have written the electronic document is in fact the person who wrote it.

(2) "Electronic testimony" shall mean any method of communication, whether wired or wireless or any combination thereof, in which text or images may be transferred electronically from one person to another and includes but shall not be limited to text messages and electronic mail.

C. The submission of electronic testimony to a judge pursuant to the provisions of this Article shall contain the electronic signature of the applicant, the applicant's full name and occupation, and a telephone number and electronic address which may be used by the judge to contact the applicant.

D. Any electronic testimony presented to a judge shall serve as the equivalent of the applicant having been administered an oath or affirmation, swearing that the facts contained in the electronic testimony are true and correct to the best of his knowledge, subject to the penalties for perjury or false swearing.

E. Accompanying the electronic testimony shall be an electronic facsimile of the SW. If the judge finds probable cause and approves the issuance of the warrant, he shall affix his electronic signature to the warrant and return it immediately to the applicant.

F. It shall be the responsibility of the applicant to create a written reproduction of his electronic testimony, including its electronic signature, and a written reproduction of the warrant, including the judge's electronic signature, and preserve the written reproductions in the same manner as an original warrant signed by both the applicant and the judge within forty eight hours from the time the warrant was issued.
G. Telephonic communication between the judge and the affiant relatively contemporaneously with the application for the warrant shall satisfy the requirements of R.S. 9:2603.1(D). Supra.

ART. 163  *** LEO to whom directed; 10 Days to execute; Electronic Devices - “REGULAR SW”

A. A SW shall be directed to any peace officer, who shall execute it and bring any property seized into the court issuing the warrant.

B. A search or seizure shall not be made during the nighttime or on Sunday, unless the warrant expressly so directs.

C. Except as authorized by Article 163.1 or as otherwise provided in this Article, or as otherwise provided by law, a search warrant cannot be lawfully executed after the expiration of the tenth day after its issuance.

D. (1) Any examination or testing of any property seized pursuant to the provisions of this Article shall be at the direction of the attorney general, the district attorney, or the investigating agency.

(2) Notwithstanding any other provision of law to the contrary, any examination or testing of the seized property may be conducted at any time before or during the pendency of any criminal proceeding in which the property may be used as evidence.

E. *** If a SW is in lawful effect while an electrical device is in the possession of the state, then there is no time limit for forensic examination of the device.

ART. 163.1  SEARCH OF A PERSON FOR BODILY SAMPLES; WARRANTS; EXECUTION

A. A judge may issue a search warrant authorizing the search of a person for bodily samples to obtain deoxyribonucleic acid (DNA) or other bodily samples.

B. The warrant may be executed any place the person is found and shall be directed to any peace officer who shall obtain and distribute the bodily samples as directed in the warrant. Example: Sabine wreck; Driver choppered to Caddo for medical treatment; Sabine judge issues a SW under this article, which can be executed in Cadd.

C. A warrant authorizing the search of a person for bodily samples remains in effect for one hundred eighty days after its issuance.

D. (1) Any examination or testing of any bodily samples seized pursuant to the provisions of this Article shall be at the direction of the attorney general, the district attorney, or the investigating agency.
(2) Notwithstanding any other provision of law to the contrary, any examination or testing of the bodily samples may be conducted at any time before or during the pendency of any criminal proceeding in which the samples may be used as evidence.

NOTE: 06 months to harvest fluids from a subject, under La. C. Cr. P. art 163.1.

If an Art. 163 SW is issued while an electronic device is in state custody, then forensic testing/examination may occur at any time (no 10 day limitation, as noted in the statute) during the pendency of the proceedings, without need of securing another SW.

ART. 201 ARREST DEFINED

Must be in custody, more than just briefly seized, detained, or not free to go.

Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.

***

ART. 203 FORM AND CONTENTS OF WARRANT

The warrant of arrest shall:

(1) Be in writing and be in the name of the State of Louisiana;
(2) State the date when issued and the municipality or parish where issued;
(3) State the name of the person to be arrested, or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;
(4) State the offense charged against the person to be arrested;
(5) Command that the person against whom the complaint was made be arrested and booked; and
(6) Be signed by the magistrate with the title of his office.

The warrant of arrest may specify the amount of bail in noncapital cases when the magistrate has authority to fix bail.

ART. 204 EXECUTION OF WARRANT

The warrant shall be directed to all peace officers in the state. It shall be executed only by a peace officer, and may be executed in any parish by any peace officer having authority in the territorial jurisdiction where the person arrested is found, or by any peace officer
having authority in one territorial jurisdiction in this state who enters another jurisdiction in close pursuit of the person arrested.

ART. 205 EFFECTIVE PERIOD

A warrant of arrest remains in effect until executed. **No time limit for AW.***

Art. 208 SUMMONS; DEFINED

Issuing a summons is an alternative to making an arrest, for non-violent matters, almost always misdemeanors.

A summons is an order in writing, issued and signed by a magistrate or a peace officer in the name of the state, stating the offense charged and the name of the alleged offender, and commanding him to appear before the court designated in the summons at the time and place stated in the summons. ***

ART. 213 ARREST BY OFFICER WITHOUT WARRANT; WHEN LAWFUL

A. A peace officer may, without a warrant, arrest a person when any of the following occur:

(1) The person to be arrested has committed an offense in his presence, and if the arrest is for a misdemeanor, it must be made immediately or on close pursuit.

(2) The person to be arrested has committed a felony, although not in the presence of the officer.

(3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.

(4) The peace officer has received positive and reliable information that another peace officer from this state holds an arrest warrant, or a peace officer of another state or the United States holds an arrest warrant for a felony offense.

B. A peace officer making an arrest pursuant to this Article who is in close pursuit of the person to be arrested may enter another jurisdiction in this state and make the arrest.

C. Notwithstanding any other provisions of law to the contrary, no magistrate shall have the authority to issue a warrant of arrest for a school employee, as defined by R.S. 17:16(G), for any misdemeanor act allegedly committed on school premises or at a school sanctioned event during the course and scope of the school employee's employment.*** Subs. D limits arrest powers at school events. SOS.

ART. 214 ARREST BY PRIVATE PERSON; WHEN LAWFUL

A private person may make an arrest when the person arrested has committed a felony, whether in or out of his presence. ***
ART. 215  SHOPLIFTERS – On word of the merchant, a one-hour hold at the store is reasonable.

ART. 215.1 STOP AND FRISK STATUTE – IMPORTANT -> See pages 129 & 133.

ART. 216 TIME AND PLACE OF MAKING ARREST

An arrest may be made on any day and at any time of the day or night, and at any place.

ART. 217 METHOD OF ARREST BY OFFICER UNDER WARRANT

A peace officer, when making an arrest by virtue of a warrant, shall inform the person to be arrested of his authority and of the fact that a warrant has been issued for his arrest, unless he flees or forcibly resists before the officer has an opportunity to inform him, or unless the giving of such information would imperil the arrest.

The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the arrestee requests, the warrant shall be shown to him ASAP.

ART. 218 METHOD OF ARREST WITHOUT WARRANT

LEOs must tell the arrestee of his intent to arrest him, his authority, and why the arrest is being made.

ART. 218.1 ADVICE OF REASONS FOR ARREST OR DETENTION AND OF RIGHTS

When any person has been arrested or detained [LASC: Means custodially detained – St v Charles (La. 2009)] in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention (6th Amendment), his rights to remain silent, against self-incrimination, to the assistance of counsel and, if indigent, to court-appointed counsel. Last 04 are re: 5th Amendment.

ART. 219 OFFICER MAY SUMMON ASSISTANCE

A peace officer making a lawful arrest may call upon as many persons as he considers necessary to aid him in making the arrest. A person thus called upon shall be considered a peace officer for such purposes.

ART. 220 SUBMISSION TO ARREST; USE OF FORCE

A person shall submit peaceably to a lawful arrest.

The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained.
ART. 224 FORCIBLE ENTRY IN MAKING ARREST

In order to make an arrest, a peace officer, who has announced his authority and purpose, may break open an outer or inner door or window of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where the person to be arrested is or is reasonably believed to be, if he is refused or otherwise obstructed from admittance. The peace officer need not announce his authority and purpose when to do so would imperil the arrest.

***

ART. 227 REARREST AFTER ESCAPE

If a person lawfully arrested escapes or is rescued, [NOTE: Interesting wording] the person from whose custody he escaped or was rescued may pursue and retake him immediately without a warrant at any time and in any place within the state. He may use the same means to retake as are authorized for an arrest.

***

ART. 229 DUTIES OF OFFICER IN CHARGE

The officer in charge of the jail or police station shall immediately inform the prisoner booked:

(1) Of the charge against him;

(2) Of his rights to communicate with and procure counsel; and

(3) Of his right to request a preliminary exam. when he is charged with a felony.

▲ We doubt that (3) occurs very often.

The officer in charge shall, within forty-eight hours from the time of the booking, notify the district attorney in writing of all persons booked for violation of state statutes, and shall furnish without cost a certified copy of any booking entry to any person requesting it.

ART. 230 RIGHTS OF PERSON ARRESTED

The person arrested has, from the moment of his arrest, a right to procure and confer with counsel and to use a telephone or send a messenger for the purpose of communicating with his friends or with counsel.
CHAPTER V. • CUSTODIAL INTERROGATION,
*MIRANDA v AZ*, & THE RIGHT TO COUNSEL

[Overview of Related Provisions of the Fifth & Sixth Amendments]

**2021 TRUE BLUE DREW BOOK**

5th Amendment, United States Constitution ▼ (Effective 1791)

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

6th Amendment, United States Constitution ▼ (Effective 1791)

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the *Assistance of Counsel* for his defense.

**Louisiana Art 1, Sec 13, La. Const. ▼ (Effective 1974)**

“When any person has been arrested or [*custodially* (according to case law)] detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and, if indigent, his right to *court appointed counsel*.”

**Louisiana Art 1, Sec. 15, La. Const. ▼ (Effective 1974)**

Prosecution of a felony shall be initiated by *indictment* or information, but no person shall be held to answer for a *capital crime or a crime punishable by life* imprisonment except on *indictment* by a grand jury. No person shall be twice placed in *jeopardy* for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.

**Art. 1, Sec. 16, La. Const. ▼ (Effective 1974; Amended in 1995)**

“Every person charged with a crime is *presumed innocent* until proven guilty and is entitled to a *speedy, public, and impartial trial* in the *parish* where the offense or an element of the
offense occurred, unless venue is changed in accordance with law. **No person** shall be compelled to give **evidence against himself.** An accused is entitled to **confront and cross-examine** the witnesses against him, to compel the **attendance of witnesses**, to present a **defense**, and to **testify** in his own behalf. ***”

**5th Amendment Memory device:**  **“That’s just SIDD, coming in 5th.”**

- Just compensation for property taken for public use.
- **No compulsory self-incrimination.**
- Grand Jury Indictment required to prosecute a death penalty or life sentence crime.
- No double jeopardy.
- Guarantee of due process (“Fundamental Fairness”).

**6th Amendment Memory Device:**  **“VI. Speedy, Public, Impartial Jury Trials for CPAs”**

- Right to a trial in the governmental **venue** of the crime;
- to be **informed** of his charges,
- to a **speedy/public/impartial jury trial** – [Now Unanimous Petit Jury Verdicts are required, as per *Ramos v LA* (2020)].
- to be **confronted** with the witnesses against him;
- to have compulsory **process** for obtaining witnesses in his favor;
- to have the **assistance of counsel** for his defense.

**Applying the US Bill of Rights to State Courts**

Case-by-case, via the 14th Amendment’s Due Process Clause, SCOTUS has applied almost all court-related protections of the Bill of Rights to state courts. Recently, SCOTUS applied the 8th Amendment’s Prohibition against **Excessive Fines/Forfeitures** to state courts in *Timbs v Indiana*, 139 S. Ct. 682 (2019).

**Paraphrasing the Two Separate Sources of the Right to Counsel**

I. **5th Amendment:**  If the suspect clearly claims his right to **silence** or right to **counsel** during a custodial situation, there can be NO more LEO-initiated questioning on any other criminal case. The **5th Amendment** right to counsel is **NOT** offense-specific, i.e., once clearly claimed, it protects as to **any & all custodial interrogations on any crime(s).** Implemented by:

  **Miranda v AZ,** 384 US 436 (1966) - Custodial Interrogations require Miranda warnings;
  **Edwards v AZ,** 451 US 477 (1981) - If the suspect requests a lawyer, Qs must immediately stop.
  **AZ v Roberson,** 486 US 675 (1988) - Claiming right to counsel for 01 crime applies to all crimes;
**Minnick v MS**, 498 US 146 (1990) - Even after he has spoken with his lawyer, a LEO can’t re-approach a suspect to re-initiate an interrogation, without his lawyer being present. “Myra Edwards is an Arizona Robber, Men and Miss.”

II. 6th Amendment: Once an indictment is rendered, or a lawyer has enrolled, or been appointed at the **72-hour hearing** [La. C. Cr. P. art 230.1], a defendant has the right to have a lawyer with him at every critical stage of that ONE case. The defendant can still be approached on other cases. Thus, the 6th Amendment right to counsel **IS** offense-specific.

**Voluntary Confessions & Suppression of Invalid Confession**

SCOTUS has stated that voluntary confessions are not merely a proper element in law enforcement, they are an unmitigated good, essential to society’s compelling interest in finding, convicting, and punishing those who violate the law.

If, however, a LEO violates a subject’s rights in order to get a confession, (1) the LEO is in big trouble (See Chapter Seven), and (2) the DA cannot use the confession when putting on the state’s initial case. Both of our Constitutions, along with our laws and jurisprudence, control whether a custodial interrogation is allowed into evidence. Lawyers, whether defense counsel, prosecutors, or judges, will examine every aspect of an interrogation. The state always has the burden for using confessions/inculpatory statements in court.

An aggrieved defendant may file a Motion to Suppress [La. C. Cr. P. art 703] to keep illegally secured confessions or physical items out of evidence. As long as there was no coercion, a voluntary but suppressed statement can be used if the defendant testifies to a different set of facts at the trial, meaning that the statement can be used to impeach the witness, if he starts lying on the stand. **Kansas v Ventris**, 556 US 586 (2009).

**Miranda v AZ**, 384 US 486 (1966) - most important custodial interrogation case.

Prosecutors cannot use inculpatory statements, generated during a custodial interrogation, unless the ADA proves that prior to questioning, the person was **clearly warned**:

- of his right to remain silent,
- that anything he says can be used against him in court,
- that he can consult with a lawyer of his choice, and
- that if he cannot afford a lawyer, one can be appointed to be with him prior to and during any questioning.

The suspect should be told that he can change his mind about any questioning – he can stop. Custodial interrogation is questioning initiated by a LEO after a person has been taken into custody or deprived of his freedom of action in a significant way.

Being in custody means a reasonable person would know he was facing a significant deprivation of his liberty—a much more serious situation than being briefly seized or detained,
e.g., a minor traffic stop. On a MV stop for violation of our traffic laws, any reasonable driver knows she will soon be free to go.

Cases where the person questioned was NOT in custody:

- **St v Davis**, 448 So. 2d 645 (La. 1984)
  LDWF agent asked a group of hunters: “Who shot the deer?”.

- **St v Shirley**, 10 So. 3d 224 (La. 2009)
  LEO asked unarrested driver at crash scene if she’d been drinking.

- **St v Morgan**, 194 So. 3d 593 (La. 2011)
  Private investigator held not to be agent of law enforcement.

- **St v Fletcher**, 209 So. 3d 689 (La. 2017)
  On-scene Qs OK; Gun ownership volunteered at pat down.

No interrogation, so okay:

  Informant in jail listened but asked no questions.

- **St v Palmer**, 14 So. 3d 304 (La. 2009)
  Consent to search is not a *Miranda* issue.

- **St v Stephens**, 212 So. 3d 1152 (La. 2017)
  Without questions being asked, defendant claimed ownership of a gun.

Exception to *Miranda* Requirement (public safety emergencies):

  The answer to “Where is the gun?” [without *Miranda*] was allowed into evidence when a reportedly armed man had stashed the firearm in a crowded store.
  This was the birth of the “Public Safety Exception,” which allows into evidence unwarned emergency question/answers, if there’s an immediate danger to the public.

Demand for Counsel and for Silence must be clear and unambiguous

A person may voluntarily, knowingly, and intelligently waive his right to counsel and right to remain silent. However, if he **clearly and unequivocally** indicates at any time that he wishes to consult with an attorney before speaking, or to remain silent, there can be **no more questioning on any case**.

Having answered some questions or volunteered some statements does not deprive him of the right to stop answering until he has spoken with his attorney and consents to be questioned. If the one in custody does **NOT** clearly claim his right to silence or right to a lawyer, then he may be questioned by LEOs in a custodial environment. If he **DOES** clearly claim his right to counsel or his right to silence, the interrogation on this case and any other case is over.
However, the defendant himself may initiate another conversation with LEOs. If so, his request for this conversation should be perpetuated, in writing or by video.

Cases where the person in custody did not clearly and unambiguously invoke his/her rights.

- **St v Payne**, 833 So. 2d 927 (La. 2002)
  “May I call a lawyer - can I call a lawyer?”.
  Three hours of complete silence does not invoke the right to silence.

**The rules are stricter when a lawyer is involved** (whether or not the arrestee knows it).

The language of the 6th Amendment requires legal representation in criminal cases. The Sixth Amendment certainly applies when an attorney stands in for a defendant in court, whether appointed by the court or hired by the defendant or his family. This right, however, is usually triggered in Louisiana when an arrestee is first brought before a magistrate or judge (in person or by telephone or audio-video electronic equipment) for appointment of counsel under C. Cr. P. art 230.1, which is referenced, in various judicial districts around the state as the:

- 72-hour Hearing
- First Appearance, or
- Initial Presentment
- Jail Clearance.

C. Cr. P. art 230.1 requires that the LEO having custody of all arrested persons to put them in contact with a judge (for a conversation) within 72 hours, not counting legal holidays. If this requirement is violated, the defendant may be released on his own recognizance (**ROR**), meaning no money, bail, or surety is required. An exception would exist if the defendant is being held for another lawful reason, such as a parole hold. See **St v Williams**, La. App. 2nd Cir (on rehearing), 965 So.2d 541 (2007), writs denied by LASC.

Facing a judge means facing the judicial system. If the arrestee didn’t know he was in trouble before, he does now. This is when the 6th Amendment comes into play, meaning the right to counsel at every critical stage of one case [including custodial interrogation]. The 6th Amendment Right to Counsel is Offense-Specific. If a judge appoints a lawyer for Joe on a burglary case, no LEO can institute a further questioning of Joe on that case, but even if he is still in jail on the burglary case, he can be questioned on a rape case, assuming **Miranda** is first explained. **McNeil v Wisconsin**, 501 US 171 (1991).

**The following cases are examples of Sixth Amendment issues involving LEOs.**

Cases stating that LEOs cannot disregard an attorney who is already involved in the case.

  If the defendant is represented, the attorney must be allowed at the live line-up.
- **Kirby v IL**, 406 US 682 (1972)
  Live line-up without a lawyer is OK if no attorney is involved in the case.
- **US v Ash**, 413 US 300 (1973)
  Photo line-up is acceptable without an attorney being present. The attorney will be able to later review the photo line-up, so make a video record of what happens.

- **St v Donovan Alexander**, ____So. 3d ____(La. 01/29/2020)
  When an identified attorney is seeking to assist a client in custody who is unaware of that fact, LEOs must speak with the lawyer, tell the subject that a specific lawyer is available, & give the attorney free access to his client, if the person in custody wants to speak with him. Otherwise, the statement will be inadmissible.

**State Statute Relative to Confessions & Pre-Trial ID**

**R.S. 14:40 Intimidation by officers**

  A. Intimidation by officers is the intentional use, by any police officer or other person charged with the custody of parties accused of a crime or violation of a municipal ordinance, of threats, violence, or any means of inhuman treatment designed to secure a confession or incriminating statement from the person in custody. ***A misdemeanor.***

**R.S. 15:451 Condition precedent to use of confession; free and voluntary rule**

  Before what purports to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises.

**R.S. 15:452 Rights of arrested person as to confession**

  No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel a confession of crime.

**C. Cr. P. art 251-253 Lineups**

  See lineup summary at [www.drewlawbooks.com](http://www.drewlawbooks.com). Your agency should by now have adopted a lineup protocol/policy and advised the LCLE. These new lineup laws apply to:

- **blind** lineups, meaning the administrator does not know which is the suspect; and
- **blinded** lineups, where the LEO does not know which photo the witness is examining.

- Defense lawyers are not required to be present for photo lineups.
- If a defense lawyer has been retained or appointed, he/she must be allowed to witness a live lineup. You should video/audio both live and photo lineups.
- You should say: “The perpetrator may or may not be included in this group of people.”
- Each separate lineup should be conducted with only one witness present.
- See information on “Show-Ups” at end of this chapter.
Two-Stage Interrogations

Two-stage interrogation - conducting an unwarned/unrecorded custodial conversation, until the suspect confesses. Then, quickly start recording, explain Miranda, and get him to restate what he just said moments before the tape recording was started.

The result of this interrogation method is that the statement will be suppressed and could cause the LEO to lose credibility with the judge or jury. *Missouri v Seibert*, 542 US 600 (2004).

Q & A:

[Q 1] You are interrogating an arrestee who has not yet had a lawyer appointed, and he has been properly Mirandized. During the interrogation, you get word that the arrestee’s sister has hired him a lawyer. In fact, the lawyer has called the station and demanded that the interrogation cease. What do you do: Stop? Continue? Or note when you received the info, and proceed, thinking, “If part gets suppressed later, perhaps the previous info will still be good.”

[Q 2] A uniformed LEO arrives on the scene responding to a report of a 103, Dist/Peace. He sees the Dude with bloody knuckles. The LEO asks: “What happened here?” The Dude says: “I beat Fred like a drum.” Dude’s lawyer files a “Motion to Suppress” that statement due to lack of *Miranda* warnings.” Can the DA get the statement into evidence as part of her case in chief?

[Q 3] A LEO places the Dude under arrest, but has no intention of questioning him. Does the LEO have to explain *Miranda* to the Dude? What is the consequence of not doing it?

[Q 4] On Monday, LEOs arrest the Dude & explain his rights. He says: “I hear the public defenders around here are good. I do not want to talk until I’ve got my lawyer with me.” On Tuesday, LEOs go to the jail, again read him his *Miranda* rights, and question him about another crime. Can the DA use the Dude’s statements against him at the trial?

[Q 5] A week later, the Dude (still in jail) sends word to the Warden that he wants to talk to the LEOs, even though he told them last week that he only wanted to talk with a lawyer present. He has changed his mind. Can the DA use his statements against him in court?

[A 1] We think you stop immediately. Your local DA may disagree & he/she may be right. When an identified attorney is seeking to render assistance to a client in custody who is unaware of that fact, LEOs must communicate with the attorney, tell the suspect that he has a specific lawyer wanting access to him, and allow them to converse in private.

If you are conducting a scientific test (e.g., Intoxylizer), and get a message that the guy’s lawyer is in the lobby, asking for his/her client, we think you may (certainly not 100%) possibly complete the test for rapidly dissipating evidence, e.g., blood for ethanol testing. Mark the exact time when you were informed about the lawyer.

Recent LASC case on this subject: *St v Donovan Alexander*, supra. (La. 2020).
[A 2] Yes. A reasonable person in that situation would not feel as if his liberty had been restricted by a LEO simply asking the question “What happened here?”

He is not in custody and has not been detained, and that is true even if the LEO did not intend to let him leave, so long as the LEO does nothing before questioning that would make a reasonable person believe that he was being custodially detained, that is, facing an extended prosecution. *St v Davis*, 448 So.2d 645 (La. 1984).

[A 3] In LA, *Miranda* warnings are mandatory upon arrest & (custodial) detention.

Sanction for violation: Any statement made in response to questions after Miranda should have been administered will not be admissible in the prosecutor’s case in chief.


[A 5] Yes, as long as the arrestee voluntarily decided on his own to initiate contact with LEOs, even after he previously said he only wanted to speak through his attorney. After 14 days in jail (serving a sentence in general population), an inmate may be re-approached. This is very thin ice and you should not attempt this without the blessings of your DA. In *MD v Shatzer*, 559 US 98 (2010), SCOTUS reasoned that a period of two weeks (serving a sentence in general population) provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.

**Chronology of 5th and 6th Amendment Cases**

Full case citations at end of book.

<table>
<thead>
<tr>
<th>Year &amp; Court</th>
<th>Case &amp; Gist</th>
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</table>
| 1963 SCOTUS  | *Gideon v Wainwright*  
Courts must appoint atty for a defendant on a felony case, if he cannot afford a lawyer. The jurisprudence has developed such that a defendant has a right to an attorney on any case where he may have to serve any time. |
| 1963 SCOTUS  | *Brady v Maryland*  
DA must provide exculpatory evidence to the accused. |
| 1966 SCOTUS  | *Miranda v AZ*  
DA may not use statements stemming from custodial interrogation unless it proves that prior to questioning, the person was explained his *Miranda* rights. |
<table>
<thead>
<tr>
<th>Year</th>
<th>SCOTUS</th>
<th>Case Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>SCOTUS</td>
<td>US v Wade and Gilbert v CA</td>
<td>[The “Wade-Gilbert Rule”] If a lawyer has enrolled or been appointed, counsel must be at a live lineup.</td>
</tr>
<tr>
<td>1972</td>
<td>SCOTUS</td>
<td>Kirby v Illinois</td>
<td>Before a lawyer is appointed or hired, lineups can be performed without counsel.</td>
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<tr>
<td>1973</td>
<td>SCOTUS</td>
<td>US v Ash</td>
<td>Defense lawyers are not required to be present at photo lineups.</td>
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<tr>
<td>1981</td>
<td>SCOTUS</td>
<td>Edwards v AZ, 451 US 477 (1981)</td>
<td>Defendant asked for a lawyer. The next day, LEOs returned, read him his Miranda rights and obtained a voluntary confession. <strong>HELD:</strong> When defendant invokes his right to counsel, a valid waiver of that right cannot be established by showing that he later responded to LEO-initiated questions after a 2nd advisement, unless he initiated further communication with the police. If request for counsel is clearly claimed, all questioning on any case must immediately stop.</td>
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<tr>
<td>1984</td>
<td>SCOTUS</td>
<td>Berkemer v McCarty</td>
<td>Roadside questioning after DWI stop. LEO's unstated plan to arrest “has no bearing on the question whether a suspect was &quot;in custody;&quot; the relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.” Similar: PA v Bruder (SCOTUS 1988). <strong>Our hypo/comment:</strong> Someone stopped for speeding (for example) is momentarily seized, detained, &amp; not free to go, but he is NOT in custody.</td>
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<tr>
<td>1985</td>
<td>SCOTUS</td>
<td>Maine v Moulton</td>
<td>After indictment, a codefendant agreed to help the state. LEOs wired him up and sent him into a strategy session with defendant, where the codefendant deliberately elicited information about the crime. <strong>HELD:</strong> Violation of 6th Amendment. The codefendant was essentially acting as a state agent.</td>
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<tr>
<td>1986</td>
<td>SCOTUS</td>
<td>Kuhlman v Wilson</td>
<td>An informant is placed in a cell with the defendant and told to just listen. CI told LEOs that defendant admitted committing the crime. <strong>HELD:</strong> This did NOT violate the Sixth Amendment.</td>
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<tr>
<td>1988</td>
<td>SCOTUS</td>
<td>AZ v Roberson, 486 US 675 (1988)</td>
<td>Invocation of Miranda is NOT case-specific. After invocation, the arrestee cannot be questioned by any LEO on any case.</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Summary</td>
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<td>1991</td>
<td>SCOTUS</td>
<td>McNeil v Wisconsin</td>
<td>Appointment of counsel [e.g., La. C. Cr. P. art 230.1 proceeding] applies to that one case (offense), only; not any other case, and commences only at or after the initiation of adversary judicial criminal proceedings, whether by formal charge, preliminary hearing, indictment, information, or arraignment.</td>
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<td>1991</td>
<td>SCOTUS</td>
<td>Minnick v MS, 498 US 146 (1990)</td>
<td>Defendant told FBI agents “'Come back Monday when I have a lawyer' and said he would make a statement then with his lawyer present.&quot; He conferred with a lawyer over the weekend. On Monday, LEOs initiated conversation without a lawyer present. <strong>Held:</strong> The rule of Edwards v AZ, 451 US 477 (1981), <em>supra</em>, is reaffirmed. Once the right is clearly invoked, the lawyer must be present for any interrogation.</td>
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<td>1994</td>
<td>SCOTUS</td>
<td>Davis v US</td>
<td>Invoking the right to counsel must be clear and unambiguous. Over an hour into the interview defendant said, &quot;Maybe I should talk to a lawyer.&quot; The agents asked if he was asking for a lawyer. He said that he was not.</td>
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<td>2004</td>
<td>SCOTUS</td>
<td>MO v Seibert</td>
<td>Suspect confessed in police custody, without Miranda. She was then warned and repeated the confession. <strong>Held:</strong> this midstream recitation of warnings, after getting an unwarned confession, violates Miranda. <strong>NOTE:</strong> In US v Blevins (2014) the Fed 5th Circuit held that a later Mirandized statement, “removed meaningfully in time and place” from an earlier non-Mirandized statement can possibly be OK. Examples of Intervening Factors that may remove the taint: another LEO, different room, after meal, lapse of time.</td>
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<tr>
<td>2009</td>
<td>SCOTUS</td>
<td>Kansas v Ventris</td>
<td>If a statement is suppressed, this does not mean the defendant can lie at trial. Similar to Harris v NY (1971 SCOTUS). <strong>HELD:</strong> the defendant’s statements on the stand can be impeached by the prosecutor’s use of the previous statement, as long as the suppressed statement was made voluntarily.</td>
</tr>
<tr>
<td>2009</td>
<td>LASC</td>
<td>St v Shirley</td>
<td>After a fatal traffic accident, Miranda warnings were not required during an extensive, on-the-scene investigation, including questioning of the driver at the scene as to how much she’d had to drink. A reasonable person would have felt free to end the encounter. She was not arrested, nor treated as such, and she was not moved from a public area to a private area.</td>
</tr>
</tbody>
</table>
### 2009 LASC
**St v Palmer**
Consent to search does not require Miranda warnings.

### 2010 SCOTUS
**Berghuis v Thompkins**
If an accused makes a statement concerning the right to counsel or the right to remain silent “that is ambiguous or equivocal” or makes no statement, the police are not required to end the interrogation.

### 2010 LASC
**St v Montejo**
(after remand from SCOTUS)
**HELD:** Defendants may have more interrogation protection under the La. Constitution than under the US Constitution. Apparently it is so, as per **St v Donovan Alexander, supra** (2020)

### 2010 SCOTUS
**MD v Shatzer**
A sentenced & jailed defendant is approached by a LEO about another crime & invokes his right to counsel. 2.5 years later, the defendant (still incarcerated in general population), is approached by another LEO. After Miranda, he confesses to another crime.
**HELD:** Even though still in jail, the passage of 14 days while defendant was back to his normal life (here, general population in prison), was sufficient to allow re-interrogation, limiting **Edwards v AZ, (SCOTUS 1981), supra.**

### 2012 LASC
**St v Thornton**
Intoxication, without coercion, will not lead to a confession being suppressed. Defendant made a valid waiver, responding rationally and coherently to questioning, although she appeared heavily “narcoticized.”

### 2016 LASC
**St v Morgan**
Statements to a private dick, w/out **Miranda**, are admissible, if no indication that the private eye was acting as a LEO or as an agent for law enforcement.

### 2017 LASC
**St v Fletcher**
The administration of **Miranda** is not required during preliminary, on-scene questioning, prior to arrest. Statements ruled admissible included: admission at scene of ownership of vehicle; acknowledgement of gun during pat down; and talking on phone at the station, incriminating himself with LEOs around.

**St v McClellan**
During routine MV investigatory stop (while being briefly seized, detained, & not free to go) defendant was not in custody & not subject to **Miranda**. In a DWI, Miranda warnings are required only when a defendant is “subjected to restraints comparable to those associated with a formal arrest.”
### 2017 LASC

**St v Stephens**

Spontaneous and voluntary statements, not given as a result of police interrogation or compelling influence, are admissible in evidence w/o *Miranda* warnings even where a defendant is in custody. When the defendant saw the LEO seize the firearm, he blurted out his claim as to the gun’s ownership, not in response to a question, so the statement was admissible.

### 2018-2019 LASC

**St v Butler**

Defendant was identified in a single photographic lineup of a crime that occurred 22 years earlier. Procedure employed was highly suggestive and presented a substantial likelihood of misidentification. ID was suppressed.

**St v Cook**

LEOs detained a 15-year-old at school and did not administer *Miranda* at outset of interrogation. Motion to suppress statements granted - a reasonable 15-year-old would not have felt free to terminate police questioning and leave, thus the LEOs should have administered *Miranda*.

**St v Christopher Alexander**

- Two statements ultimately suppressed:
  - 257 So. 3d 672 (La. 12/03/18) – 18-KK-1772
    - First statement was made to LEO in interrogation room after LEO told defendant that no one would need to know what defendant told him. LEO’s assurance was false promise of confidentiality that resulted in a subverted *Miranda* warning.
  - 285 So. 3d 1091 (La. 12/20/19) – 19-KK-1664
    - Second statement was made to his mother after LEO told him to “apologize to your mother for what you did.” This second statement was closely related in time, circumstance, and content to the one previously suppressed, and there were no intervening factors to break the chain between statements.

### 2020 LASC

**State v Donovan Alexander** (La. 01/29/20) - 19-KK-0645

LEOs would not talk with a lawyer who demanded access to his client. LEOs just took the statement without telling the suspect of the presence of his lawyer. Thus, the defendant’s statement was suppressed as his right to remain silent and right to counsel were not knowingly and intelligently waived. In short, LEOs must

1. Speak with the presenting lawyer;
2. Tell the suspect he has a lawyer there; and
3. Let them talk in privacy.
Quick Comparison of the 5th and 6th Amendment

<table>
<thead>
<tr>
<th>Amendment:</th>
<th>5th Amendment</th>
<th>6th Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to:</td>
<td>Custodial Interrogations, Arrest, and Custodial Detentions re: Any Case.</td>
<td>All Critical Stages of the Prosecution of One Case.</td>
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<tr>
<td>Usually Triggered By:</td>
<td>Wanting to question a suspect in custody. Analysis: Would a reasonable person believe he was free to go &amp; stop answering, or that his freedom was denied in a significant way?</td>
<td>Being appointed a lawyer at the Institution of Formal Charges. In LA, this usually occurs at the 72-hour hearing, per La. C. Cr. Pro. art 230.1.</td>
</tr>
<tr>
<td>Goal:</td>
<td>Insure that a defendant’s decision to be questioned is voluntary, with full understanding of his rights, &amp; with a lawyer present, if he chooses.</td>
<td>Protection of all rights of the defendant by a competent lawyer, at all stages of one case.</td>
</tr>
<tr>
<td>Analysis</td>
<td>Was right to counsel [Davis v US, supra (1994)] clearly claimed? Was right to silence [Berghuis v Thompkins, supra (2010)] clearly claimed?</td>
<td>Was there a deliberate elicitation of inculpatory info from a represented defendant [w/out lawyer present].</td>
</tr>
<tr>
<td>Sanction</td>
<td>Statement is suppressed.</td>
<td>Statement is suppressed.</td>
</tr>
<tr>
<td>Granted by?</td>
<td>Miranda, based on 5th Amendment</td>
<td>6th Amendment itself</td>
</tr>
<tr>
<td>Lineup-related?</td>
<td>YES. Due Process - Fundamental Fairness requires a non-suggestive lineup.</td>
<td>YES. If he is represented, the lawyer must attend a live lineup.</td>
</tr>
</tbody>
</table>

Show Ups

If time, Lineups are better than Show Ups. However, within two hours (or less) of the crime, it is permissible to seek & preserve ID details from a witness, then take him to where the apprehended suspect is located, and see if an ID can be made. Before the viewing, tell the witness that the suspect may or may not be the culprit, and that the investigation will continue, whatever the result of the show up. Video the process. Simpler & Safer: Have the arresting LEO send a cellphone photo to the LEO who is with the witness. Save the image and make it part of your report. Never take a suspect to a victim’s home.

See next page for some Lagniappe.
Time Frames Commencing upon Arrest of Adults

<table>
<thead>
<tr>
<th>Name of Proceeding</th>
<th>72-hour hearing, aka initial presentment; aka jail clearance; aka 1st appearance</th>
<th>Riverside Finding, aka 48-hour Finding of PC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Basis</td>
<td>La. C. Cr. P. art 230.1</td>
<td>La. C. Cr. P. art 230.2</td>
</tr>
<tr>
<td>Constitutional Basis</td>
<td>Sixth Amendment, via Due Process Clause of the 14th</td>
<td>Fourth Amendment, via Due Process Clause of the 14th</td>
</tr>
<tr>
<td>Purpose</td>
<td>Applies to all arrests if def. is still in jail, but only provides a lawyer for that one case</td>
<td>To find PC [Only must be followed after warrant LESS arrests]</td>
</tr>
<tr>
<td>Mandatory Time Frame</td>
<td>Three full/clear judicial days</td>
<td>48 hours from moment of arrest</td>
</tr>
<tr>
<td>Are weekends counted?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Are legal holidays counted?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Conducted via:</td>
<td>Conversation with a judge, in person or electronically</td>
<td>Affidavits</td>
</tr>
<tr>
<td>Sanction for violation</td>
<td>ROR</td>
<td>ROR</td>
</tr>
</tbody>
</table>

**Time Frame Commencing upon Arrest of Juveniles**

Art. 819. Continued custody hearing; time limitations

*If a child is not released to the care of his parents, the court shall set and hold a hearing within three days after the child’s entry into the juvenile detention center or shelter care facility. The three-day period includes any day that is included as a legal holiday under Children’s Code Article 114. When the last day of the three-day period is a legal holiday, the hearing shall be set and held on the next business day that is not a legal holiday. If the hearing is not held, the child shall be released unless the hearing is continued at the request of the child.*

2019 Amendment per Act #310.

**Types of Arraignment in Louisiana**

NOTE: Four pleas can be entered in Louisiana, relative to criminal arraignment:
- Guilty;
- Not guilty;
- Nolo contendere (a “no contest” plea, not admissible in civil court); or
- Not guilty and not guilty by reason of insanity (combined).

*NC v Alford*, 400 U.S. 25 (1970) Allows an “Alford Plea” (a/k/a “best interests plea”), a type of guilty plea. The court must agree to allow the plea. The plea means: “While I do not concede that I committed the crime, it is in my best interests to enter a plea of guilty.”
CHAPTER VI. — SOME DOMESTIC VIOLENCE LAWS VITAL TO LEOs

See the many Title 14 laws involving DV, as listed in this book, and on our website: www.drewlawbooks.com, including:

- R.S. 14:34.9 Battery of a dating partner [BDP] ........................................ Page 38
- R.S. 14:34.9.1 Aggravated assault of a dating partner ............................ Page 40
- R.S. 14:35.3 Domestic abuse battery ................................................ Page 40
- R.S. 14:37.7 Domestic abuse aggravated assault ............................... Page 43
- R.S. 14:40.2 Stalking ........................................................................ Page 46
- R.S. 14:40.3 Cyberstalking ............................................................. Page 46
- R.S. 14:62.8 Home invasion ............................................................. Page 64
- R.S. 14:79 Violation of protective orders ........................................... Page 72
- R.S. 14:95.1.4 Illegal transfer to prohibited possessor ........................ Page 86
- R.S. 14:95.10 Poss. of a firearm or CCW by a person convicted of DAB and certain offenses of BDP .......... Page 89
- R.S. 14:285 Unlawful communications; telephones and telecommunications devices; Improper language .... Page 108
- R.S. 14:403.3 Reports of missing children ........................................... Page 115
- Also R.S. 46:2140 Law enforcement [DV] officers; duties ................... Page 184

See www.lasc.org/LPOR-Laws for hundreds of DV laws and forms.

DOMESTIC VIOLENCE PREVENTION FIREARM TRANSFER

- La. C. Cr. P. art 1001 Definitions ............................................................ Page 178
- La. C. Cr. P. art 1001.1 Duties of the sheriff ........................................... Page 178
- La. C. Cr. P. art 1002 Transfer of firearms .......................................... Page 178
- La. C. Cr. P. art 1002.1 CV against FM, HHM, or DP ............................. Page 181
- La. C. Cr. P. art 1003 Transfer/storage-transferred firearms ............... Page 181
- La. C. Cr. P. art 1003.1 Public records; exception ................................ Page 184
- La. C. Cr. P. art 1004 Implementation ................................................ Page 184

- La. C. Cr. P. art 313 GWEN’S LAW; bail hearings; detention w/o bail – BELOW: These hearings are no longer mandatory; Up to the judge.
  
  A. (1) This Paragraph may be cited as and referred to as "Gwen's Law".
   
  (2) A contradictory bail hearing, as provided for in this Paragraph, may be held prior to setting bail for a person in custody who is charged with domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant’s family member, as defined in R.S. 46:2132
or upon the defendant's household member as defined in R.S. 14:35.3, or upon the defendant's dating partner, as defined in R.S. 46:2151. If the court orders a contradictory hearing, the hearing shall be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. At the contradictory hearing, the court shall determine the conditions of bail or whether the defendant should be held without bail pending trial. If the court decides not to hold a contradictory hearing, it shall notify the prosecuting attorney prior to setting bail.

(3) In addition to the factors listed in Article 316, in determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate shall consider the following:

(a) The criminal history of the defendant.

(b) The potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.

(c) Documented history or records of any of the following: substance abuse by the defendant; threats of suicide by the defendant; the defendant's use of force or threats of use of force against any victim; strangulation, forced sex, or controlling the activities of any victim by the defendant; or threats to kill. Documented history or records may include but are not limited to sworn affidavits, police reports, and medical records.

(4) Following the contradictory hearing and based upon the judge's or magistrate's review of the factors set forth in Subparagraph(A)(3) of this Article, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

(5) If bail is granted, with or without a contradictory hearing, the judge or magistrate shall comply with the provisions of Article 320, as applicable. The judge or magistrate shall consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest. The conditions of the electronic monitoring and house arrest shall be determined by the court and may include but are not limited to limitation of the defendant's activities outside the home and a curfew. The defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring and house arrest. A violation of the conditions of bail may be punishable by revocation of the bail undertaking and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.
B. Upon motion of the prosecuting attorney, the judge or magistrate may order the temporary detention of a person in custody who is charged with the commission of an offense, for a period of not more than five days, exclusive of weekends and legal holidays, pending the conducting of a contradictory bail hearing. Following the contradictory hearing, upon proof by clear and convincing evidence either that there is a substantial risk that the defendant might flee or that the defendant poses an imminent danger to any other person or the community, the judge or magistrate may order the defendant held without bail pending trial.

C. (1) A contradictory bail hearing, as provided for in this Article, shall be held prior to setting bail for a person in custody who is charged with the commission of a sex offense and who has been previously convicted of a sex offense.

(2) The court, after having been given notice of an applicable prior conviction as described in Subparagraph (5) of this Paragraph, shall order a contradictory hearing to be held within five days of receiving notice of the prior conviction, exclusive of weekends and legal holidays.

(3) At the contradictory hearing the court, in addition to hearing whatever evidence it finds relevant, shall, on motion of the prosecuting attorney, perform an in camera examination of the evidence against the accused.

(4) In addition to the factors listed in Article 316, the court shall take into consideration the previous criminal record of the defendant; any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children; and the court shall give ample consideration to any statistical evidence prepared by the United States Department of Justice relative to the likelihood of the defendant, or any person in general who has been convicted of sexually inappropriate conduct with a prepubescent child under the age of thirteen, to commit similar offenses against juvenile victims in the future.

(5) For purposes of this Paragraph, "sex offense" means any offense as defined as a sex offense in R.S. 15:541 when the victim is under the age of thirteen at the time of commission of the offense and less than ten years have elapsed between the date of the commission of the current offense and the expiration of the maximum sentence of the previous conviction.

D. (1) A person charged with the commission of a capital offense shall not be admitted to bail if the proof is evident and the presumption great that he is guilty of the capital offense. When a person charged with the commission of a capital offense makes an application for admission to bail, the judge shall hold a hearing contradictorily with the state.

(2) The burden of proof at the contradictory bail hearing:
(a) Prior to indictment is on the state to show that the proof is evident and the presumption great that the defendant is guilty of the capital offense.

(b) After indictment is on the defendant to show that the proof is not evident or the presumption is not great that he is guilty of the capital offense

**DOMESTIC VIOLENCE PREVENTION FIREARM TRANSFER**

**LA C. Cr. P. art 1001   Definitions**

As used in this Title:

(1) "**Dating partner**" shall have the same meaning as provided in R.S. 46:2151 or R.S. 14:34.9.

(2) "**Family member**" shall have the same meaning as provided in R.S. 46:2132 or R.S. 14:35.3.

(3) "**Firearm**" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(4) "**Household member**" shall have the same meaning as provided in R.S. 46:2132 or R.S. 14:35.3.

(5) "**Other law enforcement agency**" shall include any local or municipal police force, the constable, and state police.

(6) "**Sheriff**" means the sheriff of the jurisdiction in which the order was issued, unless the person resides outside of the jurisdiction in which the order is issued. If the person resides outside of the jurisdiction in which the order is issued, "sheriff" means the sheriff of the parish in which the person resides.

**LA C. Cr. P. art 1001.1   Duties of the sheriff; other law enforcement agencies**

Notwithstanding any provision of law to the contrary, the sheriff may enter into an agreement with any other law enforcement agency to have that law enforcement agency assume the duties of the sheriff under this Title.

**LA C. Cr. P. art 1002   Transfer of firearms**

A. (1) When a person has any of the following, the judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of the person:

   (a) A conviction of domestic abuse battery (R.S. 14:35.3).

   (b) A 2+++ conviction of battery of a dating partner (BDP - R.S. 14:34.9).
(c) A conviction of BDP that involves strangulation (R.S. 14:34.9(K)).

(d) A conviction of BDP when the offense involves burning (R.S. 14:34.9(L)).

(e) A conviction of possession of a firearm or carrying a concealed weapon by a person convicted of DAB and certain offenses of BDP (R.S. 14:95.10).

(f) A conviction of domestic abuse aggravated assault (R.S. 14:37.7).

(g) A conviction of aggravated assault upon a dating partner (R.S. 14:34.9.1).

(h) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and which has as an element of the crime that the victim was a family member, household member, or dating partner.

(i) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and in which the victim of the crime was determined to be a family member, household member, or dating partner.

(2) Upon issuance of an injunction or order under any of the following circumstances, the judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of the person who is subject to the injunction or order:

(a) The issuance of a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 320, or 871.1 of this Code.

(b) The issuance of a Uniform Abuse Prevention Order that includes terms that prohibit the person from possessing a firearm or carrying a concealed weapon.

B. (1) The order to transfer firearms and suspend a concealed handgun permit shall be issued by the court at the time of conviction for any of the offenses listed in Subparagraph (A)(1) of this Article or at the time the court issues an injunction or order under any of the circumstances listed in Subparagraph (A)(2) of this Article.

(2) In the order to transfer firearms and suspend a concealed handgun permit the court shall inform the person subject to the order that he is prohibited from possessing a firearm and carrying a concealed weapon pursuant to the provisions of 18 U.S.C. 922(g)(8) and Louisiana law.

C. At the same time an order to prohibit a person from possessing a firearm or carrying a concealed weapon is issued, the court shall also cause all of the following to occur:
(1) Require the person to state in open court or complete an affidavit stating the number of firearms in his possession and the location of all firearms in his possession.

(2) Require the person to complete a firearm information form that states the number of firearms in his possession, the type of each firearm, and the location of each firearm.

(3) Transmit a copy of the order to transfer firearms and a copy of the firearm information form to the sheriff of the parish or the sheriff of the parish of the person's residence.

D. (1) The court shall, on the record and in open court, order the person to transfer all firearms in his possession to the sheriff no later than forty-eight hours, exclusive of legal holidays, after the order is issued and a copy of the order and firearm information form required by Paragraph C of this Article is sent to the sheriff. If the person is incarcerated at the time the order is issued, he shall transfer his firearms no later than forty-eight hours after his release from incarceration, exclusive of legal holidays. At the time of transfer, the sheriff and the person shall complete a proof of transfer form. The proof of transfer form shall contain the quantity of firearms transferred. The sheriff shall retain a copy of the form and provide the person with a copy. The proof of transfer form shall attest that the person is not currently in possession of firearms in accordance with the provisions of this Title and is currently compliant with state and federal law, but shall not include the date on which the transfer occurred.

(2) Within ten days of transferring his firearms, exclusive of legal holidays, the person shall file the proof of transfer form with the clerk of court of the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.

E. (1) If the person subject to the order to transfer firearms and suspend a concealed handgun permit issued pursuant to Paragraph A of this Article does not possess firearms, at the time the order is issued, the person shall complete a declaration of nonpossession form which shall be filed in the court record and a copy shall be provided to the sheriff.

(2) Within five days of the issuance of the order pursuant to Paragraph A of this Article, exclusive of legal holidays, the person shall file the declaration of nonpossession with the clerk of court of the parish in which the order was issued.

F. Notwithstanding the provisions of Paragraph E of this Article or any other provision of law to the contrary, if the person subject to the order to transfer firearms and suspend a concealed handgun permit issued pursuant to Paragraph A of this Article possessed firearms at the time of the qualifying incident giving rise to the duty to transfer his firearms pursuant to this Title, but transferred or sold his firearms to a third party prior to the court's issuance of the order,
that third-party transfer shall be declared in open court. The person subject to the order to transfer firearms and suspend a concealed handgun permit shall within ten days after issuance of the order, exclusive of legal holidays, execute along with the third party and a witness a proof of transfer form that complies with the provisions of Paragraph D of this Article and with Article 1003(A)(1)(a). The proof of transfer form need not be signed by the sheriff and shall be filed, within ten days after the date on which the proof of transfer form is executed, by the person subject to the order with the clerk of court of the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.

G. The failure to provide the information required by this Title, the failure to timely transfer firearms in accordance with the provisions of this Title, or both, may be punished as contempt of court. Information required to be provided in order to comply with the provisions of this Title cannot be used as evidence against that person in a future criminal proceeding, except as provided by the laws on perjury or false swearing.

H. On motion of the district attorney or of the person transferring his firearms, and for good cause shown, the court shall conduct a contradictory hearing with the district attorney to ensure that the person has complied with the provisions of this Title.

I. For the purposes of this Title, a person shall be deemed to be in possession of a firearm if that firearm is subject to his dominion and control.

- LA C. Cr. P. art 1002.1 Designation of crime of violence against family member, household member, or dating partner

   Notwithstanding the provisions of Articles 814 and 817 and any other provision of law to the contrary, when a person is charged with any felony crime of violence enumerated or defined in R.S. 14:2(B), for which the person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1 if convicted, the district attorney may allege in the indictment or bill of information that the victim of the crime was a family member, household member, or dating partner for the purpose of invoking the provisions of this Title, including Article 1002(A)(1)(i). If the person pleads guilty to the indictment or bill of information, the fact that the victim was a family member, household member, or dating partner shall be deemed admitted. If the matter proceeds to trial, the issue of whether the victim was a family member, household member, or dating partner shall be submitted to the jury and the verdict shall include a specific finding of fact as to that issue in addition to a specification of the offense as to which the verdict is found.

- LA C. Cr. P. art 1003 Transfer or storage of transferred firearms

   A. The sheriff of each parish shall be responsible for oversight of firearm transfers in his parish. For each firearm transferred pursuant to this Title, the sheriff shall offer all of the following options to the transferor:
(1) (a) Allow a third party to receive and hold the transferred firearms. The third party shall complete a firearms acknowledgment form that, at a minimum, informs the third party of the relevant state and federal laws, lists the consequences for noncompliance, and asks if the third party is able to lawfully possess a firearm. No firearm shall be transferred to a third party living in the same residence as the transferor at the time of transfer. The sheriff shall prescribe the manner in which firearms are transferred to a third party.

(b) If a firearm is transferred to a third party pursuant to the provisions of this Subparagraph, the sheriff shall advise the third party that return of the firearm to the person before the person is able to lawfully possess the firearms pursuant to state or federal law may result in the third party being charged with a crime.

(2) Store the transferred firearms in a storage facility with which the sheriff has contracted for the storage of transferred firearms or with the sheriff. The sheriff may charge a reasonable fee for the storage of such firearms.

(3) Oversee the legal sale of the transferred firearms to a third party. The sheriff may contract with a licensed firearms dealer for such purpose. The sheriff may charge a reasonable fee to oversee the sale of firearms.

B. The sheriff shall prepare a receipt for each firearm transferred and provide a copy to the person transferring the firearms. The receipt shall include the firearm manufacturer and firearm serial number. The receipt shall be signed by the officer accepting the firearms and the person transferring the firearms. The sheriff may require the receipt to be presented before returning a transferred firearm.

C. The sheriff shall keep a record of all transferred firearms including but not limited to the name of the person transferring the firearm, the manufacturer, model, serial number, and the manner in which the firearm is stored.

D. (1) When the person is no longer prohibited from possessing a firearm under state or federal law, the person whose firearms were transferred pursuant to the provisions of this Title may file a motion with the court seeking an order for the return of the transferred firearms.

(2) Upon reviewing the motion, if the court determines that the person is no longer prohibited from possessing a firearm under state or federal law, the court shall issue an order stating that the firearms transferred pursuant to the provisions of this Title shall be returned to the person. The order shall include the date on which the person is no longer prohibited from possessing a firearm and a copy of the order shall be sent to the sheriff. However, all outstanding fees shall be paid to the sheriff prior to the firearms being returned.
(3) No sheriff or third party to whom the firearms were transferred pursuant to the provisions of this Title, shall return a transferred firearm prior to receiving the order issued by the court pursuant to the provisions of this Paragraph.

(4) If the person refuses to pay outstanding fees to the sheriff or fails to file a motion with the court seeking an order for the return of the transferred firearms within one year of the expiration of the prohibition on possessing firearms under state or federal law, the sheriff may send, by United States mail to the person's last known address, a notice informing the person that if he does not pay the outstanding fees to the sheriff or file a motion with the court seeking an order for the return of the transferred firearms within ninety days, the firearms shall be forfeited to the sheriff. If, after ninety days from the mailing of the notice, the person does not pay the outstanding fees to the sheriff or file a motion with the court seeking an order for the return of the transferred firearms, the sheriff may file a motion seeking a court order declaring that the firearms are forfeited to the sheriff, who may thereafter dispose of the firearms at his discretion.

E. The sheriff shall exercise due care to preserve the quality and function of all firearms transferred under the provisions of this Title. However, the sheriff shall not be liable for damage to firearms except for cases of willful or wanton misconduct or gross negligence. In addition, the sheriff shall not be liable for damage caused by the third party to whom the firearms were transferred pursuant to the provisions of this Title.

F. Nothing in this Title shall be construed to prohibit the sheriff, consistent with constitutional requirements, from obtaining a search warrant to authorize testing or examination upon any firearm so as to facilitate any criminal investigation or prosecution. Notwithstanding Article 163(C) or any other provision of law to the contrary, the testing or examination of the firearms pursuant to the search warrant may be conducted at any time before or during the pendency of any criminal proceeding in which the firearms, or the testing or examination of the firearms, may be used as evidence, and shall not be subject to the ten-day period in Article 163(C).

G. Not sooner than three years after the date on which a firearm or firearms are returned pursuant to the provisions of this Article, the person may file a motion with the court requesting that the records relative to the firearm or firearms held by the clerk of court and by the sheriff be destroyed. After a contradictory hearing with the sheriff and the district attorney, which may be waived by the sheriff or the district attorney, the court, if the person is no longer prohibited from possessing firearms under state or federal law and if the firearm or firearms have actually been returned, shall order that the records held by the clerk of court and by the sheriff relative to the returned firearm or firearms be destroyed.
• **LA C. Cr. P. art 1003.1** Public records; exception

   Notwithstanding any provision of law to the contrary, any records held by the sheriff or any other law enforcement agency pursuant to this Title shall be confidential and shall not be considered a public record pursuant to the Public Records Law.

• **LA C. Cr. P. art 1004** Implementation

   The sheriff, clerk of court, and district attorney of each parish shall develop forms, policies, and procedures no later than January 1, 2019, regarding the communication of convictions and orders issued between agencies, procedures for the acceptance of transferred firearms, procedures for the storage of transferred firearms, return of transferred firearms, the proof of transfer form, the declaration of non-possession form, and any other form, policy, or procedure necessary to effectuate the provisions of this Title.

   The definition of “**Family members**” has been expanded in **R.S. 46:2132 Definitions**:  

   (4) “**Family members**” means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, foster children, other ascendants, and other descendants. “**Family member also means the other parent or foster parent of any child or foster child of the offender.**” Same definitions as found in Title 14.

   “**Household members**” means any person present or formerly living in the same residence with the defendant and who is involved or has been involved in a sexual or intimate relationship with the defendant and who is seeking protection under this Part.

   “**Dating partner**” means any person protected from violence under R. S. 46:2151 who is seeking protection under this Part. If a parent or grandparent is being abused by an adult child, adult foster child, or adult grandchild, the provisions of this Part shall apply to any proceeding brought in district court.  

• **LA R.S. 46:2140** LAW ENFORCEMENT OFFICERS; DUTIES

   A. If a law enforcement officer has reason to believe that a family or household member or dating partner has been abused and the abusing party is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to [List of 13 sources of laws]:

   - Title 09: LA R.S. 9:361, et seq ("and the following"); R.S. 9:372;
   - Title 46: R.S. 46:2131, et seq; R.S. 46:2151; R.S. 46:2171 et seq;
   - Children’s Code: LA Ch. C. art. 1564, et seq;
   - La. Code of Civil Procedure Articles 3604; 3607.1
   - La. Code of Crim. Procedure Articles: 30, 327.1, 335.1, 335.2, and 871.1, the officer shall immediately arrest the abusing party.
B. If a law enforcement officer has reason to believe that a family or household member or dating partner has been abused, and the abusing party is not in violation of a restraining order, a preliminary or permanent injunction, or a protective order, the officer shall immediately use all reasonable means to prevent further abuse, including:

(1) **Arresting** the abusive party with a warrant or without a warrant pursuant to Code of Criminal Procedure Article 213, if probable cause exists to believe that a felony has been committed by that person, whether or not the offense occurred in the officer's presence.

(2) **Arresting** the abusive party in case of any misdemeanor crime which endangers the physical safety of the abused person whether or not the offense occurred in the presence of the officer. If there is no cause to believe there is impending danger, arresting the abusive party is at the officer's discretion.

(3) **Assisting** the abused person in obtaining medical treatment necessitated by the battery; arranging for, or providing, or assisting in the procurement of transportation for the abused person to a place of shelter or safety.

(4) **Notifying** the abused person of his right to initiate criminal or civil proceedings; the availability of the protective order, R.S. 46:2136; and the availability of community assistance for domestic violence victims.

C. (1) When a law enforcement officer receives conflicting accounts of domestic abuse or dating violence, the officer shall evaluate each account separately to determine if one party was the predominant aggressor.

(2) In determining if one party is the predominant aggressor, the law enforcement officer may consider any other relevant factors, but shall consider the following factors based upon his or her observation:

   (a) Evidence from complainants and other witnesses.

   (b) The extent of personal injuries received by each person.

   (c) Whether a person acted in self-defense.

   (d) An imminent threat of future injury to any of the parties.

   (e) Prior complaints of domestic abuse or dating violence, if that history can be reasonably ascertained by the officer.

   (f) The future welfare of any minors who are present at the scene.

   (g) The existence of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to [same list of 13
sources of laws]..... the LEO shall presume that the predominant aggressor is the person against whom the order was issued.

(3) (a) If the officer determines that one person was the predominant aggressor in a felony offense, the officer shall arrest that person. The arrest shall be subject to the laws governing arrest, including the need for probable cause as otherwise provided by law.

(b) If the officer determines that one person was the predominant aggressor in a misdemeanor offense, the officer shall arrest the predominant aggressor if there is reason to believe that there is impending danger or if the predominant aggressor is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to [same 13 sources of law]. If there is no threat of impending danger or no violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order, the officer may arrest the predominant aggressor at the officer's discretion, whether or not the offense occurred in the presence of the officer. An arrest pursuant to the provisions of this Subparagraph shall be subject to the laws governing arrest, including the need for probable cause as otherwise provided by law. The exceptions provided for in this Section shall apply.

(4) As used in this Subsection:

(a) "Dating violence" has the meaning as defined in R.S. 46:2151(C).

Here is the text of Subpart C. of R.S. 46:2151. Dating violence ***►

For purposes of this Section, "dating violence" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other.

(b) "Domestic abuse" has the meaning as defined in R.S. 46:2132(3).

Here is the text of Subpart (3) of R.S. 46:2132 Definitions ***►

"Domestic abuse" includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family member, household member, or dating partner against another. "Domestic abuse" also includes abuse of adults as defined in R.S. 15:1503 when committed by an adult child or adult grandchild.
Here is the relevant text of R.S. 15:1503 (referenced immediately above). Definitions ***

For the purposes of this Chapter, the following terms shall have the following meanings, unless the context clearly indicates a different meaning: ***

(2) "Abuse" means the infliction of physical or mental injury, or actions which may reasonably be expected to inflict physical injury, on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value.

(3) "Adult" means any individual eighteen years of age or older, or an emancipated minor who, due to a physical, mental, or developmental disability or the infirmities of aging, is unable to manage his own resources, carry out the activities of daily living, or protect himself from abuse, neglect, or exploitation. ***

• CIVIL WARRANTS RELATIVE TO HOLIDAY VISITATION DISPUTES

1. SCENARIO

Momma and Daddy are divorced. Momma has sole custody of the only child, 10-year-old Junior. Daddy has only visitation rights. It’s a holiday, and, according to the divorce judgment, Daddy should have already returned Junior to Momma over 10 days ago. Everyone lives in your city. Momma shows up at your office, tells you of the tardiness of her ex, advises that he does this all the time, and demands that you go and pick up Junior and return him to her, especially since Momma’s Momma is in town from Kansas City, and wants to see Junior. Can you go get the kid? What can/should you do?

2. SHORT ANSWER

Without the issuance of a Civil Warrant, here’s about all you can do: go to the scene; ask to come inside; if refused, stay on the porch; make sure the child is safe; try to reason with daddy; advise him that he is risking a contempt citation for disobeying a court order, and possibly a criminal misdemeanor of interfering with the custody of a juvenile; keep the peace; and write a detailed report. Unless the child is in danger, the only way you can physically go into his home and get the child is with a CIVIL WARRANT, LA R.S. 9:343 (next).

3. TEXT - LA R.S. 9:343 Return of child kept in violation of custody & visitation order

A. Upon presentation of a certified copy of a custody and visitation rights order rendered by a court of this state, together with the sworn affidavit of the custodial parent, the judge, who shall have jurisdiction for the limited purpose of effectuating the remedy provided by this Section by virtue of either the presence of the child or litigation pending before the court, may issue a
civil warrant directed to law enforcement authorities to return the child to the custodial parent pending further order of the court having jurisdiction over the matter.

B. The sworn affidavit of the custodial parent shall include all of the following:

(1) A statement that the custody and visitation rights order is true and correct.

(2) A summary of the status of any pending custody proceeding.

(3) The fact of the removal of or failure to return the child in violation of the custody and visitation rights order.

(4) A declaration that the custodial parent desires the child returned.

4. LANGUAGE OF A CIVIL WARRANT

To the Hon. Jason Parker, Webster Parish Sheriff, or any Louisiana Law Officer:

Considering the documentary submissions as per LA R. S. 9:343, YOU ARE HEREBY authorized and empowered to locate the minor child, Hayes Smith, Jr (DOB: 2-16-2010), wherever he may be found in the state of Louisiana. When the child is located, a Louisiana Law Enforcement Officer, with jurisdiction in the governmental subdivision where the child is found, shall physically pick up the child and return him to his mother, Mary Jones Smith (DOB: 5.13.1990), 17 Green Street, Springhill, LA 71075. Signed at Minden, Webster Parish, LA, on September 1, 2020.

_______________________________
Joseph Jones, District Judge, 26th JDC
CHAPTER VII. • CIVIL LIABILITY

2021 TRUE BLUE DREW BOOK

INTRODUCTION

The U.S. legal system is divided into two basic categories of law, criminal and civil. Both federal and state court systems handle criminal and civil cases. As it should be, when it comes to the training of officers, most law enforcement agencies concentrate their training and education efforts on criminal law. LEOs, however, must also understand the civil laws of liability.

Many LEOs are sued each year, relative to the performance of their duties. Knowledge of civil law can win, or even prevent lawsuits against LEOs. Three excellent civil liability lawyers contributed to this Chapter:

- Initially, Shreveport’s Jennifer McKay; and, more recently,
- NOLA’s Laura Cannizzaro Rodrigue and Blake Arcuri of Rodrigue and Arcuri.

All three of these lawyers are brilliant, and a tremendous help to law enforcement.

A. State Law Claims

Civil lawsuits can be filed in the state court system against LEOs and/or their employers. These can be based in federal law, state law or both. These suits will often assert claims pursuant to the LA Constitution and/or LA statutory law. LA Constitutional claims are analyzed like claims asserted under the U.S. Constitution, so both are briefly addressed below in the federal section.

Other than Louisiana Constitutional claims, the other claims most often asserted pursuant to Louisiana law against members of law enforcement are tort claims. Louisiana, unlike any other state in the United States, derived its governing legal principals from France. All other states drew their governing legal principals from England.

Tort in French means injury or wrong. A tort is often understood as a breach of some non-contractual obligation. A tort can encompass intentional wrongdoing, negligence, or gross negligence. For example, if Joe decided he hated his neighbor and as a result shot and killed him, this would be intentional conduct which could lead to both criminal and civil legal actions. A civil tort claim for wrongful death could be filed. The DA will also prosecute for the homicide.

Compensatory damages are generally understood to be those damages which ‘make a victim whole.’ These include medical expenses, lost wages and an award for pain & suffering.
In contrast, **punitive damages** are meant to punish a defendant for particularly bad conduct and to ‘send a message’ to prevent such conduct in the future. In claims brought pursuant to Louisiana law, punitive damages are authorized only in very limited circumstances.

Punitive damages, however, are authorized by **42 U.S.C. 1983**, and are routinely sought by plaintiffs in cases brought against LEOs.

Besides intentional conduct, liability can also be based upon **negligent** or **grossly negligent** conduct.

**Negligent** conduct is behavior which falls below the level of behavior of a reasonably prudent person. It could also be fairly described as carelessness. For example, suppose a patrol officer while driving becomes distracted because he is talking on his personal cell phone. If his inattention leads him to run a stop sign, leading to a wreck, this would be negligent conduct.

**Gross negligence** has been defined by at least one Louisiana court to mean “reckless disregard”, “want of even slight care and diligence”, and the “want of that diligence which even careless men are accustomed to exercise.” For example, a court has found gross negligence when officers had no explanation for using hog-tie restraints on a subject who was not resisting and who was having an asthma attack.

As to torts, LA’s Civil Code **Article 2315** states that: ...“*[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.*”

Some statutes provide Qualified Immunity for negligence, but not criminal negligence.

The most common claims asserted under state law against LEOs include claims for unlawful/wrongful arrest, battery, assault, excessive force, defamation, intentional infliction of emotional harm, damages resulting from injuries sustained in automobile accidents, and failure to protect third parties from injury.

The framework for evaluating state tort claims brought against LEOs is outlined in **Mathieu v Imperial Toy Corp.**, 646 So. 2d 318 (La. 1994), which requires LEOs to choose a reasonable alternative in response to emergency situations – maybe not the BEST DECISION, but at least a REASONABLE DECISION.

### B. Federal Constitutional Claims

The most common basis for lawsuits against members of law enforcement is probably 42 United States Code § 1983, commonly referred to as “Section 1983,” which states in part:

“**Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any...person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...**”
Within **01** year of the act, a plaintiff can sue the LEO & the LEO’s agency. Usual bases:

- 1st Amendment (restricting freedom of speech or assembly);
- 4th Amendment (illegal seizure, illegal search, excessive force);
- 6th Amendment (denial of access to the courts, denial of legal materials); and
- 8th Amendment (conditions of confinement; deliberate indifference to medical needs).

### C. FOURTH AMENDMENT EXCESSIVE FORCE CASES

1. **Kyle v City of New Orleans**, 353 So. 2d 969 (La. 1977) – Excessive Force found by LASC where LEOs shot through a door to arrest a 65-year-old, 165 pound man.

2. **Tennessee v Garner**, 471 US 1 (1985) – Held that using deadly force to subdue an unarmed fleeing felon was an unreasonable seizure under The Fourth Amendment. Also requires a warning before deadly force is used “where feasible.”

3. **Graham v Connor**, 490 US 386 (1989) – Excessive force claims are judged objectively relative to The Fourth Amendment, on a case by case basis.

   *Q:* How much force can a LEO use?

   *A:* Only the minimum force needed to achieve an objectively lawful LEO action.

   *Q:* What is the proper means of analysis as to LEO conduct?

   *A:* Was what the LEOs did OBJECTIVELY REASONABLE? Subjective standard looks at the actual intent of this particular officer in this case. Objective standard looks at how a generic “reasonable officer” would have acted in this case. The Court chose this.

4. **Kingsley v Hendrickson**, 135 S. Ct 2466 (2015) – Held that a claimant alleging excessive force by a LEO does not have to prove the subjective intent of the LEO, only that his actions were objectively unreasonable (the mirror image of the same rationale as in **Graham, supra**).

### D. QUALIFIED IMMUNITY

Qualified immunity (“QI”) is a viable defense against many Section 1983 claims. This doctrine can sometimes be used as a means of getting suits dismissed prior to trial.

When a Section 1983 defendant pleads QI and shows he is a LEO whose position involves the exercise of discretion, the plaintiff must rebut this defense by proving that the LEO’s conduct violated clearly established law.
**QI** gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. LEOs, like other government officials acting within their discretionary authority, are immune, in their individual capacity, from civil liability if their conduct does not violate **clearly established rights** which a reasonable person would or should have known.

Factors as to whether a LEO used reasonable force are the following:

- severity of the crime,
- immediate threat to the LEO,
- level of resistance and intoxication, and
- whether the subject is belligerent, offensive, or uncooperative. *Graham*, *supra*.

Among other factors to be considered for a LEO to successfully claim **QI**, is whether or not the involved officers regularly attend legal update classes on a regular basis.

**E. EXAMPLE OF LEGAL ANALYSIS OF QUALIFIED IMMUNITY [“QI”]**

- **Pearson v Callahan**, 129 S. Ct 808 (2009)

  To defeat **QI**, **SCOTUS** found that plaintiffs must prove:

  1. that a constitutional violation occurred, and
  2. the LEO’s actions were NOT objectively reasonable.

  Failing to prove either prong means that QI applies & plaintiff’s claims are dismissed.

- **Ashcroft v al-Kidd**, 131 S. Ct. 2074 (2011)

  A wrongful arrest case where **QI** was applied and approved by **SCOTUS**.

  These 04 steep conditions must be met for a plaintiff to overcome a LEO’s protection of **QI**:

  1. Every reasonable official would know his actions violated an established right;
  2. The right violated must be beyond debate;
  3. The jurisprudence would make any reasonable LEO know his actions were unlawful; and
  4. The LEO is entitled to a clear warning of what is required by the Constitution.

  Excessive force claims can be defeated by **QI**. The reasonableness of the force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, recognizing that officers are often forced to make split-second judgments – often during intense, uncertain, and rapidly evolving circumstances.
• **Mullenix v. Luna**, 136 S. Ct. 305 (2015)

  Officers engaged in a high speed pursuit between 90-110 mph. Perp. called 911 during the chase and advised he had a gun and would shoot officers if they didn’t end pursuit.

  Trooper positioned himself on overpass and fired 6 shots at the car in an attempt to disable the vehicle. 4 of those shots hit perp and he died.

  5th Circuit had held: “A reasonable officer would have known that the use of deadly force, absent a sufficiently substantial and immediate threat, violated the Fourth Amendment.” LEO perceived some threat of harm, but it wasn’t sufficient to prompt that response. Denied QI.

  SCOTUS HELD:

  Prior precedent did not establish "beyond debate" that Mullenix's actions were objectively unreasonable. Reversed 5th Circuit, QI granted to the officer.

  There were probably better ways to subdue the subject. But if the Courts haven’t decided this issue yet, how can we hold officers liable for making a decision in a split-second?


  LEOs received complaints about a raucous party. Twenty-one people were involved in lap dances, stripping, and apparently exchanging sexual favors for money. Two of the strippers alleged that “Peaches” had invited them.

  When the LEOs called Peaches, she first said she invited the 21 people, with full authority, then later admitted that she had no authority.

  Initial arrests for 16 participants were for unauthorized entry; later changed to “disorderly conduct.”

  All charges were dismissed, and a civil suit followed, finding two LEOs responsible for damages, doing away with their respective claims of QI.

  SCOTUS HELD:

  PC to make an arrest existed; and even if it didn’t, these LEOs had QI.

  Important: Highly-trained and experienced LEOs are able to consider, in reaching burdens such as PC, various facts, which (considered separately) could be explained innocently. Such knowledgeable LEOs can infer that these factors, considered cumulatively, can be of value in the assessment of any criminality present.
Glossary of 08 Terms &/or Re-stated Facts for LA LEOs

1. AGGRAVATED

This word in the name of a crime will usually indicate that human life is endangered and/or that a dangerous weapon is involved. With the exception of R.S.14:37, Agg. Assault, an "Aggravated" crime is always a felony.

2. EXIGENT ENTRY OF A HOME [St. v Shisler and Dyczweski, ____So. 3d ____ (La. 5/1/20)]

This recent LASC case lists factors that, when the LEO has PC, provide an exigent circumstance allowing the LEO to make a warrantless search of a home (for arrest or seizure) without consent: To prevent destruction of evidence; To prevent an offender's escape; To prevent a violent confrontation; and To conduct a protective sweep. The fact of CCTV cameras and an arrest for a small amount of MJ outside did not provide a valid exigency for a warrantless, non-consensual entry. Also, these LEOs lacked PC.

3. HEARSAY

Testimony of what was said outside of court, not to prove that it was uttered, but to prove that the statement is true. The problem is no way to cross-examine what someone else (other than the witness) said outside of court. Hearsay is often allowed at pre-trial or post-trial hearings, but almost never at a trial.

4. PRIVILEGE

An evidentiary rule that allows a witness not to reveal what a defendant told him. Usually: client-attorney; patient-doctor; priest-penitent. The marital privilege is two fold: If Wife sees Husband do something that is illegal, it is her decision whether or not she will testify about what she saw. After divorce, she will be expected to testify. If Husband TOLD Wife something incriminating, it will always be his decision as to whether or not she will reveal what he said, even after divorce.

5. RAPE PROSECUTION

The husband/rapist can be prosecuted for any of the 03 rapes that fit the facts, when the victim is his wife.

6. SEQUESTRATION

Witnesses may be placed "under the rule" during a hearing or a trial, meaning that no witness may see or hear another witness testify. All witnesses who are sequestered will have to remain outside the courtroom while the hearing/trial is ongoing. The witnesses, during sequestration, can only discuss the facts of the case with the lawyers who are involved.

7. VEHICULAR

This word will indicate that the subject crime involves an impaired operator of a movable. A vehicular crime includes the crime of DWI.

8. WITNESS

One who gives evidence, under oath, of knowledge he/she has personally seen or knows.
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# Chapter IX. Court Case Index

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